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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
THERESA NOKES,)	
Employee)	OEA Matter No. J-0260-12
)	
v.)	Date of Issuance: November 27, 2012
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Theresa Nokes, Employee, <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 17, 2012, Theresa Nokes (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Public Schools’ (“Agency”) decision to terminate her effective August 10, 2012. At the time of her termination, Employee was a Parent/Tech Coordinator. The effective date of Employee’s termination was August 10, 2012. On October 22, 2012, Agency filed its Answer to Employee’s Petition for Appeal requesting that the appeal be dismissed for lack of jurisdiction.

I was assigned this matter on October 10, 2012. Thereafter, on October 24, 2012, I issued an Order requiring Employee to submit a written brief addressing the jurisdiction issue in this matter by November 6, 2012. Agency was also ordered to submit a reply to Employee’s jurisdiction brief, if it chose to. Employee did not comply. Subsequently, on November 7, 2012, I issued a Show Cause Order, wherein, I ordered Employee to submit a statement of good cause for her failure to submit a response to the October 24, 2012, Order by November 19, 2012. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to D.C. Official Code, § 1-606.03 (2001), has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

Agency highlights in its Answer that OEA lacks jurisdiction in this matter since Employee filed her appeal with this Office more than thirty (30) days from the effective date of her termination. 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. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1¹, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, 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.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³

A "[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within thirty (30) calendar days of the effective date of the action being appealed."⁴ The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.⁵ Also, while this Office has held that the statutory thirty (30) days time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,⁶ there is an

¹ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

² See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Pub. Sch.*, 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).

⁴ DC Official Code §1-606.03.

⁵ See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

⁶ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

exception whereby, a late filing will be excused if an agency fails to provide the employee with “adequate notice of its decision and the right to contest the decision through an appeal.”⁷

Here, According to the parties’ submissions to this Office, Employee’s termination was effective August 10, 2012. Because Employee’s termination effective date was August 10, 2012, Employee had thirty (30) days from that date to file an appeal with OEA, but failed to do so. She filed her appeal on September 17, 2012, approximately thirty-eight (38) days from the termination effective date. According to the Final Agency Decision in this matter, Agency complied with OEA Rule 605.1⁸ when it terminated Employee, and as such, Employee’s untimely Petition for Appeal does not fall within the exception to the thirty (30) days mandatory filing requirement. Further, because Employee has the burden of proof in issues of jurisdiction, I find that, by not providing a response to the October 24, 2012, and November 7, 2012, Orders, Employee has failed to meet her burden of proof in this matter. Therefore, I conclude that this Office does not have jurisdiction over Employee’s appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

Assuming *arguendo* that this Office had jurisdiction over Employee’s appeal, OEA Rule 621.1 grants an Administrative Judge (“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.⁹ This Office has held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.¹⁰ Here, Employee was warned in the October 24, 2012, and November 7, 2012, Orders 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. I conclude that, Employee’s failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I find 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

Based on the foregoing, it is hereby **ORDERED** that Employee’s appeal is **DISMISSED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁷ OEA Rule 605.1; See also *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, Opinion and Order on Petition for Review (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, Opinion and Order on Petition for Review (May 23, 2011).

⁸ 59 DCR 2129 (March 16, 2012).

⁹ *Id.* at 621.3.

¹⁰ *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).