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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SAM BATTLE,)	
Employee)	OEA Matter No. 2401-0293-09
)	
v.)	Date of Issuance: September 20, 2011
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Sam Battle, Employee <i>Pro Se</i>		
Bobbie Hoye, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 28, 2009, Sam Battle (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was August 24, 2009. Agency was notified on October 19, 2009, of Employee’s petition for appeal and on November 18, 2009, Agency filed an answer to the appeal requesting that Employee’s appeal be dismissed for lack of jurisdiction. This matter was assigned to me on or about August 8, 2011. An initial review of Employee’s appeal indicated that this Office may not have jurisdiction because Employee’s appeal was filed on September 28, 2009, 35 days after the RIF effective date. Therefore, on August 9, 2011, I issued an Order requiring Employee to address the issue of whether this Office has jurisdiction over his appeal. On or about August 12, 2011, Employee via telephone requested that the matter be dismissed since he is now disable and cannot return to work. I advised Employee to submit his request in writing to this Office by August 23, 2011¹. Employee did not comply. Subsequently, on August 31, 2011, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of cause based on his failure to submit a response to the August 9, 2011, Order. Employee had until September 12, 2011, to respond. Employee did not respond by the September 12, 2011, deadline and has not responded to date. This record is now closed.

¹ According to the submission deadline on the August 9, 2011, Order.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this petition for appeal should be dismissed.

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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.

Here, by failing to submit a response to the August 9, 2011, and August 31, 2011, Orders, Employee has failed to prosecute his appeal. I conclude that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Thus, this 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