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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
THERESA HAYES)	OEA Matter No. 2401-0200-09
Employee)	
)	Date of Issuance: January 11, 2011
v.)	
)	Lois Hochhauser, Esq.
D.C. DEPARTMENT OF MENTAL HEALTH)	Administrative Judge
Agency)	
_____)	

Ms. Theresa Hayes, Employee, *Pro Se*
Justin Zimmerman, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Theresa Hayes, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on August 12, 2009, appealing the final decision of the D.C. Department of Mental Health, Agency herein, to remove her from her position as community service financial assistant with Agency, effective August 1, 2009, as a result of a reduction-in-force. At the time of her removal, she was in career and permanent status.

This matter was assigned to me on June 11, 2010. On July 12, 2010, I issued an Order scheduling a prehearing conference for 9:30 a.m. on August 12, 2010, and directing the parties to submit prehearing statements by 4:00 p.m. on July 30, 2010. The Order notified the parties that “failure to attend the prehearing conference or to otherwise fail to comply with” the Order could result in the imposition of sanctions, including the dismissal of the petition. The parties were further advised of the procedures to use if a continuance or extension of time was needed. According to the Certificate of Service attached to the Order, completed by Katrina Hill of this Office, the Order was mailed to Employee, by first class mail, postage prepaid, at the address listed by Employee in her petition. The mailing was not returned to this Office by the U.S. Postal Service.

Employee did not submit the prehearing statement and did not appear at the August 12 prehearing status. She did not contact the Administrative Judge or OEA to request a continuance or

extension. At approximately 10:30 a.m., the Administrative Judge dismissed Agency Representative who had submitted a prehearing statement and had appeared at the prehearing conference.

On August 12, 2010, I issued an Order directing Employee to show cause why the petition should not be dismissed. The Order stated that the deadline for submitting her response was 4:00 p.m. on August 24, 2010. The Order stated that the record would close on that date unless the parties were notified to the contrary. The Order was sent to the address listed by Employee in her petition by first class mail, postage prepaid. It was not returned by the U.S. Postal Service. Employee did not respond to the Order or request an extension. The record closed on August 24, 2010.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), a petition for appeal can be dismissed if a petitioner fails to prosecute the appeal. Failure to prosecute an appeal includes, but is not limited to, the failure to appear at a scheduled proceeding after receiving notice, failure to file submissions that have a filing deadline, or failure to inform OEA of a change of address which results in the return of correspondence to this Office. In this matter, Orders were sent to Employee at the address she listed in her petition. She had not notified this Office of any change in her address. The Orders were not returned to this Office and are presumed delivered. Employee did not appear at the prehearing conference scheduled for 9:30 a.m. on August 12, 2010 and she did not submit the prehearing statement that was due on 4:00 p.m. on July 30, 2010. The Order notified her that sanctions, including the dismissal, could be imposed for her failure to adhere to the requirements of the Order. Employee did not contact OEA or this Administrative Judge to request a continuance or extension of time despite being instructed in the Order on the procedures for doing so. Employee also failed to respond to the August 12, 2010 Order, which required her to file her response by 4:00 p.m. on August 24, 2010. She did not contact the undersigned or OEA to request an extension of time. Based on these circumstances, the Administrative Judge concludes that the petition for appeal should be dismissed based on Employee's failure to prosecute.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge