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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LYNN SHORTER)	OEA Matter No. 2401-0177-04
Employee)	
)	
v)	Date of Issuance: October 6, 2005
)	
D.C. PUBLIC SCHOOLS)	Muriel A. Aikens-Arnold
Agency)	Administrative Judge
_____)	

Lynn Shorter, *Pro se*
Harriet Segar, Esq., Office of the General Counsel

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 28, 2004, Employee, a Teacher, Early Childhood, filed a Petition for Appeal from Agency's action to separate her from service effective June 30, 2004 as a result of a reduction-in-force due to Agency's serious financial challenges. Agency was notified by this Office regarding this appeal on December 16, 2004 and directed to respond by January 21, 2005. Agency filed its response on January 21, 2005 requesting dismissal of this matter as Employee did not state any legal basis to appeal the abolishment of her position.

This matter was assigned to this Judge on April 19, 2005. On June 2, 2005, an Order Convening a Prehearing Conference was issued scheduling said conference on June 28, 2005 with a deadline to file prehearing statements no later than June 23, 2005. Agency submitted its prehearing statement on June 24, 2005 and its representative appeared for the prehearing conference. However, Employee failed to comply with the Order to submit a prehearing statement by the deadline and did not appear at the prehearing conference. Nor did she communicate with the Judge regarding his absence.

On July 1, 2005, an Order to Show Cause was issued to give Employee an opportunity to explain why she did not comply with the previous Order to appear at the prehearing conference. On July 11, 2005, Employee submitted a written explanation stating, among other things, that she “acknowledged [my] deadline before being sanctioned” when she contacted this Judge on July 7, 2005 to request additional time to file her response to the Order to Show Cause, that she “. . . had no idea of the formal procedure or protocol . . .” and that her son was ill that day. Accordingly, the record is closed.

JURISDICTION

For purposes of dismissing this appeal, the Office has jurisdiction pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999) reads as follows:

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) 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.

Here, Employee failed to comply with the Order to submit documents and failed to appear at the prehearing conference. She was warned, in the Order Convening a Prehearing Conference, that sanctions may be imposed for failure to appear or produce documents. Even though she now contends that she did not know the "protocol," she acknowledged that she was warned about sanctions in the Order to Show Cause. Both Orders were sent to Employee's address of record via first-class mail and were not returned by the US Postal Service as undeliverable. Thus, that part of her explanation is not plausible. Then she asserts that her son was sick and that was the reason for her absence. That bare assertion may be true, but does not, alone, excuse her absence or her failure to communicate with this Judge regarding her situation.¹ This Judge, therefore, concludes that Employee's behavior constitutes a failure to prosecute her appeal and, therefore, this appeal should be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED for failure to prosecute..



FOR THE OFFICE:

MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge

¹ Although Agency's representative stated that Employee contacted her (presumably the same day) and advised she would not appear at the conference, this Judge had reserved the time lost between proceedings that day.