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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ARTHUR BONDS)	
Employee)	OEA Matter No. 1601-0054-13
)	
v.)	Date of Issuance: April 23, 2014
)	
DISTRICT OF COLUMBIA)	Lois Hochhauser, Esq.
DEPARTMENT OF PUBLIC WORKS)	Administrative Judge
Agency)	
_____)	
Corey Argus, Esq., Agency Representative)	
Arthur Bonds, Employee, <i>Pro-Se</i>)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 13, 2013, Arthur Bonds, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Department of Public Works, Agency, to remove him from his position as a Motor Vehicle Operator, effective February 1, 2014. At the time of the removal, Employee was in permanent and career status.

The matter was assigned to me on February 25, 2014. On February 28, 2014, I issued an Order scheduling the prehearing conference for March 18, 2014. The Order was mailed to Employee at the address listed in his petition, by first class mail, postage prepaid. It stated, in pertinent part, parties were required to comply with all OEA Rules. The Order was not returned to the Office.

On March 12, 2014, Agency counsel filed a motion seeking a continuance. In the motion, counsel stated that he had tried to contact Employee by telephone without success to request his consent. The Administrative Judge then telephoned Employee several times at the telephone number listed in his petition, and similarly could not reach Employee. The number would either ring continually or a recording would come stating that messages could not be left because the owner had not set up his voicemail.

By Order dated March 18, 2014, I granted Agency's motion, and rescheduled the prehearing conference for April 9, 2014. In the Order, I noted the unsuccessful efforts to reach Employee by telephone. Employee was directed to provide OEA with a current telephone number by March 28, 2014. The March 18, 2014 Order was mailed to Employee at the address listed in his petition by first class mail, postage prepaid. It was returned by the U.S. Postal Service with the notation that it was "not deliverable" and could not be forwarded.

Agency counsel appeared at the prehearing conference on April 9, 2014. Employee did not appear, and did not contact the Office to request a continuance. Additional attempts to reach him by telephone were unsuccessful for the reason noted above. Agency counsel was excused after approximately 20 minutes. The record is hereby closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Should this appeal be dismissed?

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) states:

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 failure 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 this Office of a change of address which results in correspondence being returned.

As noted above, the March 18, 2014 Order was returned to OEA by the U.S. Postal Service with a notation that the Order could not be delivered or forwarded. The Order was sent to the address listed by Employee in his petition. The February 28, 2014 Order was mailed to the same address and was not returned as undeliverable. It is presumed to have been received by Employee in a timely manner. The February 28, 2014 Order stated that the parties were required to comply with all OEA Rules. By failing to notify OEA of a change in address which resulted in the return of the March 18, 2014 Order, Employee failed to comply with OEA Rule 621.3 (c). Although this Rule does not specify that employees must also keep OEA informed of a current telephone number that can be used, it is essential that all parties can be reached by mail and telephone. In this matter, numerous attempts to contact Employee by telephone to advise him of the request for a continuance and to advise him of the rescheduled hearing date were not successful because the telephone number he provided in his petition did not take

messages, and the calls were not answered by Employee. An employee files a petition for appeal with OEA because the employee believes that he or she has not been treated fairly by his employing agency. The employee is seeking relief for the alleged wrong. However, an employee cannot prosecute the appeal and obtain the desired relief if the employee cannot be reached by telephone and mail. The Administrative Judge is aware, and has been advised by other employees, that the termination which is the basis for the appeal often adversely impacts on the ability on the employee to pay essential expenses and may result in the employee not having a place to live or a telephone. However, without contact information, an employee cannot meet the obligation to prosecute the appeal. If an employee does not have a current mailing address or telephone number, the employee should provide an address and telephone number which can be used to contact employee. If that is not possible, this Office will work with an employee to find a way that the employee can be contacted in order to allow the employee the ability to proceed with the appeal. It is critical for an employee to keep OEA informed of accurate contact information not for the benefit of OEA, but rather for the benefit of the employee.

The Administrative Judge concludes that the return of the March 18 Order by the U.S. Postal Service, mailed to Employee by first class mail, postage prepaid, at the address listed by Employee in his petition, constitutes a failure to prosecute his appeal in violation of OEA Rule 621.3(c). She further concludes that by failing to advise OEA of a current address, Employee failed to take "reasonable steps to prosecute" his appeal. Finally, she concludes, in an exercise of "sound discretion," that as a result of the violation of OEA Rule 621.3(c), this petition for appeal should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge