

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SABRINA BETTARD,)	
Employee)	OEA Matter No. 1601-0075-14
)	
v.)	
)	Date of Issuance: September 13, 2016
DEPARTMENT OF GENERAL)	
SERVICES,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sabrina Bettard (“Employee”) worked as a Program Support Specialist with the Department of General Services (“Agency”). Agency issued a notice of final decision removing Employee from her position for “any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: unauthorized absence and absence without official leave; and any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, i.e., inability to fulfill requirements for the position of Program Support Specialist.” The effective date of Employee’s

removal was April 7, 2014.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 2, 2014. She argued that although she was absent from her position, she was not absent without leave (“AWOL”). Employee asserted that she was on Family Medical Leave until October of 2013. She contended that she was on leave because she was the victim of a violent crime which resulted in her suffering from post-traumatic stress and depression. Therefore, she considered it an injustice to be removed from her position as she recovered.²

An OEA Administrative Judge (“AJ”) was assigned to her case and issued an order requesting that Employee and Agency attend a Status Conference. Both parties were present for the conference. Subsequently, the AJ issued an order requiring the parties to submit briefs addressing the issues raised during the Status Conference. The order provided that Agency’s brief was due on February 9, 2015, and Employee’s brief was due on March 9, 2015.³

Agency submitted its brief in a timely manner. However, Employee did not submit her brief by the March 9th deadline. As a result, the AJ issued an Order for Statement of Good Cause due to Employee’s failure to submit her brief. The order provided that “failure to respond in a timely fashion to this order, or failure to establish good cause for failure to submit your response[,] WILL result in the imposition of sanctions including the dismissal of this matter, pursuant to OEA Rule 621. . . .” Employee had until March 23, 2015, to file her submission.⁴

Employee did not submit her Brief or Statement of Good Cause. Therefore, the AJ issued an Initial Decision on March 25, 2015. She held that in accordance with OEA Rule 621.1,

¹ *Petition for Appeal*, p. 10-12 (May 2, 2014).

² *Id.*, 7-9.

³ *Order to Submit Briefs* (January 12, 2015).

⁴ *Order for Statement of Good Cause* (March 13, 2015).

Employee's appeal was dismissed for failure to prosecute.⁵

On April 28, 2015, Employee filed a Petition for Review. The petition is on a District of Columbia Court of Appeals Petition for Review form. However, this Board will err on the side of caution and assume the petition was intended to be filed with the OEA Board.

As provided in her Petition for Appeal, Employee argues that her absence was not unauthorized. Employee, again, asserts that she was on Family Medical Leave. Additionally, she makes several arguments related to Agency's unwillingness to make reasonable accommodations for her pursuant to the American with Disabilities Act. Therefore, she requested that she be reinstated to her position with back pay and damages.⁶

Notwithstanding Employee's assertions, she failed to comply with the AJ's order to file a brief and to show cause as to why her brief was not filed by the deadline. OEA Rule 621.3 provides the sanctions that the AJ may impose when a party fails to prosecute or defend a matter. The rule provides that:

- 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 (Emphasis added). 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 the Office of a change of address which results in correspondence being returned.

Based on the aforementioned, it was proper for the AJ to dismiss Employee's appeal. She failed to comply with OEA Rule 621.3(b). This Board has consistently upheld an AJ's

⁵ *Initial Decision* (March 25, 2015).

⁶ *Petition for Review*, p. 2-7 (April 28, 2015).

ability to impose sanctions on these grounds.⁷ Additionally, the Show Cause Order provided that “failure to respond in a timely fashion to this order, or failure to establish good cause for failure to submit your response[,] WILL result in the imposition of sanctions including the dismissal of this matter, pursuant to OEA Rule 621. . . .” Therefore, Employee was on notice that this outcome was a possibility if she failed to comply with the orders. She does not contend that she did not receive the order, nor does she offer a reason for missing the briefing and Good Cause deadlines. Thus, this Board must uphold the AJ’s decision to dismiss her appeal. Accordingly, Employee’s Petition for Review is denied.

⁷ *Marlon Ray v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0070-04, *Opinion and Order on Petition for Review* (May 15, 2007); *Sharon Young-Wester v. D.C. Public Schools*, OEA Matter No. J-0033-03, *Opinion and Order on Petition for Review* (September 19, 2006); *Francine H. James v. Office of Boards and Commissions (Board of Appeals and Review)*, OEA Matter No. 2401-0069-04, *Opinion and Order on Petition for Review* (July 31, 2007); *Isabelita Aglipay v. Department of Mental Health*, OEA Matter No. 1601-0072-08, *Opinion and Order on Petition for Review* (July 30, 2010); *Dametrious McKenny v. D.C. Public Schools*, OEA Matter No. 1601-0207-12, *Opinion and Order on Petition for Review* (February 16, 2016); and *Thomas Pierre v. D.C. Public Schools*, OEA Matter No. 1601-0186-12, *Opinion and Order on Petition for Review* (May 10, 2016).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.