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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MINA VEAZIE)	OEA Matter No. 1601-0112-07
Employee)	
)	Date of Issuance: July 16, 2008
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Administrative Judge
Agency)	
_____)	
John Mercer, Esq., Employee Representative		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition with the Office of Employee Appeals (OEA) on August 15, 2007, appealing Agency’s imposition of a ten day suspension, effective July 16, 2007. At the time the petition was filed, Employee was in permanent career status.

This matter was assigned to me on October 30, 2007. At the prehearing conference, which took place on November 19, 2007, the parties agreed to enter into mediation. On or about March 19, 2008, I was advised that mediation efforts had not been successful, and I issued an Order scheduling a hearing for May 1, 2008. Employee and counsel were present at the proceeding, but Sara White, Agency representative, did not appear. I contacted Ms. White by telephone and she stated that she had not received a copy of the Order. She stated that it was Agency’s “firm intention” to resolve the matter, and asked that it be returned for mediation. Employee agreed, provided that another hearing date was scheduled. The hearing was rescheduled for June 11, 2008. On June 6, 2008, Agency notified Employee that it was reducing the ten day suspension to an eight day suspension. Therefore, on June 11, 2008, I issued an Order directing Employee to show cause, if any, why this matter should not be dismissed based on lack of jurisdiction. Employee’s submission was due to be filed by June 24, 2008. The parties were advised that unless they were notified to the contrary, the record in this matter would close on June 24, 2008. Employee did not respond to the Order. The record closed on June 24, 2008.

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. Pursuant to D.C. Code §1-606.3(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, and reductions-in-force. OEA Rule 604.1, 46 D.C.Reg. 9299 (1999). Appeals involving suspensions of less than ten days are not within OEA's jurisdiction. See, e.g., *Osekre v. Department of Human Services*, OEA Matter No. J-0080-00 (February 13, 2002). _____ D.C. Reg. _____ (). Therefore, when Agency reduced the suspension from ten days to eight days, it divested OEA of its jurisdiction to hear this matter.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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 present argument regarding this Office's jurisdiction. She did not do so. I conclude that she did not meet her burden of proof on this issue.

In addition, this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. Pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), failure to prosecute includes failure to "[s]ubmit required documents after being provided with a deadline for such submission." See, e.g., *Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee failed to respond to the June 11 Order although she was provided with a deadline. She did not request an extension of time to file her response. I conclude that Employee's failure to prosecute her appeal provides an additional ground for dismissing the petition.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge