

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---|---|----------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | OEA Matter No.: J-0046-20 |
| MELAKU TEFERA, |) | |
| Employee |) | |
| |) | Date of Issuance: April 15, 2021 |
| v. |) | |
| |) | ARIEN P. CANNON, ESQ. |
| D.C. OFFICE OF UNIFIED |) | Administrative Judge |
| COMMUNICATIONS, |) | |
| Agency |) | |
| |) | |
| _____ |) | |
| Melaku Tefera, Employee, <i>Pro se</i> |) | |
| Andrea Comentale, Esq., Agency Representative |) | |

INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL HISTORY

Melaku Tefera (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 9, 2020, challenging the District of Columbia Office of Unified Communications’ (“Agency”) decision to remove him from his position as an Electronic Technician. Agency filed its Answer along with a Motion to Dismiss on February 15, 2021, asserting that OEA does not have jurisdiction over Employee’s appeal. I was assigned this matter on February 26, 2021.

An Order on Jurisdiction directing Employee to respond to the Motion to Dismiss was issued on March 4, 2021, via email to Employee’s email address of record.² Because Employee did not respond to this order by the March 18, 2021, prescribed deadline, a Show Cause Order was issued on March 24, 2021, again via email. The Show Cause Order required Employee to provide a statement of good cause for failing to respond to the March 4th Order and respond to Agency’s Motion to Dismiss for Lack of Jurisdiction. Employee was ordered to respond to the

¹ This decision was issued during the District of Columbia’s COVID-19 State of Emergency.

² Due to the current state of emergency and the remote operations of this Office, orders are being issued via email.

Show Cause Order by March 31, 2021. To date, Employee has not submitted a response to the March 4, 2021 Order on Jurisdiction nor to the Show Cause Order. The record is now closed.

JURISDICTION

As described below, the jurisdiction of this Office has not been established.

ISSUE

Whether the jurisdiction of this Office has been established.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.³ “Preponderance of the evidence” shall mean:

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.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.⁴

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3⁵ provides that the Administrative Judge, 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. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) *Submit required documents after being provided with a deadline for such submission;*
or
- (c) Inform this Office of a change of address which results in correspondence being returned.⁶

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.⁷ Here, an Order on Jurisdiction was issued on March 4, 2021, which afforded Employee the opportunity to respond to Agency’s Motion to Dismiss for Lack of Jurisdiction. Employee’s response to this order was due by March 18, 2021. Because Employee failed to respond to this order, a Show

³ 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

⁵ 59 DCR 2129 (March 16, 2012).

⁶ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁷ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Cause Order was issued on March 24, 2021, affording Employee another opportunity to address the jurisdiction issue raised by Agency. To date, Employee has not responded to the Order on Jurisdiction or to the Show Cause Order. Accordingly, I find that Employee has failed to exercise the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be dismissed for failure to prosecute.

Furthermore, considering the documents of record, the undersigned finds that OEA lacks jurisdiction over an appeal where an employee voluntarily resigns. Along with Employee's Petition for Appeal, he included a resignation letter that was submitted to Agency. Employee's resignation was "due to unresolved health issues as well as systemic harassment, verbal threatening messages during [his] sick leave and [Employee could] no longer bear the stress ...". Employee states that his resignation was effective April 7, 2020.

Employee's Petition for Appeal appears to be based on the following: (1) his contention that he was not returned to the same duties when he was put back to work following a 2015 OEA order; (2) after he requested a desk audit from D.C. Department of Human Resources, his work environment became hostile; (3) he was denied the ability to use part of his 900 hours of sick leave for coronavirus protocol; and (4) he received an EEO Exit Letter for discrimination and retaliation complaint.

To the extent that Employee is appealing the position and duties that he was returned to based on a 2015 OEA Order, I find that is well beyond the scope of the instant appeal. Employee's contention regarding a hostile work environment after requesting a desk audit seems to be addressed in the EEO Exit Letter that was issued on April 23, 2020. The Exit Letter addresses Employee's hostile work environment, discrimination, and retaliation complaint and provides a Notice of Right to File a Formal Complaint, which directs Employee to the D.C. Office of Human Rights. Employee's claim regarding the denial of his ability to use part of his 900 hours of sick leave does not fall within the purview of this Office. Accordingly, I find that this Office lacks jurisdiction to hear the complaints raised in Employee's Petition for Appeal.

As previously noted, 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..." This Office has no authority to review issues beyond its jurisdiction. Employee seems to suggest that his resignation was involuntary and "forced." Whether an employee's resignation is voluntary or involuntary has been adjudicated on numerous occasions by this Office, and the law is well settled with this Office that there is a legal presumption that retirements/resignations are voluntary.⁸ Employee was afforded the opportunity to respond to Agency's Motion to Dismiss and the voluntariness of his resignation; however, he has failed to respond to Agency's motion. As such, Employee has failed to satisfy his burden of establishing the jurisdiction of this Office.

⁸ *Williams v. D.C. Department of Human Services*, Initial Decision, OEA Matter No. J-0054-17 (August 16, 2017); *Bagenstose v. District of Columbia Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001); *Paula LaGrand v. D.C. Metropolitan Police Department*, Opinion and Order on Petition for Review, OEA Matter No. J-0194-12 (June 10, 2014) (citing *District of Columbia Metropolitan Police Department v. Stanley*, 942 A.2d 1172 (D.C. 2008)).

Additionally, OEA Rule 604.2 provides that an appeal must be filed within thirty (30) calendar days of the effective date of the appealed agency action. Here, Agency has not taken any adverse action. Employee submitted his resignation on April 6, 2020, with an effective date of April 7, 2020, and did not file his appeal with this Office until June 9, 2020. Employee's appeal before this Office comes more than sixty (60) days after his resignation became effective and is untimely. Accordingly, Employee's Petition for Appeal should be dismissed because Employee has failed to establish the jurisdiction of this Office.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction and for failure to prosecute.

FOR THE OFFICE:

/s/ Arien P. Cannon
Arien P. Cannon, Esq.
Administrative Judge