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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MARCUS THOMPSON,)	
Employee)	OEA Matter No. 1601-0387-10
)	
v.)	Date of Issuance: September 28, 2012
)	
DISTRICT OF COLUMBIA)	STEPHANIE N. HARRIS, Esq.
PUBLIC SCHOOLS,)	Administrative Judge
Agency)	
_____)	
Marcus Thompson, Employee <i>Pro-Se</i>)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 26, 2010, Marcus Thompson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate him from his position as an Educational Aide. On September 27, 2010, Agency submitted its Answer in response to Employee’s Petition for Appeal.

I was assigned this matter on or around July 17, 2012. On July 24, 2012, I ordered (“July 24th Order”) the parties to submit briefs addressing whether OEA had jurisdiction in this matter in response to Agency’s claim that Employee was in probationary status at the time of his termination. Employee’s brief was due on or before August 3, 2012 and Agency’s brief was due on or before August 15, 2012. No response was received from Employee as directed by the July 24th Order. On July 31, 2012, Employee’s copy of the July 24th Order was returned to this Office marked ‘Return to Sender; Attempted-Not Known; Unable to Forward’. On August 7, 2012, I issued an Order for Statement of Good Cause (“August 7th Order”) wherein Employee was required to submit a statement explaining his failure to adhere to the deadline as was previously prescribed. Moreover, Employee was also directed to submit his legal brief. Employee’s response was due on or before July 23, 2012. On August 14, 2012, Employee’s copy of the August 7th Order was returned to this Office marked with a ‘Return to Sender’ label. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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:

That 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.

OEA Rule 628.2 *id.* states:

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.

ANALYSIS AND CONCLUSIONS OF LAW

In its Answer, Agency contends that Employee was not a permanent employee at the time of his separation and requests that this matter be dismissed for lack of jurisdiction. This contention raised a jurisdictional issue in this matter.

This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction..” Pursuant to OEA Rule 628.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat 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.”

This Office has no authority to review issues beyond its jurisdiction.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.² Because Employee has the burden of proof in issues of jurisdiction, I find that, by not providing a response to the July 24th and August 7th Orders, Employee has failed to meet his burden of proof in this matter. And for this reason, I am unable to address the factual merits, if any, of this matter.

Additionally, OEA Rule 621.1³ grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “in the exercise of sound discretion may dismiss the action or rule for the appellant” if a party fails to take reasonable steps to prosecute or defend an appeal.⁴ In addition to OEA Rule 621.3(b)-(c), this Office has consistently held that the failure to prosecute an appeal includes failing to submit required documents after being provided with a deadline for such submission and not informing this Office of a change of address which results in correspondence being returned.⁵ Both the July 24th and August 7th Orders advised Employee that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. Therefore, the undersigned concludes that Employee’s failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, the undersigned finds that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this represents another reason why this appeal should be dismissed.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for lack of jurisdiction and for Employee’s failure to prosecute his appeal.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

¹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

³ 59 DCR 2129 (March 16, 2012).

⁴ See OEA Rule 621.3.

⁵ See also *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).