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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
ROSETTA STITT) OEA Matter No. J-0020-11
Employee)
) Date of Issuance: April 19, 2011
v.)
) Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA OFFICE OF THE) Administrative Judge
STATE SUPERINTENDENT OF EDUCATION)
Agency)
_____)

Rosetta Stitt, Employee, *pro se*
Raeshawn Crosson-Settles, Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Rosetta Stitt, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on November 12, 2010, appealing the final decision of the District of Columbia Office of the State Superintendent of Education, Agency herein, to remove her from her position as Assistant Terminal Manager, effective November 16, 2010. In her petition, Employee identified herself as having career and permanent status. However, in its October 29, 2010 letter to Employee notifying her of her impending removal, Agency stated that Employee had been “appointed non-competitively without job tenure” on March 25, 1991, and that she had no appeal rights to this Office.

The matter was assigned to me on March 7, 2011. I issued an Order on that date, in which I notified Employee that she had the burden of proof on the issue of jurisdiction. I directed her to submit argument and documentation to support her position that this Office had jurisdiction of this matter. I also directed Agency to submit its response, specifically supporting its argument that this Office lacked jurisdiction to hear this matter. I directed that both submissions be filed by no later than 4:00 p.m. on March 25, 2011, and notified the parties that failure to comply with the Order in a timely manner could result in the imposition of sanctions, including, in the Employee’s case, the dismissal of the petition without further notice. I also notified the parties that the record in this matter would close at 4:15 p.m. on March 25, 2011, unless they were notified to the contrary. The Order was

mailed to Employee by first class mail, postage prepaid, at the address listed by Employee in her petition for appeal. It was not returned to OEA. Employee did not respond to the Order or contact the Office to request an extension.¹ The record closed at 4:15 p.m. on March 25, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) states:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

In this matter, Employee failed to respond to the Order issued on March 7, 2011, which was sent to her by first class mail, postage prepaid, at the address she listed in her petition. The Order was not returned to OEA. and is presumed to have been delivered to Employee. OEA Rule 622.3(b), cited above, provides that a failure to prosecute an appeal includes the failure to submit required documents after being provided with a deadline for such submission. The Order imposed a deadline of March 25, 2011, and notified Employee that her failure to comply could result in the imposition of sanctions, including the dismissal of the petition. I conclude that by failing submit a required response after being provided with a deadline for such submission, Employee failed to prosecute her appeal.

Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), employees have the burden of proof on issues of jurisdiction. Employee was directed to present legal or factual argument to establish this Office's jurisdiction in view of Agency's arguments that this Office lacked jurisdiction in this matter. Due to Employee's failure to respond, she could not meet her burden of proof on the issue of

¹ . Agency filed a request for an extension on March 25, 2011. Since Employee failed to file her submission on that date, and she had the burden of proof in this matter, I did not rule on Agency's motion. Agency did file its submission on April 13, 2011. It was not considered in reaching a decision in this matter.

jurisdiction. Thus, this matter is also dismissed due to Employee's failure to meet her burden of proof on the issue of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge