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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KENNETH NEWTON,)	
Employee)	OEA Matter No. 1601-0034-19
)	
v.)	Date of Issuance: January 21, 2020
)	
D.C. DEPARTMENT OF PARKS)	
AND RECREATION,)	
Agency)	ERIC T. ROBINSON, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
_____)	
Kenneth Newton, Employee)	
Richard Evans, Employee Representative)	
Rahsaan Dickerson, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 19, 2019, Kenneth Newton (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Department of Parks and Recreation’s (“DPR” or the “Agency”) action of removing him from service. Employee’s last position of record was Customer Service Representative. In its Final Agency Decision – Separation letter dated January 29, 2019, DPR asserted that Employee was engaged in an altercation with a co-worker on December 19, 2018.

This matter was assigned to the Undersigned on June 7, 2019. On June 13, 2019, the Undersigned issued an Order Convening a Prehearing Conference. In adherence to this Order, both parties were required to submit a written Prehearing Statement and they were required to appear for the Prehearing Conference on July 15, 2019. Employee did neither. On July 25, 2019, the Undersigned issued an Order for Statement of Good Cause to Employee. He was required to explain his absence and he was required to submit his Prehearing Statement. Employee responded to this Order by providing an acceptable reason for his absence. On October 1, 2019, I issued another Order Convening a Prehearing Conference which was set for November 5, 2019. Pursuant

to the parties' request, the Prehearing Conference was rescheduled for November 21, 2019. During the Prehearing Conference, Employee was Ordered, orally, to provide the Prehearing Statement and he was required to actively participate in a Telephone Status Conference on December 16, 2019. Of note, Employee left a designation form for a Mr. Richard Evans; however, to the Undersigned's knowledge, Mr. Evans never contacted the Undersigned about this (or any) matter and he did not leave a telephone number with his contact information. Employee (or his erstwhile representative) did not participate in the aforementioned Status Conference call.

On December 17, 2019, the Undersigned issued a Second Order for Statement of Good Cause. According to this Order, Employee was required to explain, in writing, his absence for the December 16, 2019 status conference call and he was required to submit his Prehearing Statement. Employee's response was due no later than January 2, 2020. To date, the Undersigned has not received an explanation for the second absence or Employee's Prehearing Statement. After reviewing the documents of record, I have determined that no further proceedings are warranted. 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 matter should be dismissed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

OEA Rule 621.3, *id.*, states as follows:

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

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents and when they fail to appear for scheduled proceedings after receiving notice. See *David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). Here, Employee did not appear for the Status Conference on December

16, 2019; he did not file his Prehearing Statement; and he did not file his Second Statement of Good Cause. He was required to do all of the above pursuant to the Order Convening a Prehearing Conference and the Second Order for Statement of Good Cause. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, I conclude that this matter should be dismissed due to Employee's failure to prosecute his appeal.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge