

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Kevin Miller) OEA Matter No. 2401-0218-09
Employee)
) Date of Issuance: November 1, 2010
v.)
) Senior Administrative Judge
Office of Public Education Facilities Modernization) Joseph E. Lim, Esq.
Agency)

Charles Brown, Jr., Esq., Agency Representative
Kevin Miller, Employee pro se

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On August 20, 2010, Employee filed a petition for appeal with this Office from Agency's final decision terminating him due to a Reduction-in-Force (RIF). The matter was assigned to the undersigned judge on September 22, 2010. I scheduled a prehearing conference for October 18, 2010 and ordered the parties to submit a prehearing statement beforehand. While Agency complied, Employee failed to do so.

Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to attend the conference nor did he submit a prehearing statement. I issued a Show Cause Order to Employee asking him to explain his non-compliance by October 25, 2010. To date, Employee has failed to respond. The record is 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.

ANALYSIS AND CONCLUSION

OEA Rule § 622.3, 46 D.C. Reg. 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.

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee’s behavior constitutes a failure to prosecute his appeal and that is sound cause for dismissal.

ORDER

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

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge