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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
FELIPA CEDILLOS)	OEA Matter No. 2401-0115-12
Employee)	
)	Date of Issuance: January 18, 2013
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Administrative Judge
Agency)	
_____)	
Felipa Celillos, Employee, <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Felipa Cedillos, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on June 25, 2012, appealing the decision of the District of Columbia Public Schools, Agency herein, to eliminate her position as part of a reduction-in-force (RIF), effective August 10, 2012. I was assigned the matter on or about September 23, 2012.

In its Answer, Agency provided its rationale for its decision to RIF Employee, but also provided documentation that Employee had been reassigned to another position and did not suffer a break in service. Among the attachments submitted by Agency was a letter from Crystal Jefferson, Interim Deputy Chief, Agency Office of Human Resources to Employee, dated August 9, 2012, notifying her that she had been assigned to a permanent position; and a Notification of Personnel Action (Standard Form 50) signed by Ms. Jefferson, documenting the reassignment with an effective date of August 12, 2012. Agency requested that the matter be dismissed for lack of jurisdiction.

On September 25, 2012, I issued an Order directing Employee to respond to Agency's position that this Office lacked jurisdiction to hear this matter because Employee had never been terminated, but rather was reassigned without a break in service. I advised Employee that she had the burden of proof on the issue of jurisdiction and directed her to respond by October 10, 2012. I notified Employee that her failure to respond could be considered concurrence that the petition should

be dismissed, and could also be viewed as a failure to prosecute her appeal. The parties were advised that unless they were notified to the contrary, the record would close on October 10, 2012. The Order was mailed to Employee at the address identified by Employee in her petition as her address, by first class mail, postage prepaid. It was not returned, and is presumed to have been received by Employee in a timely manner. Employee did not respond to the Order. The record closed on October 10, 2012.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction is conferred upon it by law. D.C. Official Code §1-606.03(a), this Office's jurisdiction is limited to appeals involving performance ratings that result in removals, final agency decisions that result in removals, reductions in grade, suspensions of ten days or more, placement on enforced leave and reductions-in-force. In this matter, Employee contended that she was removed pursuant to a RIF. However, the documentation submitted by Agency support Agency's contention that Employee was not removed, but rather was reassigned with no break in service. If Employee was not removed pursuant to a RIF, as she alleged, then this Office lacks jurisdiction to hear this matter. Pursuant OEA Rule 628.2, 59 D.C. Reg. 2129 (March 16, 2012), Employee has the burden of proof on issues of jurisdiction. Employee must meet this burden by a "preponderance of the evidence," defined in OEA Rule 621.1, as 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." Employee was given the opportunity to meet this burden of proof and establish that this Office had jurisdiction to hear this matter. She failed to do so. She was further advised that her failure to respond could be considered concurrence that the matter should be dismissed. This provides a basis for dismissing the petition..

Employee's failure to respond to the Order provides an additional basis to dismiss this petition. OEA Rule 621.3(b) provides that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. The failure to prosecute an appeal includes the failure to meet a deadline for submitting a document. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). In this matter, Employee did not respond to the Order of September 25, 2012, which directed that her submission be filed by October 10, 2012. Employee did not seek an extension or contact this Office about the matter. The Order was sent to Employee at the address provided by Employee in her petition by first class mail, postage prepaid. It was not returned and is deemed received by Employee in a timely manner. In the Order, I advised Employee that her failure to respond could also be considered as a failure to prosecute this appeal. I conclude that Employee's failure to prosecute this matter provides another basis for the dismissal of this petition.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED¹

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge

¹ Since this petition is being dismissed, Agency's request is moot.