THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ISAIAH WEBB	)	
Employee	)	
	)	OEA Matter No.: J-0305-10
v.	)	
	)	Date of Issuance: November 3, 2010
D.C. DEPARTMENT OF	)	
HUMAN RESOURCES,	)	
Agency	)	SOMMER J. MURPHY, Esq.
	)	Administrative Judge

Isaiah Webb, Employee
Stephanie Ferguson, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 3, 2010, Isaiah Webb ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office"), asserting that Agency violated District government laws and regulations pertaining to the administration of disbursements to or from Employee's 401(a) account. On August 19, 2010, Agency filed an answer to Employee's appeal and requested that the matter be dismissed.[1]

I was assigned this matter on or about August 10, 2010. After reviewing Employee's Petition for Appeal, I determined that a question existed regarding whether OEA has jurisdiction over the instant matter. As a result, I issued an order on September 24, 2010, directing Employee to address the jurisdictional issue in a written brief. Employee was advised that he had the burden of proof with regard to the issue of jurisdiction. Employee was also notified that his appeal would be dismissed if he failed to respond to the Order by October 11, 2010. Employee failed respond to the Order. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

[1] Agency's Answer to Petition for Appeal (August 19, 2010).

JURISDICTION

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

ISSUE

Whether this Office has jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." OEA Rule 629.1, states that 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: "[t]hat 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."

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Section 101(d) of OPRAA amended D.C. Code §1-606.3(a) as follows:

> "An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee…an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more…or a reduction in force…."

Thus, §101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

The starting point in every case involving construction of a statute is the language itself.[2] A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.[3] Thus, as of October 22, 1998, § 101(d) of OPRAA clearly removed appeals from grievance denials from the jurisdiction of this Office.

Here, Employee's primary argument is that Agency ceased to continue making contributions to his 401(a) retirement plan after he transferred from the D.C. Public Schools to the Department of Youth Rehabilitation Services. Employee states and Agency concedes that a Notice of Final Agency Action was not issued.[4] Moreover, Employee provided a copy of an

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[2] *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975).
[3] *Gardner v. D.C. Fire & Emergency Services Dept*., OEA Matter No. 1602-0030-90 (June 9, 2010), _ D.C. Reg. _ ( ); (citing *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980)).
[4] *Petition for Appeal*, Exhibit A (May 3, 2010).

April 5, 2010 email to Phillip Lattimore and Karla Kirby that "[t]his is a formal grievance to the individuals who are positioned to resolve this matter."[5] Employee's complaints and grounds for appeal are all grievances over which this Office has no jurisdiction.

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides that if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge may dismiss the action or rule for the appellant. Failure to prosecute includes, but is not limited to submitting required documents after being provided with a deadline for such submission.[6] Although this appeal can be dismissed solely on the grounds mentioned above, Employee has also failed to prosecute his appeal by failing to submit a response to the September 24, 2010 order on jurisdiction. This matter is therefore dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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SOMMER J MURPHY, ESQ
ADMINISTRATIVE JUDGE

[5] *Id.*
[6] *Id.*