

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-6-09

(TEMPORARY EMPLOYEE)

ALISON CHRISTENSEN,)
)
 Appellant,)
)
 v.) DISMISSAL ORDER
)
 STATE OF OREGON, DEPARTMENT)
 OF ADMINISTRATIVE SERVICES,)
)
 Respondent.)
 _____)

Alison Christensen, Corvallis, Oregon, Appellant, *pro se*.

Tessa Sugahara, Attorney-In-Charge, Labor and Employment Section, Department of Justice, Salem, Oregon, represented Respondent.

On March 11, 2009, Alison Christensen appealed her termination from a temporary position as an "Ops & Policy Analyst 2" with the Department of Administrative Services (Department). The appeal does not include the date of Christensen's termination. For purposes of this Order, we assume the appeal was timely.

According to a personnel form Christensen submitted with her appeal, the Department hired Christensen as a temporary employee on July 15, 2008. Among other things, the form states that Christensen is "not eligible for * * * Regular status." See ORS 240.015(8) and 240.309(2). In her appeal letter, Christensen discusses the behavior of a co-worker which she alleges caused friction in the workplace and led to her termination.

On March 13, 2009, the Administrative Law Judge (ALJ) wrote Christensen, stating in part:

“In several cases, the Board has held that temporary employees may not appeal their discipline or termination under ORS 240.560 or 240.086, because those statutes apply only to regular status employees. Temporary employees are ‘non-status’ employees. ORS 240.309. See *Smith v. Fairview Training Center*, Case No. MA-22-93 (February, 1994) (attached). Following this precedent, it would appear that your appeal should be dismissed.

“Ms. Christensen, by March 27, 2009, please provide me with legal precedent or argument stating why your appeal should not be dismissed. If you do not do so, I will recommend that the Board dismiss your appeal.”

Christensen did not respond to the ALJ’s letter.

ORS 240.309 controls the hiring, status, and assignment of temporary employees. ORS 240.307 provides a procedure for enforcing ORS 240.309.

In *Smith v. Fairview Training Center*, Case No. MA-22-93 (February 1994), a temporary employee appealed his dismissal. This Board held that

“* * * Smith had a temporary appointment but alleges no facts that would tend to show a violation of the applicable statute, ORS 240.309.

“Further, as a ‘nonstatus’ temporary employee, Smith is not entitled to review under either ORS 240.560 or 240.086 which apply to regular employees only.”

See also Martin v. Oregon State Fair, Case No. MA-13-90 (June 1991) (Board lacks jurisdiction over dismissal appeals of temporary employees).

Here, Christensen did not allege facts suggesting a violation of ORS 240.309, and it appears from the face of her appeal that she was a non-status temporary employee. We conclude that this agency has no jurisdiction to hear Christensen’s appeal.

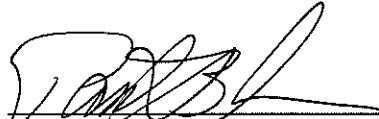
We also conclude that Christensen’s appeal should be dismissed for failure to prosecute. A temporary employee’s failure to respond to an ALJ constitutes lack of prosecution that warrants dismissal. *E.g., Carmoney v. Employment Department*, Case No.

MA-9-03 (April 2003); *Trombley v. Eastern Oregon Training Center*, Case No. MA-20-96 (October 1996).

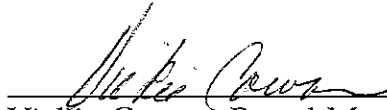
ORDER

The appeal is dismissed.

DATED this 30TH day of April 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.