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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EBONY ARTIS-PRICE,)	
Employee)	OEA Matter No. 1601-0168-12
)	
v.)	Date of Issuance: April 26, 2013
)	
OFFICE OF THE STATE)	STEPHANIE N. HARRIS, Esq.
SUPERINTENDENT OF EDUCATION,)	Administrative Judge
Agency)	
_____)	
Ebony Artis-Price, Employee <i>Pro-Se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 26, 2012, Ebony Artis-Price (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her position, effective July 6, 2012.

On November 19, 2013, an Order was sent to the parties scheduling a Mediation/Settlement Conference to take place on December 18, 2012. Agency was present for the Mediation/Settlement Conference, but Employee did not appear at the scheduled date and time. The assigned mediator attempted to contact Employee to no avail.

Thereafter, this case was assigned to the undersigned Administrative Judge (“AJ”) on December 20, 2012 for the limited purpose of addressing the status of the mandatory mediation for this matter.¹ On January 11, 2013, the undersigned issued an Order (“January 11th Order”) scheduling a Status Conference for January 29, 2013 (“January 29th SC”), to address the mediation status with the parties. Neither party was present for the January 29th SC. Subsequently, the undersigned issued an Order for Statement of Good Cause to both parties on January 31, 2013 (“January 31st Order”). The parties were ordered to submit their Statement of Good Cause on or before February 11, 2013, based upon their failure to appear at the scheduled Status Conference. Agency timely submitted its Statement of Good Cause, explaining that the Order was not properly forwarded to the assigned attorney until after the January 29th SC had passed. However, as of the date of this decision, OEA has not received a response from Employee

¹ In accordance with D.C. Official Code § 1-606.06(a), adverse action appeals filed with the Office of Employee Appeals on or after October 1, 2011 are subject to mandatory mediation.

regarding the aforementioned Order for Statement of Good Cause. Based on the record to date, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03.

ISSUE

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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:

That 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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1² grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.³ Additionally, OEA Rule 621.3(a)-(b), states that failure to prosecute an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice; or
- (b) Submit required documents after being provided with a deadline for such submission.

Moreover, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.⁴ Employee did not appear at the scheduled Status Conference and she failed to submit a response to the January 31st Order for Statement of Good Cause. Employee's appearance at the scheduled Status Conference was necessary to address pertinent issues in this matter. Further, both the January 11th and January 31st Orders advised Employee that failure to comply could result in sanctions, including dismissal. The undersigned concludes that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Employee has

² 59 DCR 2129 (March 16, 2012).

³ See OEA Rule 621.3.

⁴ See also *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee's failure to prosecute her appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute her appeal.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge