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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHAMEKA HARRIS,)	
Employee)	OEA Matter No. 1601-0029-13
)	
v.)	Date of Issuance: May 9, 2014
)	
OFFICE OF THE STATE SUPERINTENDENT)	
OF EDUCATION,)	
Agency)	STEPHANIE N. HARRIS, Esq.
)	Administrative Judge
_____)	
Shameka Harris, Employee <i>Pro Se</i>)	
Hillary Hoffman-Peak, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 29, 2012, Shameka Harris (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her from her position as a Bus Attendant. Agency submitted its Answer to Employee’s Petition for Appeal on January 28, 2013.

I was assigned this matter in January 2014. Thereafter, I issued an Order dated January 23, 2014 (“January 23rd Order”), ordering the parties to submit briefs to address pending issues in this matter. Agency’s brief was due on or before February 21, 2014; Employee’s brief was due on or before March 21, 2014. On January 31, 2014, Employee submitted a change of address via facsimile through her case worker, Lashawn Dunn (“Mrs. Dunn”). Subsequently, the undersigned sent out a copy of the January 23rd Order in an Amended Order on February 10, 2014, which also reflected Employee’s change of address.

Upon review of Agency’s brief submitted on February 5, 2014, the undersigned issued an Order on March 6, 2014 (“March 6th Order”), requesting additional information from Agency and revising the deadlines for the parties’ brief submissions. Agency’s brief was due on or before

March 28, 2014 and Employee's brief was due on or before April 18, 2014. Agency timely submitted its brief on March 27, 2014. Employee's brief was not submitted by the April 18, 2014 prescribed deadline.

Subsequently, on April 24, 2014, the undersigned issued an Order for Statement of Good Cause ("April 24th Show Cause Order") requiring Employee to explain her failure to submit a response to the March 6th Order on or before May 6, 2014. As of the date of this decision, Employee 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.

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 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;

¹ *Id.* at 621.3.

- (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.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.² Here, Employee was warned in the March 6th and April 24th Orders that failure to comply could result in sanctions, including dismissal. Additionally, at the request of Employee, a copy of the March 6th Order was sent to her case worker, Mrs. Dunn, by email on March 20, 2014, and the April 24th Show Cause Order was also sent to Mrs. Dunn by mail.³

Employee did not provide a written response to either the March 6th Order or the April 24th Show Cause Order. Both were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, this 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:

STEPHANIE N. HARRIS, 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); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

³ The April 24th Show Cause Order was sent to the address listed for Mrs. Dunn; however it was returned by the Post Office on May 2, 2014 as "Return to Sender; Attempted – Not Known; Unable to Forward."