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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHAUNDA CLARK-WHITE,)	
Employee)	OEA Matter No. J-0078-14
)	
v.)	Date of Issuance: July 25, 2014
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	Arien Cannon, Esq.
_____)	Administrative Judge
Shaunda Clark-White, Employee, <i>Pro se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Shaunda Clark-White (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on May 20, 2014, challenging the Office of the State Superintendent of Education’s (“Agency”) decision to terminate her from her position effective April 17, 2014. At the time of her termination Employee was a Social Services Program Specialist.¹ Agency filed its Answer June 26, 2014. I was assigned this matter on June 4, 2014.

An Order on Jurisdiction was issued on June 27, 2014, which required Employee to set forth her reasons as to why she believes this Office may exercise jurisdiction over her appeal. Employee’s response to the Order on Jurisdiction was due on or before July 14, 2014. Employee did not respond to the Jurisdiction Order by this date. Subsequently, a Show Cause Order was issued on July 16, 2014, requiring Employee provide a statement of good cause for failing to respond to the Jurisdiction Order. A response to the Show Cause Order was due on or before July 23, 2014. To date, Employee has not responded to the Show Cause Order. The record is now closed.

¹ See Petition for Appeal (May 20, 2014).

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUES

1. Whether this appeal should be dismissed for lack of jurisdiction.
2. Whether this appeal should be dismissed for failure to prosecute.

DISCUSSION, ANALYSIS, AND CONCLUSION

This Office's jurisdiction is established pursuant to the District of Columbia's Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code § 1-601-01, *et seq.* (2001). OEA Rule 628.2 states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..."² Pursuant to OEA Rule 628.1, the burden of proof is defined under a "preponderance of the evidence" standard. Preponderance of the evidence means "[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."

OEA Rule 604.2 provides that an appeal with this Office must be filed *within thirty (30) calendar days of the effective date of the appealed agency decision.*³ This Office has no authority to review issues beyond its jurisdiction. The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters. *See Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641, 643 (D.C. 1991)). A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal. *See Id.* Here, Employee's termination became effective at the close of business on April 17, 2014.⁴ Employee filed her Petition for Appeal with this Office on May 20, 2014, beyond the 30-day limit prescribed in D.C. Official Code § 1-606.03(a) and OEA Rule 604.2. Accordingly, I find that Employee has not established the jurisdiction of this Officer over her appeal.

In the alternate, and in accordance with OEA Rule 621.3⁵, this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute the appeal. Here, an Order on Jurisdiction was issued on June 27, 2014, which required Employee to set forth reason(s) why she believed this Agency may exercise jurisdiction over her appeal. Employee failed to respond to this Jurisdiction Order. Accordingly, a Show Cause Order was issued which required Employee to establish good cause for failing to respond to the Order on Jurisdiction. Employee also failed to respond to the Show Cause Order.

OEA Rule 621.3 provides that if a party fails to take reasonable steps to prosecute or

²59 DCR 2129 (March 16, 2012).

³ *Id.*

⁴ *See* Petition for Appeal, Attachment (May 20, 2014).

⁵ 59 DCR 2129 (March 16, 2012).

defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes submitting required documents after being provided with a deadline for such submission. Here, Employee has failed to respond to the Jurisdiction Order and the Show Cause Order. As such, I find that Employee has not exercised due diligence in prosecuting her case before this Office. Accordingly, I find that Employee's appeal shall be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction, and in the alternate, **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge