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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DANITA MOORE)	OEA Matter No. 1601-0028-15
Employee)	
)	Date of Issuance: March 27, 2015
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Administrative Judge
Agency)	
_____)	

Danita Moore, Employee, *Pro Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Danita Moore, Employee, filed a petition with the Office of Employee Appeals on January 2, 2015, appealing the decision of the District of Columbia Public Schools, Agency, to terminate her employment, effective January 7, 2015. At the time of her removal, Employee was serving in the position of Program Support Assistant.

This matter was assigned to me on February 11, 2015. After reviewing the file, I determined that jurisdiction was at issue, since Employee had identified herself as a term employee who had been employed for seven months at the time of her removal. In addition, in its February 6, 2015 Answer, Agency identified Employee as a probationary employee at the time of her removal. On February 18, 2015, I issued an Order directing Employee to submit legal and/or factual argument in support of her position that this Office had jurisdiction of her appeal by no later than March 9, 2015. The Order advised Employee that she had the burden of proof on all jurisdictional issues; and further, that failure to respond could result sanctions based on her failure to prosecute and/or could be viewed as concurrence with the conclusion that this Office lacked jurisdiction to hear the appeal. The Order stated that unless the parties were notified to the contrary, the record in the matter would close on March 9, 2015. The Order was sent to Employee by first class mail, postage prepaid, to the address listed in her petition for appeal. It was not returned, and is presumed to have been received by Employee in a timely manner. Employee did not file a response to the Order. The record closed on March 9, 2015.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Did Employee meet her burden of proof on the issue of jurisdiction?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states that employees have the burden of proof on all issues of jurisdiction. This burden must be met by a “preponderance of the evidence” which is defined in OEA Rule 628.2 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.” Employee has the burden of proof on the issue of her employment status, since her employment status is a basis for this Office’s jurisdiction.

Pursuant to the Omnibus Personnel Reform Amendment Act, D.C. Law 12-124 (1998), this Office has jurisdiction to hear appeals of permanent employees in the career and education services who have successfully completed their probationary periods. Permanent employees who serve in either the career or educational service are entitled to removal for cause. As discussed below, identifying Employee as a term employee or as a probationary employee would not change the outcome, since this Office lacks jurisdiction to hear the appeal of either term or probationary employees. *See* D.C. Code §1-617.1(b).

Employee claims that she was a term employee. Chapter 8, Section §826.1 of the District Personnel Manual (DPM) provides that the “employment of an individual under a ...term appointment shall end on the expiration date of the appointment.” Since there is no guarantee of continued employment at the expiration of the term, a term employee has no basis to appeal termination. An appeal by a term employee therefore under those circumstances would therefore be dismissed. *See, e.g., Sinai v. Department of Human Services*, OEA Matter No. 1601-0126-91 (November 18, 1993). Agency maintains Employee was in probationary status at the time of her removal. §814.3 of the DPM states that a termination during the probationary period cannot be appealed to this Office. An appeal to this Office by a probationary employee must therefore be dismissed for lack of jurisdiction. *See, e.g., Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991). For these reasons, the Administrative Judge conclude that Employee did not meet her burden of proof that this Office has jurisdiction to hear her appeal, and that therefore the appeal should be dismissed.

There is another basis to dismiss this matter. OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) provides that “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.” According to OEA Rule 621.3(b), the failure of an employee to prosecute an appeal includes the failure to submit documents after being provided with a deadline for the submission. In this matter, an Order was issued which directed Employee to file a response by March 9, 2015. She was notified that failure to respond in a timely manner could result in the imposition of sanctions, including dismissal. The Order was mailed to the address listed by Employee in her petition by first class mail, postage prepaid. It was not returned to OEA, and is presumed to have been received by Employee in a timely manner. Employee did not file a response or contact the undersigned to request an extension of time. The Administrative Judge concludes that Employee’s failure to respond to the Order which provided a deadline, constitutes a failure to prosecute her appeal and provides an additional and independent basis to dismiss this matter. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010).

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge