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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CURTIS FOY,)	
Employee)	OEA Matter No. J-0037-12
)	
v.)	Date of Issuance: March 29, 2012
)	
DEPARTMENT OF HOUSING AND)	
COMMUNITY DEVELOPMENT,)	STEPHANIE N. HARRIS, Esq.
Agency)	Administrative Judge
_____)	
Curtis Foy, Employee <i>Pro Se</i>		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 6, 2011 Curtis Foy (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Housing and Community Development’s (“DHCD” or “Agency”) decision to terminate him from a Supervisory Program Analyst position effective September 15, 2011. On January 9, 2012 Agency filed an Answer to Employee’s petition for appeal requesting dismissal of the claim for lack of jurisdiction because Employee’s termination was from a Management Supervisory Service (“MSS”) position. Agency’s answer noted that Employee’s position was ‘at-will’ with no right to tenure at the time of his termination.

I was assigned this matter on or around January 17, 2012. After reviewing the documents of record, I issued an Order dated January 19, 2012 wherein I directed Employee to address whether OEA may exercise jurisdiction over this matter. On January 28, 2012 Employee submitted a request asking for additional time in which to file a response. On January 30, 2012 the undersigned issued an Order granting Employee’s request for additional time, extending the deadline of submission to February 14, 2012. Employee’s brief was not received by the February 14, 2012 deadline. On February 22, 2012 the undersigned issued an Order for statement of good cause, directing Employee to address his failure to submit a response by the extended deadline. Employee was required to submit his statement of good cause by the close of business on March 2, 2012. On February 29,

2012 Employee sent a statement of good cause to the incorrect email address for the undersigned.¹ Attorney Andrea Comentale forwarded the electronic statement of good cause to the undersigned on March 1, 2012. However, the Employee was directed to submit his statement of good cause by first class mail **AND** email. Employee's statement of good cause was received by the undersigned via mail on March 5, 2012, after the March 1, 2012. Due to the circumstances presented in Employee's statement for good cause, the undersigned again granted Employee an extension of time to submit his brief on jurisdiction, with a due date on or by March 16, 2012.

As of the date of this decision, I have not received Employee's brief addressing jurisdiction as directed by the initial January 19, 2012 Order. 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."² Employee was given an opportunity to meet this burden of proof, but failed to do so.

Agency's assertion that Employee was employed in the MSS as an 'at-will' employee at the time of his termination is corroborated by D.C. Official Code § 1-609.54(a), which provides that an appointment to a position in the MSS shall be an at-will appointment. Further, it is well established in the District of Columbia that "an employer may discharge an at-will employee at any time and for any reason, or for no reason at all."³ Moreover, OEA has consistently held that it lacks jurisdiction over 'at-will' 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 should be dismissed for lack of jurisdiction.

¹ The undersigned provided the proper email address in the February 22, 2012 Order for statement of good cause.

² See OEA Rule No. 628.1, 59 DCR 2129 (March 16, 2012).

³ *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). See also *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C. 2006).

⁴ See *Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, *Opinion and Order on Petition for Review* (February 10, 2004); *Jenkins v. Department of Public Works*, OEA Matter No. 1601-0037-01, *Opinion and Order on Petition for Review* (April 5, 2006); and *Minter v. D.C. Office of Chief Medical Examiner*, OEA Matter No. J-0116-07, *Opinion and Order on Petition for Review* (July 22, 2009).

Additionally, Employee's failure to respond to the March 6, 2012 Order for statement of good cause provides an additional basis to dismiss this petition. The March 6, 2012 Order advised Employee of the consequences for not responding. The Order was sent by first class mail to the home address listed in the petition for appeal. The Order was not returned to OEA, and is therefore presumed to have been received by Employee.

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 above referenced orders were required for a proper resolution of this matter on the merits. Despite being afforded two extensions of time during the course of this appeal, 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 the 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).