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**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, <i>Pro-Se</i>	)	
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 the 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. Employee identified herself as holding career service status and a permanent appointment in her petition. However, Agency maintained that Special Police Officers were employed at-will.

Upon review of the file, I determined that neither party had submitted any document to support its position regarding the status held by Employee at the time of her removal. On May 18, 2015, I issued an Order directing Agency to submit argument and/or documentation in support of its position that Employee held at-will status when she was terminated. Agency filed a timely response with supporting documentation. I then issued an Order directing Employee to submit argument and/or documentation in support of her position regarding this Office's jurisdiction by March 18, 2016. She was reminded that employees bear the burden of proof on issues of jurisdiction and cautioned that her failure to file a timely response could be considered concurrence with Agency's position regarding this Office's lack of jurisdiction or could be considered a failure to prosecute. She was further cautioned that if she did not respond in a timely manner, a sanction of dismissal of the appeal could be imposed 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 or contact the Administrative Judge. 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

Among the documents submitted by Agency to support its position was a statement from Danielle Reich, Manager, Labor Management & Employee Relations, who stated that she has held this position since June 2011. Ms. Reich asserted that she reviewed Employee's personnel file and 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.

Agency submitted legal and factual argument as well as documentation in support of its position that Employee held at-will status at the time of her removal. Employee was directed to submit documentation and argument in support of her position that she held career service status and a permanent appointment at the time of her removal and that therefore this Office had jurisdiction to hear this matter. She was cautioned that her failure to respond could be considered as concurrence with Agency's position that she held at-will status and that this Office lacked authority to hear her appeal. Despite that warning, Employee did not respond. She failed to offer any document or argument to support her position on this jurisdictional issue. Thus, the only arguments and documents submitted support Agency's position that Employee held at-will status. Since Employee did not file any argument or document opposing Agency's contention, the Administrative Judge finds that the record supports the finding that Employee held at-will status at the time of her removal.

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* D.C. Code § 1-609.05 (2001). Since Employee held at-will status at the time of her removal, Agency could remove her without cause. As an at-will employee, Employee had no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012) places the burden of proof on all issues of this Office's jurisdiction of this Office 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.” The Administrative Judge concludes that Employee failed to meet her burden of proof on this Office’s jurisdiction. Based on this conclusion, the Administrative Judge further concludes 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 of March 18, 2016 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 the Administrative Judge 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). Although Employee was cautioned that the matter could be dismissed if she did not respond, she still failed to file a response. The Administrative Judge concludes therefore that Employee failed to exercise the diligence needed to pursue her appeal, and further that the dismissal of this appeal constitutes “an exercise of sound discretion.” In sum, the Administrative Judge concludes 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.<sup>1</sup>

FOR THE OFFICE:

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Lois Hochhauser, Esq.  
Administrative Judge

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<sup>1</sup> Given the outcome of this matter, Agency’s motion to dismiss to dismissed as moot.

