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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
ROBERT SIMMONS,)	
Employee)	OEA Matter No. 1601-0139-11
)	
v.)	Date of Issuance: July 1, 2013
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
)	
Robert Simmons, Employee <i>Pro Se</i>)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 22, 2011, Robert Simmons (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate him from his position as a Multi-Media Specialist at Alice Deal Middle School effective August 12, 2011. Employee was terminated for receiving a ‘Minimally Effective’ rating under the IMPACT Performance Assessment System for the 2009-2010, and 2010-2011 school years. On September 14, 2011, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter on March 29, 2013. Thereafter, I issued an Order dated April 8, 2013, requiring the parties to attend a Status Conference on April 24, 2013. Both parties attended the Status Conference. Thereafter, I issued a Post Status Conference Order requiring the parties to submit briefs addressing the issues raised during the Status Conference. Agency’s brief was due on May 23, 2013. Because Agency failed to submit a timely brief, on May 28, 2013, I issued a Statement of Good Cause requiring Agency to submit its brief, along with a statement of good cause based on its failure to submit its brief by the May 23, 2013 deadline. On June 6, 2013, Agency submitted its Statement of Good Cause along with a Motion to Dismiss, requesting that this matter be dismissed for lack of jurisdiction because Employee was an ‘at-will’ employee when he was terminated. On June 11, 2013, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency. Employee’s brief was due on June 17, 2013. Following

Employee's failure to submit his brief on jurisdiction by the required deadline, on June 20, 2013, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to submit a response to the June 11, 2013, Order on or before June 27, 2013. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

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

OEA Rule 621.1 grants an Administrative Judge ("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.¹ 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.

¹ *Id.* at 621.3.

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.² Here, Employee was warned in the June 11, 2013, and June 20, 2013, 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 find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, the matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *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).