THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CECELIA WIGGINS	)	
Employee	)	OEA Matter No. 1601-0050-15
	)	
v.	)	Date of Issuance: March 30, 2016
	)	
D.C. PUBLIC SCHOOLS	)	Lois Hochhauser, Esq.
Agency	)	Administrative Judge
	)	

Cecelia Wiggins, Employee, *Pro-Se*
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 9, 2015, Cecelia Wiggins, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Public Schools, Agency, to terminate her employment, effective February 27, 2015. At the time of removal, Employee held the position of Special Police Officer.

The matter was assigned to me on or about May 28, 2015. In addition to its Answer, Agency filed a motion to dismiss the petition on April 15, 2015, arguing that this Office lacked jurisdiction to hear this appeal because Employee held at-will status. Although Employee identified herself as holding career service status and a permanent appointment in her petition, Agency maintained that Special Police Officers were employed at-will.

Upon review of the file, I determined that there was no document in the file identifying Employee's status at the time of her removal. I further determined that Agency should submit documentation and additional argument to support is motion to dismiss, and ordered Agency to do so. Agency filed a timely response with supporting documentation and additional argument. I then directed Employee to submit argument and/or documentation in support of her position regarding this Office's jurisdiction by March 18, 2016. She was informed that employees bear the burden of proof on issues of jurisdiction. Employee was cautioned that her failure to respond in a timely manner could be considered concurrence with Agency's position regarding this Office's lack of jurisdiction and/or could be considered a failure to prosecute. She was also advised that the appeal could be dismissed as a sanction for failing to prosecute the matter. The

parties were advised that unless they were notified to the contrary, the record in this matter would close on March 18, 2016. Employee did not respond to the Order. The record closed on March 18, 2016.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012) places the burden of proof on all issues of jurisdiction on employees. Pursuant to OEA Rule 628.1, this burden must be met by a "preponderance of the evidence," which is defined as "the 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."

Agency was required to do more than merely assert that Employee held at-will status. It did so, submitting legal and factual argument and documentation in support of its position. One of the documents submitted by Agency in support of its position that this Office lacked jurisdiction to hear this matter, was a written statement from Danielle Reich, Manager, Labor Management & Employee Relations. In the statement, Ms. Reich stated that she held her position since June 2011; that she had reviewed Employee's personnel file and that based on the review she determined that Employee was "a non-tenured employee…[employed] 'at-will' and [without] job tenure or protection." Agency also submitted a copy of the 2008 amendment to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 "to establish employment without tenure within the Education Service classification…" in support of its position that Special Police Officers are employed at-will.

Thereafter, Employee was directed to submit documentation and argument in support of her position regarding this Office's jurisdiction. She failed to respond, so that the only arguments and documents submitted support Agency's position that Employee held "at-will" status. I conclude that Employee failed to meet her burden of proof in establishing this Office's jurisdiction.

It is well established in the District of Columbia that an at-will employee can be removed "at any time and for any reason, or for no reason at all." *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). *See also Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006). An "at will" employee lacks job tenure and protection. *See* Code § 1-609.05 (2001). An "at-will" employee has no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991). Employee was cautioned that her failure to respond could be considered as concurrence that she held "at-will" status and that this Office had no authority to hear her appeal. Despite that warning, Employee did not respond. Based on the conclusion

that Employee failed to meet her burden of proof in this issue of jurisdiction, I further conclude that this petition should be dismissed.

There is an alternate basis for dismissing this appeal. OEA Rule 621.3, states:

> If a party fails to take reasonable steps to prosecute or 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, but is not limited to, a failure to… (b) Submit required documents after being provided with a deadline for such submission.

Employee was cautioned that her failure to respond to the March 8, 2016 Order by the stated deadline could be considered as a failure to prosecute her appeal. The Order was sent to Employee at the address she provided, and it was not returned as undelivered. It is assumed to have been received by Employee in a timely manner. Employee did not respond to the Order, and did not contact me to seek an extension.

This Office has consistently maintained that the sanction of dismissal may be imposed for an employee's failure to prosecute; and that the failure to respond to an Order by a stated deadline constitutes such a failure. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee was cautioned that her appeal could be dismissed if she did not respond. Therefore, I find that Employee failed to exercise the diligence required in order to pursue an appeal before this Office. I further find that the dismissal of this appeal constitutes "an exercise of sound discretion." In sum, I conclude that Employee's failure to prosecute her appeal constitutes an alternative basis for appealing this matter.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.[1]

FOR THE OFFICE:

_____
Lois Hochhauser, Esq.
Administrative Judge

[1] Agency's motion to dismiss is therefore dismissed as moot.