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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
TONIQUEA JACKSON,)	
Employee)	OEA Matter No. J-0097-16
)	
v.)	Date of Issuance: December 12, 2016
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	Arien P. Cannon, Esq.
)	Administrative Judge
Toniquea Jackson, Employee, <i>Pro se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2016, Toniquea Jackson (“Jackson”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s decision to remove her from her position as a Supervisory Terminal Specialist. This matter was assigned to the undersigned on October 6, 2016.

Agency filed a Motion to Dismiss for Lack of Jurisdiction on October 19, 2016. An Order on Jurisdiction was issued on October 24, 2016, which required Employee to file a brief addressing why she believed this Office may exercise jurisdiction over her appeal. Employee’s brief was due on or before November 7, 2016. Because Employee failed to submit her filing on or before the November 7, 2016 deadline, a Show Cause Order was issued on November 22, 2016. To date, Employee has yet to respond to the Order on Jurisdiction or the Show Cause Order.

JURISDICTION

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

ISSUE

Whether this matter should be dismissed for failure to prosecute.

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.¹ “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.²

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.³ Additionally, OEA Rule 621.3 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 (Emphasis added);* or
- (c) Inform this Office of a change of address which results in correspondence being returned.⁴

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 a submission.⁵ In the instant matter, Employee was given a November 7, 2016 deadline to submit a response to address the jurisdiction of this Office. Employee’s failure to respond to the Order on Jurisdiction prompted a Show Cause Order to be issued on November 22, 2016. Employee was given a December 2, 2016 deadline to respond. Employee was advised in the November 22, 2016 Show Cause Order that a failure to respond could result in sanctions, including dismissal. To date, Employee has not responded to either Order. All Orders were sent via postal mail service to the address provided by Employee in her Petition for Appeal. Furthermore, Employee’s burden of establishing jurisdiction has not been met. A response to Order on Jurisdiction and Show Cause

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ *Id.*

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁵ *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).

Order was required to ensure an appropriate review and resolution of the matter.

Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be dismissed for Employee's failure to prosecute and for failure to establish the jurisdiction of this Office.

ORDER

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

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge