

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MARIA SAUNDERS,)	
Employee)	OEA Matter No. 1601-0264-10
)	
v.)	Date of Issuance: August 24, 2012
)	
OFFICE OF THE STATE)	MONICA DOHNJI, Esq.
SUPERINTENDENT OF EDUCATION,)	Administrative Judge
Agency)	
_____)	
Maria Saunders, Employee <i>Pro Se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 14, 2010, Maria Saunders (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent’s (“Agency”) decision to terminate her from her position as a Bus Attendant. On January 19, 2010, OEA notified Agency of Employee’s Petition for Appeal in this matter.

I was assigned this matter on or around June 10, 2012. Upon review of the case file, the undersigned noticed that Agency had not filed its Answer to Employee’s Petition for Appeal as required by the January 19, 2010 letter. On June 11, 2012, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a statement of good cause based on its failure to submit an Answer to Employee’s petition for appeal. Agency had until June 25, 2012, to respond. On June 25, 2012, Agency submitted a Motion for Extension of Time to File. This Motion was granted on June 27, 2012. Agency now had until July 10, 2012, to submit its Answer. On July 16, 2012, Agency submitted a Motion to Dismiss Employee’s Petition for Appeal for mootness, noting that Employee was rehired and is still employed by Agency. Subsequently, on July 17, 2012, I issued an Order requiring Employee to address the jurisdiction issue in this matter. Employee’s response to this Order was due on July 26, 2012. Employee did not comply. Thereafter, on August 1, 2012, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on her failure to respond to the July 17, 2012. Employee had until August 15, 2012 to respond. As of the date of this decision, Employee has not responded to either Order. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “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.

OEA Rule 628.2 *id.* states:

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.

ANALYSIS AND CONCLUSIONS OF LAW

Agency highlights in its Motion to Dismiss that Employee was rehired and is still employed by Agency, and thus, requested that the matter be dismissed as moot. This raised a jurisdiction issue in this matter. This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1¹, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force.

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...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as “[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.” This Office has no authority to review issues beyond its

¹ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ Because Employee has the burden of proof in issues of jurisdiction, I find that, by not providing a response to the July 17, 2012, and August 1, 2012, Orders, Employee has failed to meet her burden of proof in this matter. And for this reason, I am unable to address the factual merits, if any, of this matter.

Additionally, OEA Rule 621.1 grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “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.⁴ 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.

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 submission.⁵ Here, Employee was warned in the July 17, 2012, and August 1, 2012, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. I conclude that, Employee’s failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and this represents another reason why this appeal should be dismissed.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for lack of jurisdiction and for Employee’s failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁴ *Id.* at 621.3.

⁵ *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).