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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CYNTHIA LINGHAM,)	
Employee)	OEA Matter No. 1601-0258-10
)	
v.)	Date of Issuance: June 6, 2012
)	
DEPARTMENT OF PARKS,)	MONICA DOHNJI, Esq.
AND RECREATION,)	Administrative Judge
Agency)	
_____)	
Cynthia Lingham, Employee <i>Pro Se</i>		
Margaret Radabaugh, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 17, 2009, Cynthia Lingham (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Parks and Recreation’s (“Agency”) decision to terminate her from her position as a Recreation Specialist. On March 26, 2010, Employee filed a Motion for Expedited Summary Disposition, noting that this Office should summarily dismiss this appeal based on Agency’s failure to timely submit its Answer to the petition for Appeal. Subsequently, On May 13, 2010, Employee submitted a corrected copy of her Motion for Expedited Summary Disposition. On April 6, 2010, Agency submitted an Answer to Employee’s Motion, along with a Request for an Enlargement of Time to file its Answer, noting that it only became aware of the pending petition for appeal after receiving Employee’s Motion for Expedited Summary Disposition. Agency further explained that since the matter has not been assigned to an Administrative Judge (“AJ”), Employee will not be prejudiced. Agency submitted its Answer to Employee’s petition for appeal on June 17, 2010. On September 7, 2010, Employee submitted a change of address.

I was assigned this matter on or around April 3, 2012. On April 4, 2012, I issued an Order directing the parties to attend a Status Conference on May 2, 2012. Agency complied, but Employee did not. Thereafter, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on her failure to attend the May 2, 2012,

Status Conference. Employee had until May 18, 2012 to respond. As of the date of this decision, Employee has not responded to the May 2, 2012 Order. The Order specifically noted that if either party did not appear at the Status Conference, sanctions may be imposed pursuant to OEA Rule 621, 59 DCR 2129 (March 16, 2012). 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 for failure to prosecute.

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 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 dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.² Employee did not appear at the Status Conference, and did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merits. I conclude that Employee's failure to prosecute her appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for her failure to attend a scheduled proceeding. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for her failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010), ___ D.C. Reg. ___ (); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ().