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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
BETTYE FELDER)	
Employee)	OEA Matter No. 1601-0076-12
)	
v.)	Date of Issuance: March 7, 2014
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
_____)	

Ms. Bettye Felder, Employee, *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 12, 2012, Bettye Felder, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Public Schools, Agency, to remove her from her position as an Educational Aide, effective March 3, 2012. I was appointed to hear this matter on September 3, 2013.

At the prehearing conference, which took place on October 9, 2013, Employee contended that she was the victim of disparate treatment. Employee agreed to a deadline of November 12, 2013 to file a list of the individuals she claimed had engaged in similar misconduct but had not been terminated, by November 12, 2013. Agency agreed to a deadline of December 12, 2013 for its response, with the deadline to be extended for each day Agency was closed if the anticipated government shutdown took place. These deadlines were memorialized in an Order issued on October 15, 2013.

Neither party filed a submission in response to this Order. Therefore on January 27, 2014, I issued an Order notifying the parties of their failure to respond to the previous Order. I specifically notified Employee that she had an affirmative duty to prosecute her appeal and risked dismissal of the matter if she failed to respond by the new deadline of February 13, 2014. The parties were also advised that unless they were notified to the contrary, the record in this matter would close on that date. Employee did not respond to the Order. The record closed on February 13, 2014.

JURISDICTION

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

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621, 59 DCR 2129 (March 16, 2012), authorizes an administrative judge to impose sanctions on parties as necessary to serve the ends of justice. The administrative judge “in the exercise of sound discretion may dismiss the action” if a party fails to take reasonable steps to prosecute an appeal. Pursuant to OEA Rule 621.3, failure to prosecute an appeal includes failing to submit required documents after being provided with a deadline for such submission. This places an affirmative duty on Employee, as the movant, to submit documents as required, or risk dismissal of the appeal.

In this matter, Employee failed to respond to two Orders, both of which had stated deadlines. She did not contact the undersigned to request an extension of time. Each Order was mailed to Employee by first class mail, postage prepaid, at the address she listed in her petition. Neither Order was returned by the U.S. Postal Service. Therefore, it is presumed that Employee received both Orders in a timely manner. In addition, Employee was aware of the deadline imposed in the first Order because she agreed to the deadline at the prehearing conference. In the second Order, Employee was specifically notified that her failure to respond could result in the dismissal of the petition. However, again she did not file a response, timely or otherwise, and did not contact the undersigned to request an extension of time.

For these reasons, the undersigned concludes that Employee’s failure to respond to two Orders with stated deadlines constitutes a failure on her part to exercise the diligence needed for her to prosecute her appeal, as required by OEA Rule 621. The undersigned further concludes that the dismissal of the petition is the appropriate sanction to impose in this matter under these circumstances.

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge