

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0116-11
BEULAH BROCK,)	
Employee)	
)	Date of Issuance: November 14, 2011
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
)	Administrative Judge

Beulah Brock, *Pro Se*
Bobbie Hoye, Esq., *Agency Representative*

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 10, 2011, Beulah Brock (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public School System’s (“Agency” or “DCPS”) action of removing her position from the staffing plan for the 2011-2012 school year. Employee’s position of record at the time she filed this appeal was an Administrative Aide. According to Agency, Employee is currently an active employee of DCPS.

I was assigned this matter on or around October of 2011. On October 12, 2011, I issued an Order scheduling a status conference on October 27, 2011 for the purpose of assessing the parties’ arguments in reference to this appeal. Counsel for Agency appeared at the conference; however, the employee did not. I subsequently issued an Order for Statement of Good Cause on October 28, 2011, directing the employee to submit a statement of cause for her failure to appear at the status conference. Employee was ordered to submit a response no later than the close of business on November 7, 2011. Employee did not file a response to the Order for Statement of Good Cause.

JURISDICTION

Jurisdiction in this matter has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

The issue of whether OEA has jurisdiction over this matter arose based on the documents submitted by the Employee in her petition for appeal. OEA Rule 629.2, 46 D.C. Reg. at 9317, states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 629.1, *id*, a party’s burden of proof is by a “preponderance of the evidence”, which is defined as “[t]hat 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 622.3, 46 D.C. Reg. at 9313 (1999) provides 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 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.

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 any required documents.¹ In this case, Employee was warned that the failure to appear at a scheduled conference may lead to the imposition of sanctions, including dismissal of the appeal. Employee was further afforded an opportunity to establish good cause for her failure to appear at the October 27, 2011 conference. Employee did not comply with either order. Employee has not exercised diligence in pursuing her appeal, thus the petition for appeal is dismissed for failure to prosecute.

¹ *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. ___ ().

Cc:

Beulah Brock, Employee
Bobbie Hoye, Esq., Agency Representative

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

Cc:
Beulah Brock, Employee
Bobbie Hoye, Esq., Agency Representative