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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
MARIA BROOKS)	OEA Matter No. 1601-0174-11
Employee)	
)	Date of Issuance:
v.)	January 11, 2012
)	
D.C. PUBLIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
)	

Maria Brooks, Employee , *pro se*
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Maria Brooks, Employee herein, filed this petition on August 15, 2011, with the Office of Employee Appeals (OEA) appealing the decision of the D.C. Public Schools, Agency herein, to terminate her employment as a teacher.

In the petition, Employee stated that she did not know her type of appointment or her type of service. Employee also stated that the effective date of her removal was August 12, 2011. In its response, Agency alleged that Employee was not in permanent status at the time of her separation. Therefore, following assignment of the matter to me on December 5, 2011, I issued an Order on that date directing Employee to present factual and/or legal argument in support of her position that this Office had jurisdiction of this matter. Employee was notified that her response had to be filed with OEA by 4:30 p.m. on December 20, 2011, and that unless the parties were notified to the contrary the record would close at that time. She was further notified that if she chose not to respond, she would be “deemed to have conceded that this Office lacked jurisdiction of this matter.” I provided my email address and telephone number in the Order in the event the Employee needed to reach me when I was not at OEA. The Order was sent to Employee by first class mail, postage prepaid, to the address listed on the petition for appeal. It was not returned to OEA by the U.S. Postal Service. Employee did not respond to the Order and did not attempt to contact me. The record in this matter is hereby closed.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSION

Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on all issues of jurisdiction. Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, as 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”. Employee’s employment status, which creates this Office’s jurisdiction, is an issue over which Employee has the burden of proof. Employee was given the opportunity to meet this burden of proof, but did not do so. *See*, OEA Rule 604.1, 46 D.C.Reg. 9299 (1999). I conclude that Employee did not meet her burden of proof on these issues of jurisdiction.

Employee’s failure to respond to the Order provides an additional basis to dismiss this petition. In accordance with OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to the Order I issued which had specific deadlines and advised her of the consequences of not responding. The Order was sent to Employee at the address she listed as her home address in her petition, by first class mail, postage prepaid. It was not returned by the U.S. Postal Service and is presumed delivered in a timely manner. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

In sum, for these reasons, the Administrative Judge concludes that Employee failed to meet her burden of proof in jurisdictional issues and failed to prosecute this appeal; and that for these reasons petition should be dismissed.¹

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge

¹ Issues of timeliness and Employee’s failure to submit certain required documents are not addressed in this Initial Decision. It was decided that Employee would be asked to address the jurisdictional issues first. Since the petition is being dismissed on jurisdictional and failure to prosecute matters and the parties were not asked to address these other matters in the initial Order, they are not discussed herein.