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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
LYNN A. SMITH)	OEA Matter No. 1601-0007-06
Employee)	
)	Date of Issuance: November 28, 2005
v.)	
)	Daryl J. Hollis, Esq.
)	Senior Administrative Judge
DEPARTMENT OF CORRECTIONS)	
Agency)	

Lynn Smith, *Pro se*
Fred Staten, Jr., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On October 18, 2005, Employee, a Correctional Officer in the Career Service, filed a petition for appeal from Agency's action allegedly removing her from her position. However, Employee's petition for appeal did not contain a copy of the Final Agency Decision (FAD) from which she was appealing, and thus was incomplete. See OEA Rule 609.4, 46 D.C. Reg. 9304 (1999).

By my Order to Employee dated October 21, 2005, she was required to submit a copy of the FAD to me by the close of business on October 31, 2005. On October 31, Employee telephoned me and stated that she had just received the October 21 Order and requested a brief extension of time in which to submit the FAD. She told me that she had

the document in her possession and would submit it “quickly”. I granted Employee’s request, told her that she could fax the document to me and gave her my office fax number. However, the document never arrived, either by fax or by mail.

On November 10, 2005, I telephoned Employee at her phone number of record, but received a recorded message that the number had been disconnected. Thus, on November 10 I issued a second Order to Employee requiring her to submit a copy of the FAD to me by the close of business on November 18, 2005. I provided her with my fax number and the Office’s address. I cautioned her that failure to comply with the terms of this Order would result in the appeal being dismissed. However, Employee did not submit the FAD by the November 18, 2005 deadline, not has she done so to date. The record is closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed.

ANALYSIS AND CONCLUSIONS

OEA Rule 604.1, 46 D.C. Reg. at 9299, reads in pertinent part as follows: “Effective October 21, 1998 . . . any District of Columbia employee may appeal a *final agency decision* effecting: . . . (b) An adverse action for cause that results in removal. . . .” (emphasis added). Further, OEA Rule 629.2, 46 D.C. Reg. at 9317, states: “The employee shall have the burden of proof as to issues of jurisdiction. . . .”

Here, Employee filed a petition for appeal challenging Agency’s decision allegedly removing her from her position. However, Employee did not produce, even when twice ordered to do so, the FAD from which she was appealing. As this Office only has jurisdiction to review final Agency actions, Employee has not established our jurisdiction over her appeal. Therefore, the appeal must be dismissed.

Further, pursuant to OEA Rule 622.3, 46 D.C. Reg. at 9313, a petition for appeal may be dismissed when a party fails to prosecute the appeal. According to this Rule, failure to prosecute includes the failure “[t]o submit required documents after being provided with a deadline for such submission.” Failure to respond to Orders from the Administrative

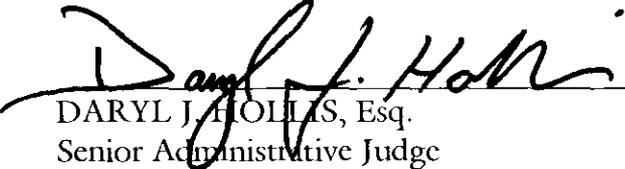
Judge constitutes a failure to prosecute. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-03, 32 D.C. Reg. 1244 (1985); *Thorne v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0011-04 (March 24, 2005), ___ D.C. Reg. ___ ().

In this case, Employee did not submit the required FAD, despite being twice ordered to do so. Further, following the issuance of my second Order, dated November 10, 2005, Employee did not contact me to request additional time to submit the FAD. I conclude that Employee had failed to prosecute this appeal, and that her inaction constitutes an additional ground upon which this appeal should be dismissed.

ORDER

It is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:


DARYL J. HOLLIS, Esq.
Senior Administrative Judge