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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DERRICK JONES)	OEA Matter No. 1601-0192-09AF15
Employee)	
)	Date of Issuance: August 5, 2016
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA DEPARTMENT)	Administrative Judge
OF TRANSPORTATION)	
Agency)	
_____)	

Cheri Hance Staples, Esq., Agency Representative
Hampton Stennis, Esq., Employee Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION

On November 17, 2010, following an evidentiary hearing, this Administrative Judge (AJ) issued an Initial Decision, in which she concluded that the District of Columbia Department of Transportation, Agency, had not met its burden of proof regarding its decision to terminate the employment of Derrick Jones, Employee. Agency filed a petition for review with the Office of Employee Appeals (OEA) Board on December 22, 2010. The Board denied the Agency's petition on March 5, 2012.

Agency then filed a Petition for Review of Agency Decision with the Superior Court of the District of Columbia. On April 2, 2014, Judge Peter Krauthamer remanded the matter to OEA, directing that it "make material findings necessary for a thorough criminal threats analysis." *District of Columbia Department of Transportation, Petitioner, v. District of Columbia Office of Employee Appeals, Respondent, and Derrick Jones, Intervenor*, Superior Court of the District of Columbia, Civil Division, Case No. 2012 CA 2979P (MPA).

The matter was reassigned to this AJ. After reviewing the record and meeting with the parties, the AJ found, and the parties agreed, that the "thorough criminal threats analysis" could be completed without supplementing the record. The parties thereafter submitted argument on whether

the evidence supported a conclusion that Employee's conduct constituted a criminal threat pursuant to D.C. Code §22-407 and the applicable case law. The record closed on November 14, 2014.

On April 27, 2015, the AJ issued an Addendum Decision on Remand, in which she concluded that, based on a "thorough criminal threats analysis" pursuant on D.C. Code §22-407 and case law, Agency had not met its burden of proof in this matter.

Employee filed a motion for attorney fees on June 24, 2015. On July 2, 2015, the AJ issued an Order, directing Agency to respond to the motion and asking the parties to advise her if they wanted to engage in settlement negotiations. The parties responded affirmatively, and were directed to submit status reports. The parties requested, and were granted, several continuances in order to complete negotiations.

On January 7, 2015, the parties advised the AJ that they had drafted a settlement agreement which, when executed, would resolve all attorney fee issues. However, subsequently Employee emailed the AJ that the matter might not be resolved. Therefore, the AJ issued an Order on March 17, 2016, directing the parties to notify her by April 13, 2016 if the matter was settled or if it should be resolved by the AJ. On April 13, 2016 and April 18, 2016, the parties requested that the deadline be extended until May 6, 2016, stating that they had resolved all outstanding issues and were "in the process of collecting the required signatures" needed to bring the matter to closure. By Order dated April 25, 2016, the request was granted, and Employee was directed to submit his request to dismiss this matter by May 6, 2016 or show cause why it could not be dismissed.

On May 5, 2016, Employee advised the AJ that the parties had executed the settlement agreement and that Agency had "begun processing payment." Employee, with consent of Agency, asked that the filing deadline be extended from May 6, 2016 until June 10, 2016. An Order was issued on May 6, 2016, granting the request. The Order further stated that the record would close on June 10, 2016, and that "if no submission [was] filed with this Office, the matter would be dismissed, unless the parties were advised to the contrary. It further stated that "absent extraordinary circumstances," it was unlikely that additional extensions would be granted. Neither party responded to the Order. The record closed on June 10, 2016

JURISDICTION

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

ISSUE

Should this motion for an award of attorney fees be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

It is important that the moving party file a written request seeking the dismissal of the motion or petition which initiated a matter in order to complete the record and avoid any misunderstanding regarding the movant's intention. In this matter, Employee, although ordered to do so, did not. However, as detailed above, there is sufficient documentation in the record to support the conclusion that the parties successfully settled this matter. In particular, the May 5, 2016 communication from Employee stated that the settlement agreement had been executed and that Agency had begun to process the payment. In addition, in the May 6, 2016 Order, the parties were notified that if no response was filed by the stated deadline, the record would close, and the matter would be dismissed.

OEA Rule 619.2(g), 59 DCR 2129 (March 16, 2012), authorizes an Administrative Judges to dismiss a matter when it has been settled. *See e.g., Rollins v. District of Columbia Public Schools*, OEA Matter No. J-0086-92, *Opinion and Order on Petition for Review* (December 3, 1990). The AJ concludes that the record contained sufficient documentation to support the conclusion that the matter was settled, and that this request for fees should be dismissed, even without a written request.¹

There is an alternative basis for dismissing this matter. OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) 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." The failure of an employee to prosecute an appeal includes the failure to respond to an Order which by the stated deadline. In this matter, Employee failed to respond to the May 6, 2016 Order, despite being notified that failure to respond would result in the dismissal of the petition. The AJ concludes, in an exercise of "sound discretion," that this failure to comply with the May 6, 2016 Order which contained a filing deadline, constitutes a failure to prosecute and serves as an alternate basis for the dismissing this matter. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010).

In sum, for these reasons, the Administrative Judge concludes that this matter should be dismissed.

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge

¹ The parties are commended for successfully resolving this matter.