

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KEVIN HUGHES)	OEA Matter No.: J-0110-13
Employee)	
v.)	Date of Issuance: October 9, 2013
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Lois Hochhauser
Agency)	Administrative Judge
_____)	
Kevin Hughes, Employee <i>Pro-Se</i>)	
Iris Barber, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 26, 2013, Kevin Hughes, Employee, filed a Petition for Appeal with the Office of Employee Appeals (OEA) regarding the delay of the District of Columbia Public Schools, Agency, in completing its investigation of his application to renew his teaching license. He listed the date of the written notice of the final decision as June 20, 2013.

I was assigned this matter on July 10, 2013. Upon review of the documents filed, I determined that the jurisdiction of the Office was at issue. On July 15, 2013, I issued an Order advising Employee that it appeared that the Office did not have jurisdiction regarding the issue raised in his petition. I further advised him that employees have the burden of proof on all issues of jurisdiction. I directed him to show good cause why the petition should not be dismissed based on lack of jurisdiction and further, to submit the final Agency notice by no later than July 31, 2013 and that unless notified to the contrary, the record would close on that date. In addition, I cautioned him that his failure to respond to the Order could be considered a failure to prosecute his appeal which could constitute an independent ground to dismiss the petition. Employee did not respond to the Order and the record closed on July 31, 2013.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

The jurisdiction of this Office is set forth in Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001). D.C. Official Code §1-606.03(a) states in pertinent part:

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]. . . .

In his petition, Employee described the action he was appealing, in pertinent part, as follows:

On 06/20/2013 I went to renew my license. Filled out [an] application...got fingerprinted and still waiting for results of investigation to be completed.

Employee's petition does not identify a category over which this Office has jurisdiction, as provided in D.C. Official Code § 1-606.03(a), *infra*. This Office has no authority to review issues beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992). Employee was given an opportunity to provide such a basis and was advised that he had the burden of proof on the issue of jurisdiction. He did not respond to the Order.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012) provides that employees have the burden of proof on issues of jurisdiction. I conclude that Employee did not meet the burden of proof on the issue of jurisdiction and that this petition for appeal should therefore be dismissed.

In addition, OEA Rule 621.1, 59 DCR 2129 (March 16, 2012), authorizes this Office's Administrative Judges "in the exercise of sound discretion [to] dismiss the action" if a party fails to take reasonable steps to prosecute or defend an appeal. *See* OEA Rule 621.3. According to OEA Rule 621.3(b), the failure to prosecute an appeal includes a failure to "[s]ubmit required documents after being provided with a deadline for such submission." The July 15, 2013 Order directed Employee to file his response by July 31, 2013 and notified him that his failure to respond to the Order could be considered as a failure to prosecute and result in the imposition of sanctions, including the dismissal of the petition. I conclude that Employee's failure to respond to the Order constitutes a failure to prosecute his appeal. I further conclude that the sanction of dismissal of the petition is appropriate in this matter. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Accordingly, I conclude that Employee's failure to prosecute his appeal constitutes a second and independent basis upon which this petition should be dismissed.

ORDER

Based on the foregoing findings of facts, conclusions of law and analysis, it is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge