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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
KENNETH HARRIS)	OEA Matter No. 1601-0106-09
Employee)	
)	Date of Issuance: March 16, 2011
v.)	
)	Lois Hochhauser, Esq.
OFFICE OF THE CHIEF FINANCIAL OFFICER)	Administrative Judge
Agency)	
)	

Stephen White, Employee Representative
Clarene Martin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Kenneth Harris, Employee¹ herein, filed a petition with the Office of Employee Appeals (OEA) on March 25, 2009, appealing the final decision of the Office of the Chief Financial Officer, Agency herein, to remove him from his position as Accounting Technician, effective February 27, 2009. In its answer, Agency disputed the jurisdiction of OEA to hear this matter.

Following the retirement of Senior Administrative Judge Sheryl Sears, the matter was assigned to me on or about September 1, 2010. On September 7, 2010, I issued an Order scheduling a prehearing conference for 9:30 a.m. on September 22, 2010. In the Order, I cautioned the parties that failure to comply with the Order in a timely manner could result in the imposition of sanctions, including the dismissal of the matter. Agency Representative appeared at the prehearing conference in a timely manner. No one appeared on Employee's behalf, and no one contacted OEA or the undersigned to request a delay or continuance. At approximately 10:30 a.m., the Agency Representative was excused.

On January 31, 2011, I issued an Order directing that Employee, through his Representative, show good cause for his or her failure to appear at the prehearing conference. I also directed that documentation be filed that the current Employee Representative was authorized to appear in this

¹ The word "Employee" is used throughout this document although Employee died prior to my appointment. However, since there is no evidence that a personal representative was appointed, the word "Employee" is still being used to identify the petitioner in this matter.

matter by the duly appointed personal representative of the Employee's estate. The filing deadline was 5:00 p.m. on February 16, 2011. The parties were notified that unless advised to the contrary, the record would close at 5:05 p.m., on February 16, 2011. The Order stated that failure to respond to the Order in a timely manner could result in the dismissal of the petition without further notice. No submissions were filed and no contact was made to OEA or the undersigned to request additional time. None of the copies of the January 31 or the September 22 Order was returned to OEA, and all are presumed to have been received. The record in this matter closed at 5:05 p.m. on February 16, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), provides that a petition for appeal can be dismissed with prejudice if an employee fails to prosecute the appeal. The Rule states, in pertinent part, that failure to prosecute includes the failure to "[s]ubmit required documents after being provided with a deadline for such submission." See, e.g., *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). The Orders in this matter were sent by first class mail, postage prepaid, to the addresses for the Employee representative and the Employee listed in the petition for appeal. The Orders were not returned to this Office, and are presumed to have been received by the Employee Representative, identified above. No family member or personal representative responded or contacted the undersigned or any employee at OEA in response to the Order. No one attended the prehearing conference or responded to the January 31 Order, which provided a deadline for submission, on Employee's behalf. The Administrative Judge finds that no one attended the duly scheduled prehearing conference on Employee's behalf and concludes that this constitutes a failure to prosecute. She further finds that no one on Employee's behalf, complied with the January 31 Order which contained a specific deadline. She concludes that this constitutes another failure to prosecute pursuant to OEA Rule 622.3. Based on the aforesaid findings, conclusions and analysis, the Administrative Judge concludes that this petition for appeal should be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.



FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge