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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
RONALD HOLMAN,)	
Employee)	OEA Matter No. 1601-0100-12
)	
v.)	Date of Issuance: December 26, 2013
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
Ronald Holman, Employee <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 17, 2012, Ronald Holman (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Custodian effective June 1, 2012. Employee was terminated for violating 5-E District of Columbia Municipal Regulations (“DCMR”) section 1401.2: (h) falsification of official records; (i) dishonesty; and (u) any other cause authorized by the laws of the District of Columbia.¹ On July 2, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter in October of 2013. Thereafter, I issued an Order dated October 9, 2013, requiring the parties to attend a Status Conference on November 6, 2013. Both parties attended the Status Conference. Thereafter, on November 7, 2013, I issued a Post Status Conference Order wherein the parties were required to submit briefs addressing the issues raised during the Status Conference. Agency’s brief was due on December 4, 2013, while Employee’s brief was due on December 30, 2013. Following Agency’s failure to submit its brief by the required deadline, on December 6, 2013, I issued an Order for Statement of Good Cause to Agency. Agency was ordered

¹ Specifically, Agency noted that Employee “knowingly and willfully failed to fully and/or accurately report your earnings from the District of Columbia Public Schools when you applied for and/or received unemployment insurance benefits through the District of Columbia Department of Employment Services’ Office of Unemployment Compensation. As a result of this failure to report your earnings, you collected unemployment insurance benefits to which you were not entitled.”

to submit a Statement of Good Cause based on its failure to submit its brief by the required deadline. Agency had until December 13, 2013 to respond. On December 13, 2013, the undersigned emailed a courtesy copy of the Post Status Conference Order and the Show Cause Order to Agency's representative and her Supervisor – W. Iris Barber. Agency's representative responded to the December 13, 2013, email noting that she has been on medical leave of absence since after Thanksgiving. She also stated that her first day back in the office would be December 16, 2013. She further explained that "I will be able to draft and file a Statement of Good Cause on that day [December 16, 2013], but I will not be able to have my brief to you for at least a week after that." As of the date of this decision, Agency has not submitted its Statement for Good Cause or its brief. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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:

That 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 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.² Failure of a party to prosecute or defend 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;
- or

² *Id.* at 621.3.

- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that a matter may be decided in favor of the Employee when an Agency fails to submit required documents.³ Here, Agency was warned in the November 7, 2013, and December 6, 2013, Orders that failure to comply could result in sanctions, including dismissal. Agency did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. Additionally, while this Office does not typically accept e-mail correspondence, assuming that the undersigned made an exception and accepted Agency's December 13, 2013, email response, Agency still failed to comply with the terms in her own submission. Agency's representative did not submit her Statement for Good Cause on December 16, 2013, as she noted in her December 13, 2013, email, nor did she submit her brief within a week from December 16, 2013. Also, Agency had notice of the deadlines for submitting its brief and Statement of Show Cause through the Orders and the courtesy email. Moreover, the certificate of service attached to the November 7, and December 6, 2013, Orders show that a copy of these Orders was mailed to Agency's representative's address of record. And this Office has not been notified by Agency of a change of address or by the Post Office that the correspondence was returned.

Furthermore, Agency has a duty to notify this Office of any change in schedule, as well as submit a written request for an extension of time as outlined in the October 9, 2013, Order. Prior to going on sick leave, Agency's representative, or her supervisor could have contacted Employee and this Office and filed a written request for an extension to submit the Post Status Conference brief. Agency's representative in this matter has on numerous occasions, made requests for extension to the undersigned. Accordingly, I find that Agency's representative is aware of the procedure for requesting an extension and by failing to do so in the instant matter, I further find that Agency's behavior constitutes a failure to defend its action of separating Employee and this is a violation of OEA Rule 621.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record and reimburse him all back-pay, and benefits lost as a result of his removal; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

³*Dwight Gopaul v. District of Columbia Public Schools*, OEA Matter No. 2401-0114-02, (June 16, 2005); *Morris v. Department of Mental Health*, OEA Matter No. 2401-0080-03R04 (April 14, 2004); *James v. Office of Boards & Commissions*, OEA Matter No. 2401-0069-04 (October 8, 2004).