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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CYNTHIA MILLER-CARRETTE,)	
Employee)	OEA Matter No. 1601-0173-11
)	
v.)	Date of Issuance: September 6, 2013
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
Cynthia Miller-Carrette, Employee <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 15, 2011, Cynthia Miller-Carrette (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position as a Teacher effective August 12, 2011. Employee was terminated for receiving a ‘Minimally Effective’ rating under the IMPACT Performance Assessment System for the 2009-2010, and 2010-2011 school years. On September 14, 2011, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter on June 18, 2013. Thereafter, I issued an Order dated June 24, 2013, requiring the parties to attend a Status Conference on July 24, 2013. Both parties attended the Status Conference. Thereafter, I issued a Post Status Conference Order wherein, the parties were required to submit briefs addressing the issues raised during the Status Conference. Agency’s brief was due on August 14, 2013, while Employee’s brief was due on August 28, 2013. Following Agency’s failure to submit its brief by the required deadline, on August 19, 2013, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a Statement of Good Cause based on its failure to submit its brief by the required deadline. Agency had until August 28, 2013 to respond. On August 30, 2013, Agency’s representative via email noted that she did not receive the July 24, 2013, Post Status Conference Order. Agency’s representative further noted that, she will be able to submit her brief by Tuesday (September 3, 2013). Subsequently, the Undersigned responded to Agency’s email granting Agency its request

to submit its brief by September 3, 2013. Additionally, the Undersigned emailed a PDF copy of the Post Status Conference Order to Agency's representative. As of the date of this decision, Agency has not responded to either Order. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.¹ 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 this Office of a change of address which results in correspondence being returned.

¹ *Id.* at 621.3.

This Office has consistently held that a matter may be decided in favor of the Employee when an Agency fails to submit required documents.² Here, Agency was warned in the July 24, 2013, and August 19, 2013, Orders that failure to comply could result in sanctions, including dismissal. Agency did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. Additionally, Agency failed to adhere to the September 3, 2013, extension deadline it requested. Further, the July 24, 2013, Order to Agency was not returned to this Office. Moreover, the certificate of service attached to the July 24, 2013, Post Status Conference Order shows that a copy of this Order was mailed to Agency's representative's address of record. And this Office has not been notified by Agency of a change of address. Accordingly, I find that Agency's behavior constitutes a failure to defend its action of separating Employee and this is a violation of OEA Rule 621.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to her last position of record and reimburse her all back-pay, and benefits lost as a result of her removal; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *Dwight Gopaul v. District of Columbia Public Schools*, OEA Matter No. 2401-0114-02, (June 16, 2005); *Morris v. Department of Mental Health*, OEA Matter No. 2401-0080-03R04 (April 14, 2004); *James v. Office of Boards & Commissions*, OEA Matter No. 2401-0069-04 (October 8, 2004).