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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---|---|---------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| SOLOMON EHIEMUA, |) | |
| Employee |) | OEA Matter No. 1601-0337-10AF16 |
| |) | |
| v. |) | Date of Issuance: June 20, 2016 |
| |) | |
| D.C. PUBLIC SCHOOLS, |) | MONICA DOHNJI, Esq. |
| Agency |) | Senior Administrative Judge |
| _____ |) | |
| Olekanma A. Ekekwe, Esq., Employee Representative | | |
| Carl Turpin, Esq., Agency Representative | | |

INITIAL DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 22, 2010, Solomon Ehiemua (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate him effective July 16, 2010. Employee was a School Psychologist at Mamie D. Lee School at the time of his termination. Employee was terminated for receiving an “Ineffective” rating under the IMPACT, DC Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2009-2010 school year.

Following an Evidentiary Hearing, I issued an Initial Decision on July 1, 2013, in which I reversed the Agency’s decision to terminate Employee from his last position of record. As relief, I directed that Agency reinstate Employee, and I awarded him back pay, any benefits lost as a result of the removal, as well as any costs and attorney’s fee.

On April 14, 2016, the undersigned Administrative Judge (“AJ”) received Agency’s Response to Motion for Attorney’s Fees. Agency asserted that Employee’s attorney’s Motion was untimely and should be dismissed.¹ Subsequently, on May 10, 2016, I issued an Order for Statement of Good Cause to Employee’s attorney (“Ms. Ekekwe”) wherein, she was ordered to submit to me and to Attorney Carl Turpin, by the close of business on May 31, 2016, a statement of good cause for her failure to timely file a Motion for Attorney’s Fees with this Office as required by OEA Rule

¹ Ms. Ekekwe has not filed a Motion for attorney’s fees with OEA.

634.2, 59 DCR 2129 (March 16, 2012). As of the date of this decision, Ms. Ekekwe has not responded to this 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 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.² 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* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

² *Id.* at 621.3.

This Office has consistently held that, failure to prosecute an appeal includes a failure to appear at a scheduled proceeding after receiving notice, as well as a failure to submit required documents after being provided with a deadline for such submission.³ In the instant matter, pursuant to Ms. Ekekwe's failure to timely file a Motion for Attorney's fees in compliance with OEA Rule 634.2, the undersigned issued an Order for Statement of Good Cause to Ms. Ekekwe requesting an explanation for her failure to comply with the aforementioned OEA rule. Her response was due on or before May 31, 2016. Ms. Ekekwe was warned in the May 10, 2016, Order that failure to comply could result in sanctions, including dismissal. Ms. Ekekwe did not provide a written response to my Order for Statement of Good Cause. This was required for a proper resolution of this matter on its merits. I conclude that Ms. Ekekwe's failure to timely file her Motion for Attorney's fees, as well as provide a response to the May 10, 2016, Order is consistent with the language of OEA Rule 621. Ms. Ekekwe was notified of the specific repercussions of failing to establish good cause for her failure to respond to the May 10, 2016, Order after being provided with a deadline for such submission. Accordingly, I find that Ms. Ekekwe has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore, the matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

³*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).