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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0009-22
)	
v.)	Date of Issuance: December 22, 2022
)	
DEPARTMENT OF BEHAVIORAL HEALTH,)	JOSEPH LIM, ESQ.
Agency)	Senior Administrative Judge
)	

Employee, *Pro se*
Jeremy Greenberg, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on November 15, 2021, challenging the Department of Behavioral Health’s (“Agency”) decision to suspend him from his position as Psychiatrist for twenty (20) workdays effective October 13, 2021, as well as a prior nine (9) day suspension that occurred in 2020. In response to OEA’s November 23, 2021, request for Agency’s answer, Agency filed its Answer and a Motion to Dismiss on December 21, 2021. I was assigned this matter on January 6, 2022.

An Order on Jurisdiction was issued on January 12, 2022, which required Employee to set forth his reasons as to why he believes this Office may exercise jurisdiction over his appeal. When Employee did not respond to the Jurisdiction Order by the deadline, a Show Cause Order was issued on February 15, 2022, requiring Employee to provide a statement of good cause for failing to respond to the Jurisdiction Order. Employee responded to the Show Cause Order on February 23, 2022, whereby he indicated that he had misread the Order. On February 25, 2022, I ordered him to respond to the Jurisdiction Order by March 7, 2022, and then extended the deadline to March 23, 2022, after Employee requested an extension. In his emailed response, Employee did not address the jurisdiction issue and instead gave a long and detailed history of his issues with Agency. On April 22, 2022, I issued a ruling¹ stating that OEA had jurisdiction over Employee’s appeal of an October 13, 2021, twenty (20) day suspension on an equitable basis, but that

¹ This Order was mistakenly labeled as an Initial Decision by the undersigned.

Employee's appeal of a nine (9) day suspension that occurred in 2020 is dismissed for lack of jurisdiction. In that same Order, I ordered the parties to submit proposed dates for a prehearing conference.

After a June 21, 2022, Prehearing Conference, I ordered the parties to submit briefs on the issues identified at the conference. Upon request by the parties, I extended the discovery deadline to July 5, 2022. Employee requested another extension for time to submit his brief, and I extended his deadline to September 20, 2022.

When Employee failed to submit his brief, I issued a second Show Cause Order with a deadline of November 11, 2022. The Order also mandated the submission of a signed letter by the treating physician for any assertions of medical issues on his part. On November 11, 2022, Employee responded in an email whereby he again neglected to submit a signed doctor's note or his brief while mentioning that he and his wife were on vacation. On November 15, 2022, Employee submitted a handwritten note again alleging a medical issue but failed to submit the required signed doctor's note substantiating his medical excuse for non-compliance with the order to submit a brief in support of his appeal.

On November 28, 2022, I issued a third Order for Good Cause Statement and once again, I ordered the submission of a signed letter by the treating physician if Employee again allege a medical issue for his non-compliance. Employee's response was due December 12, 2022. To date, Employee has not responded. The record is closed.

JURISDICTION

This Office has jurisdiction over Employee's appeal of his October 13, 2021, twenty (20) day suspension pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee's appeal of an October 13, 2021, twenty (20) day suspension should be dismissed for failure to prosecute.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

On June 21, 2022, I ordered the parties to submit briefs on the issues identified at the prehearing conference. Based on Employee's request, the deadline for the submission of briefs was extended by about a month and a half to September 20, 2022. While Agency complied, Employee failed to do so. Employee was then ordered on October 28, 2022, to show cause for his non-compliance regarding the failure to submit a brief and was ordered to submit a signed doctor's note if he alleges a medical reason for non-compliance. On November 11, 2022, Employee responded in an email whereby he again neglected to submit a signed doctor's note or his brief while mentioning that he and his wife were on vacation. On November 15, 2022, Employee submitted a handwritten note that he had a medical emergency but declined to submit a signed doctor's note substantiating this excuse. He submitted a subsequent email whereby he again neglected to submit a signed doctor's note or his brief while mentioning that he and his wife were

on vacation. On November 28, 2022, Employee was then ordered to show cause for his non-compliance by December 12, 2022. To date, Employee has not responded. The record is closed.

As Agency had noted in Agency's Opposition to Employee's 2nd Extension Request, Employee has admitted to the underlying conduct that resulted in discipline. In addition, Employee has time and again failed to submit his brief or a doctor's note for his failure to comply. In accordance with OEA Rule 624.3, 6-B DCMR Ch. 600, et seq. (2021), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee has exhibited a consistent pattern of failing to comply with Orders issued by the undersigned. These Orders had specific deadlines and contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Orders were sent to Employee at the address he listed as his home address in his Petition and in his subsequent submissions. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner. *See, e.g., Prater v. MPD*, OEA Matter No. 1601-0135-03, *Opinion and Order on Petition for Review* (November 28, 2006), and *Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Thus, this Petition is also being dismissed based on Employee's failure to prosecute his appeal and to comply with properly issued Orders from the undersigned.

ORDER

It is hereby ORDERED that this matter is DISMISSED with prejudice.

FOR THE OFFICE:

s/Joseph Lim, Esq.

Joseph Lim, Esq.

Senior Administrative Judge