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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JENNIFER COHEN,)	
Employee)	OEA Matter No. J-0051-16
)	
v.)	
)	Date of Issuance: January 31, 2017
D.C. PUBLIC SCHOOLS,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Jennifer Cohen (“Employee”) worked as a World Language Teacher with the D.C. Public Schools (“Agency”). Employee was removed from her position for “incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.”¹ She filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 1, 2016. She argued that she was fit for duty and requested that reasonable accommodations be made for her medical condition. Accordingly, she asked that the termination action against her be reversed.²

On July 5, 2016, Agency filed a Motion to Dismiss. It argued that although Employee

¹ *District of Columbia Public Schools’ Motion to Dismiss Employee’s Petition for Appeal*, p. 5-6 (July 5, 2016).

² *Petition for Appeal*, p. 2 (June 1, 2016).

filed her appeal on June 1, 2016, she had not yet been terminated. Agency explained that Employee's termination was not effective until June 20, 2016. Therefore, it reasoned that her appeal should be refiled because it was filed before the termination action.³

The OEA Administrative Judge ("AJ") issued an order requesting that both parties file briefs addressing if the matter should be dismissed for lack of jurisdiction.⁴ Employee's brief was due on July 25, 2016, and Agency's brief was due on August 8, 2016.⁵ However, Employee failed to submit her brief. As a result, the AJ issued an Order Requesting a Good Cause Statement as to why she failed to submit her brief. Employee had until August 18, 2016, to respond.⁶

The AJ issued her Initial Decision on September 8, 2016. She held that in accordance with OEA Rule 621, Employee failed to prosecute her appeal. Accordingly, she dismissed her case.⁷

On September 19, 2016, Employee submitted a request for an extension. Because it was filed after the Initial Decision, this Board will consider Employee's request a Petition for Review. Employee explains that she was homeless from July 23, 2016 through August 2, 2016. Additionally, she was hospitalized from August 7, 2016 through August 19, 2016. Therefore, she requested an extension to defend her rights.⁸

At the time the AJ issued her Initial Decision on this matter, Agency was requesting that Employee re-file her appeal because she filed it before the effective date of her removal action. Thus, the merits of Employee's appeal were not addressed or decided because of the outstanding

³ *District of Columbia Public Schools' Motion to Dismiss Employee's Petition for Appeal*, p. 2 (July 5, 2016).

⁴ *Order to Submit Briefs* (July 11, 2016).

⁵ *Order on Jurisdiction* (July 11, 2016).

⁶ *Order for Good Cause Statement* (August 4, 2016).

⁷ *Initial Decision* (September 8, 2016).

⁸ *Request for Extension* (September 19, 2016).

procedural issue that the AJ requested the parties to brief. Although Employee failed to adhere to two orders issued by the AJ, she provided a reasonable justification for missing the deadlines.

Employee claims that she was homeless and hospitalized. While this Board recognizes the AJ's authority to dismiss appeals for failure to prosecute under OEA rule 621.3, we are confident that if the AJ had been aware of the circumstances before issuing the Initial Decision, she would have granted an extension in this matter. In *Murphy v. A.A. Beiro Construction Co. et al.*, 679 A.2d 1039, 1044 (D.C. 1996), the District of Columbia Court of Appeals held that "decisions on the merits of a case are preferred whenever possible. . . ." ⁹ This Board believes that in the interest of justice and fairness, this matter must be remanded to the Administrative Judge for further findings.

⁹ The OEA Board also followed this holding in *Diane Gustus v. Office of Chief Financial Officer*, OEA Matter No. 1601-0025-08, *Opinion and Order on Petition for Review* (December 21, 2009) and *Jerelyn Jones v. D.C. Public Schools*, OEA Matter No. 2401-0053-10, *Opinion and Order on Petition for Review* (April 30, 2013).

ORDER

Accordingly, it is hereby ORDERED that Employee's Petition for Review is **GRANTED**, and this matter is **REMANDED** to the Administrative Judge for further findings.

FOR THE BOARD:

Sheree L. Price, Vice Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

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.