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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0007-23
Employee)	
)	
v.)	Date of Issuance: June 23, 2023
)	
D.C. FIRE & EMERGENCY SERVICES)	
DEPARTMENT,)	JOSEPH LIM, ESQ.
Agency)	Senior Administrative Judge
)	
Employee, <i>Pro se</i>		
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 October 21, 2022, challenging the D.C. Fire and Emergency Medical Services Department’s (“Agency” or “DCFEMS”) decision to terminate her employment as a Firefighter/Emergency Medical Technician effective September 24, 2022. In response to OEA’s October 21, 2022, request for Agency’s answer, Agency filed its Answer on November 18, 2022. I was assigned this matter on December 2, 2022.

A Prehearing Conference was held on December 21, 2022, whereby the parties agreed that this was a *Pinkard*¹ case which precludes OEA from a de novo hearing pursuant to the holdings in *Pinkard* and the Collective Bargaining Agreement. On December 21, 2022, the parties were ordered to submit briefs by February 28, 2023, to which Agency complied. Despite granting Employee’s request for an extension to submit a brief by close of business March 27, 2023, Employee failed to do so.

A Show Cause Order was issued on June 2, 2023, requiring Employee to provide a statement of good cause for failing to respond to the Briefing Order. To date, Employee has not

¹ *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002).

responded. The record is closed.

JURISDICTION

This Office has jurisdiction over Employee's appeal pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee's appeal should be dismissed for failure to prosecute.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

As Agency had noted in Agency's brief, Employee pled guilty to all charges of repeated Absence Without Leave ("AWOL") levied against her at the May 26, 2022, hearing held before the Fire Trial Board ("FTB"). On December 21, 2022, I ordered the parties to submit briefs on the issues identified at the Prehearing Conference. While Agency complied, Employee failed to do so. Based on Employee's request, the deadline for the submission of her brief was extended to March 27, 2023. After the deadline had passed, Employee asked for another extension of a month and a half to obtain counsel. Based on Agency's reasonable objection, I then ordered Employee on June 2, 2023, to show cause for her non-compliance with the order to submit a brief. To date, Employee has not responded.

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 she listed as her home address in her Petition and in her 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.² Thus, this Petition is also being dismissed based on Employee's failure to prosecute her 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

² 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).