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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TERRY HALL)	OEA Matter No. 1601-0057-04
Employee)	
)	Date of Issuance: May 24, 2005
v.)	
)	Daryl J. Hollis, Esq.
)	Senior Administrative Judge
OFFICE OF THE ATTORNEY)	
GENERAL – D.C.)	
Agency)	
_____)	

Terry Hall, *Pro se*
Ross Buchholz, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On April 19, 2004, Employee, a Paralegal Specialist in the Career Service, filed a petition for appeal from Agency's final decision removing him for: "Insubordination"; "Discourteous Treatment"; "Malfeasance" and "Destruction of Government Property".

This matter was assigned to me on November 8, 2004. I conducted a Prehearing Conference on January 15, 2005. At that proceeding Employee was represented by Clarissa Thomas Edwards, Esq. Following the Prehearing, I scheduled an evidentiary Hearing for March 15 and 17, 2005. However, pursuant to the parties' joint request, the Hearing was rescheduled for May 10 and 12, 2005. On February 1, 2005, Ms. Edwards submitted a

motion to withdraw as Employee's counsel, citing "irreconcilable differences [that] have arisen between [Employee and counsel] to the point where counsel can no longer be effective if she is compelled to represent [Employee]." By Order dated February 3, 2005, I granted Ms. Edwards's motion to withdraw. In that Order, a copy of which was mailed to Employee at his address of record, I also wrote: "If Employee obtains new counsel, that person must notify me of his/her appearance as soon as possible. Further, Employee must be prepared to go forward with the evidentiary Hearing scheduled for May 10 and 12, 2005 with or without representation." The Order that was mailed to Employee was not returned to the Office as undelivered. Thus, there is a legal presumption that he received it. *See Keifa v. D.C. Public Schools*, OEA Matter No. 2401-0101-04 (December 8, 2004), slip. op. at 3, and cases cited therein. Nevertheless, I received no further communication from Employee.

On May 10, 2005, Mr. Buchholz appeared for the 9:30 a.m. Hearing as scheduled, but Employee did not. At approximately 9:40 a.m., I placed a call to Employee at his home number and left a message advising him that if he did not arrive by 10:00 a.m., I would dismiss Mr. Buchholz and the Agency's witnesses that were also present. After waiting until 10:00 a.m. for Employee to appear, I dismissed these individuals. On May 10, 2005, I sent to Employee an Order for Statement of Good Cause that reads as follows:

An evidentiary Hearing in the above-captioned case was scheduled for today, May 10, 2005, at 9:30 a.m. Notice of this proceeding was sent to you at [your address of record] on January 27, 2005. This notice was not returned to the Office as undelivered, as thus there is a presumption that you received it. Further, on February 3, 2005, I issued an Order granting Ms. Edwards's request to withdraw as your counsel. In that Order, I also wrote as follows: "If Employee obtains new counsel, that person must notify me of his/her appearance as soon as possible. Further, Employee must be prepared to go forward with the evidentiary Hearing scheduled for May 10 and 12, 2005 with or without representation." Further, you were ordered to provide Mr. Buchholz with a list of anticipated exhibits by the close of business on April 26, 2005. This you failed to do. Again, my Order was sent to you at the above address and was not returned as undelivered. Since that time, I have had no further communication from you.

Today, although Mr. Buchholz appeared as required, you did not. Nor did you contact me prior to the Hearing to advise me that you would be late or would be unable to attend. At approximately 9:40 a.m., I placed a call to you at your home number and left a message advising you that if you did not arrive by 10:00 a.m., I would dismiss Mr. Buchholz and the Agency's witnesses that were also here. You did not arrive by 10:00 a.m., and thus I dismissed these people.

This matter will not proceed without your cooperation. You are hereby ORDERED to submit to me and to Mr. Buchholz, by the close of business on May 20, 2005, a statement of good cause for your failure to attend the Hearing. Your statement must be in my hands by this deadline, and the deadline will not be extended. Failure to respond to this Order by the deadline or failure to establish good cause for your failure to attend today's Hearing and to submit your anticipated exhibits will result in this matter being dismissed, pursuant to OEA Rule 622, 46 D.C. Reg. 9312 (1999).

(emphasis in original).

This Order was mailed to Employee at his address of record, and was not returned to the Office as undelivered. Thus, again there is a legal presumption that he received it. *Keifá, supra*. However, Employee did not respond to the Order by the deadline, nor has he done so to date. 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 matter should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part as follows:

If a party fails to take reasonable steps to prosecute . . . an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action. . . . Failure of a party to prosecute . . . 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. . . .

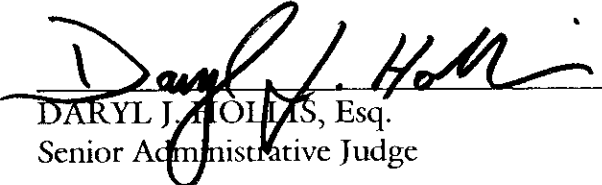
Further, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985).

Here, Employee did not submit the required exhibit list and did not appear for the Hearing. Further, he did not respond to the Good-Cause Order. I conclude that Employee has abandoned his appeal, and that his inactions constitute a failure to prosecute. Therefore, the matter should be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:


DARYL J. HOLLIS, Esq.
Senior Administrative Judge