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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0097-11
JUAN JOHNSON,)	
Employee)	
)	Date of Issuance: November 30, 2012
v.)	
)	
METROPOLITAN)	
POLICE DEPARTMENT,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Juan Johnson, Employee, <i>Pro Se</i>		
Brenda Wilmore, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 13, 2011, Juan Johnson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency”) action of suspending Employee for a period of thirty-five (35) workdays.¹ The effective date of Employee’s suspension was July 30, 2010.

I was assigned this matter in July of 2012. On August 8, 2012, I ordered the parties to appear at a Status Conference (“SC”) before this Office. The SC was to be held on September 24, 2012. Agency appeared for the SC; however, Employee did not. I subsequently issued an Order for Statement of Good Cause to Employee because he had failed to appear at the SC. Employee was required to submit a statement to establish good cause on or before October 1, 2012 to explain his absence. Employee failed to submit a statement of cause before the required deadline. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

¹ The Final Notice of Adverse Action stated that ten (10) days of the suspension would be held in abeyance for a period of twelve (12) months contingent upon Employee’s completion of an alcohol treatment program.

ISSUE

Whether Employee's appeal should be dismissed for failure to prosecute.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "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 the 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 621.3 further provides that "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 an appeal includes, but is not limited 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.

In this case, Employee was warned that the failure to appear at the Status Conference could result in sanctions as enumerated in Rule 621.3. Employee failed to appear at the SC as required in the August 8, 2012 Order. Employee also failed to provide a Statement of Good Cause on or before October 1, 2012 to explain his failure to appear at the SC.² Furthermore, Employee has not informed this Office of any change in his mailing address. Based on the foregoing, I find that Employee's lack of diligence in pursuing his appeal before OEA constitutes a failure to prosecute and serves as grounds for the dismissal of this matter.

ORDER

It is hereby ORDERED that Employee's petition for appeal is DISMISSED for failure to prosecute.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

² The August 8, 2012 and September 24, 2012 orders were returned to this Office by the US Postal Service and stamped as "Forward Time Exp. Rtn. To Send."