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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CLAUMISHA REID)	
Employee)	OEA Matter No. J-0083-13
)	
v.)	Date of Issuance: June 18, 2013
)	
OFFICE OF THE STATE)	Lois Hochhauser, Esq.
SUPERINTENDENT OF)	Administrative Judge
EDUCATION)	
Agency)	
_____)	
Claumisha Reid, Employee <i>Pro Se</i>		
Virginia Crisman, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 25, 2013, Claumisha Reid, Employee herein, filed a petition for appeal with the Office of Employee Appeals (OEA) appealing the decision of the Office of the State Superintendent of Education, Agency herein, to terminate her employment. The effective date of the termination, according to the petition, was July 11, 2012. I was assigned the matter on May 15, 2013.

On May 16, 2013, I issued an Order notifying Employee that it appeared that her petition was untimely, and directing her to submit legal and/or factual argument regarding the timeliness of her appeal by May 31, 2013. In the Order, I notified Employee that her failure to respond to this Order could result in the imposition of sanctions, including the dismissal of the appeal without further notice. I also advised Employee that her failure to respond could be considered as her concurrence that this Office lacks jurisdiction because the appeal was untimely. Finally, in the Order, the parties were advised that unless they were notified to the contrary, the record in this matter would close on May 31, 2013. Employee did not respond to the Order, and did not contact the undersigned to request an extension. The record therefore closed on May 31, 2013.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

There are several bases for dismissing this appeal. The first basis is the untimely filing of the appeal. Timeliness is a jurisdictional issue. Pursuant to OEA Rule 628, 59 DCR 2129 (March 16, 2012), cited in pertinent part below, Employee has the burden of proof on this issue:

628.1 The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean the degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

628.2 The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

OEA Rule 604.2 requires that appeals be filed within 30 days of the effective date of the appealed action. The effective date in the final Agency notice submitted by Employee with her appeal was July 11, 2012. The final Agency notice provided information regarding appeals filed with this Office, including the 30 day time limit. Employee did not respond to the Order. Therefore, there is no basis for excusing the late filing. Employee failed to meet her burden of proof on the jurisdictional issue of timeliness. The appeal should be dismissed for lack of jurisdiction.

Employee's failure to prosecute this appeal constitutes another independent basis for dismissing her petition. OEA Rule 621.3 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.

Employee was directed to respond to the Order by May 31, 2013. She was informed that that her failure to comply could result in the imposition of sanctions, including the dismissal of the petition without further notice. Employee did not respond, and did not otherwise contact the undersigned to request an extension. Her failure to respond, pursuant to OEA Rule 621.3(b), provides another basis for dismissing this appeal.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge