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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---|---|----------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| KOFI ADEASE, |) | |
| Employee |) | OEA Matter No. 2401-0248-10 |
| |) | |
| v. |) | Date of Issuance: March 29, 2012 |
| |) | |
| DISTRICT OF COLUMBIA |) | |
| PUBLIC SCHOOLS, |) | STEPHANIE N. HARRIS, Esq. |
| Agency |) | Administrative Judge |
| _____ |) | |
| Kofi Adease, Employee <i>Pro Se</i> | | |
| Sara White, Esq., Agency's Representative | | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 2, 2009 Kofi Adease (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency”) action of terminating his employment due to an adverse action. The effective date of the termination was November 2, 2009.

In the December 2, 2009 Petition for Appeal, Employee listed his employment status as term and stated that he had been employed with the Agency for one and a half (1.5) months. In its January 7, 2010 Answer, Agency argued that OEA lacks jurisdiction to hear this matter because Employee was a probationary employee at the time of his removal.

I was assigned this matter on or around February 6, 2012. After reviewing the case file and the documents of record, I issued an Order dated February 9, 2012 wherein I directed Employee to address the question of jurisdiction in this matter. Employee was required to respond on or before February 20, 2012. Employee did not respond to the initial February 9, 2012 Order. I then issued an Order for Statement of Good Cause dated February 24, 2012 wherein I required Employee to provide good cause for his failure to respond to the February 9, 2012 Order. Employee was required to respond to the Order for Statement of Good Cause by March 7, 2012. As of the date of this decision, I have not received Employee’s response to the February 9, 2012 Order, or the February 24, 2012 Order for Statement of Good Cause. After reviewing all of the relevant facts and circumstances as

contained within the documents of record, I have decided that no further proceedings are required. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Employee has the burden of proof on all issues of jurisdiction. Employee must meet his burden by a “preponderance of the evidence,” which is defined 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.”¹ The employment status of the appellant is a jurisdictional issue where Employee has the burden of proof. As will be discussed below, Employee has failed to meet the burden of proof.

Agency provided job data records showing that Employee was within his probationary period (August 31, 2009 to August 31, 2010) when he was terminated effective November 2, 2009.² Chapter 8, § 814.3 of the District Personnel Manual (“DPM”) provides that a termination during a probationary period is not appealable or grievable. Moreover, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.³

In response to Employee’s assertion that he was a term employee, Employee has submitted no documentation to substantiate this claim. DPR § 823.9 stated that “a term employee shall serve a probationary period of one (1) year upon initial appointment.” Additionally, DPR § 814.1 provides that an Agency can “terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.” Moreover, OEA has consistently held that it lacks jurisdiction over term employees.⁴

Employee has failed to address the jurisdictional issues concerning his employment status. Thus, based on the record at hand, I conclude that Employee did not meet the burden of proof and that this matter must be dismissed for lack of jurisdiction.

Additionally, Employee’s failure to respond to the February 9, 2012 and February 24, 2012 Orders provides an additional basis to dismiss this petition. Both of these Orders advised Employee of the consequences for not responding. The Orders were sent by first class mail to the home address

¹ See OEA Rule No. 628.1, 59 DCR 2129 (March 16, 2012).

² Agency Answer, Exhibit B.

³ See, e.g., *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

⁴ See *Carolynn Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, *Opinion and Order on Petition for Review* (July 30, 2010); *Roxanne Smith v. D.C. Department of Parks and Recreation*, OEA Matter No. J-0103-08, *Opinion and Order on Petition for Review* (May 23, 2011).

listed in the petition for appeal. The Order was not returned to OEA and is therefore presumed to have been received by employee. Further, Employee did not contact the undersigned to request an extension of time to file his response.

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), provides as follows:

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:

- (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.

Specifically, OEA Rule 621.3(b) provides that the failure to prosecute an appeal includes the failure to submit required documents after being provided with a deadline for such submission. Further, this Office has held that a matter may be dismissed when a party fails to submit required documents.⁵ Employee's responses to the February 9, 2012 and February 24, 2012 Orders were required for a proper resolution of this matter on the merits. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, I conclude that Employee's failure to provide a required response and actively prosecute his appeal presents another reason for dismissal of this matter.

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

⁵ See *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1224 (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).