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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TINA JOHN)	OEA Matter No. 1601-0043-05
Employee)	
)	
v)	Date of Issuance: February 3, 2006
)	
DEPARTMENT OF HEALTH)	Muriel A. Aikens-Arnold
Agency)	Administrative Judge
_____)	

Tina John, *Pro se*
Ross Buchholz, Assistant Attorney General

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 30, 2005, Employee, a Public Health Services Specialist, filed a Petition for Appeal from Agency's action to separate her from service effective March 4, 2005 for: Violation of the use of absence from the workplace by remaining in an absence without leave (AWOL) status for at least ten (10) consecutive work days, during which you did not communicate with your supervisor or any other managerial staff of the HIV/AIDS Administration (HAA). Agency was notified by this Office regarding this appeal on April 7, 2005 and directed to respond by May 9,

2005. Agency filed its response on May 6, 2005.¹

This matter was assigned to this Judge on October 4, 2005. On December 19, 2005, an Order Convening a Prehearing Conference was issued scheduling said conference on January 17, 2006 with a deadline to file prehearing statements no later than January 10, 2006.² On January 6, 2006, a document from the D.C. Office of Unemployment Compensation was received in this Office (presumably from Employee as no envelope was attached) with the heading "Discharge Not for Misconduct." Agency submitted its prehearing statement on January 31, 2006; and its representative appeared for the prehearing conference. However, Employee failed to comply with the Order to submit a prehearing statement by the deadline and did *not* appear at the prehearing conference. Nor did she communicate with the Judge regarding her absence. The Judge and Agency representative waited thirty (30) minutes. When Employee did not appear, Agency's representative was excused. Accordingly, the record is closed.

JURISDICTION

For purposes of dismissing this appeal, the Office has jurisdiction pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999) reads as follows:

¹ The file reflects that Employee picked up and signed for a copy of Agency's answer on 9/23/05.

² Due to an unforeseen conflict, the Judge issued an Order on January 9, 2006, changing the meeting date to January 31, 2006. Both Orders were mailed to Employee at the address on record.

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:

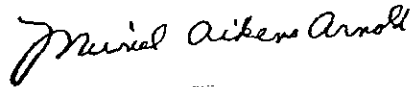
- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform the Office of a change of address which results in correspondence being returned.

Here, Employee failed to comply with the Order to submit documents and failed to appear at the prehearing conference. She was warned, in the Order Convening a Prehearing Conference (and again in the Order changing the meeting date) that sanctions may be imposed for failure to appear or produce documents. Both Orders were sent to Employee's address of record via first-class mail and were not returned by the US Postal Service as undeliverable.³ This Judge, therefore, concludes that Employee's behavior constitutes a failure to prosecute her appeal and, therefore, this appeal should be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED for failure to prosecute..

FOR THE OFFICE:



MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge

³ There is no record that Employee submitted a change of address.