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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0142-15
BERNITA CARMICHAEL,)	
Employee)	
)	Date of Issuance: September 23, 2016
v.)	
)	
DISTRICT OF COLUMBIA DEPARTMENT)	
OF CORRECTIONS,)	
Agency)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge

Bernita Carmichael, Employee, *Pro se*
Nada Paisant, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Bernita Carmichael ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on September 11, 2015, challenging the District of Columbia Department of Correction's ("Agency") decision to remove her from her position as a Fire Protection Specialist. Employee's termination became effective at the close of business on August 17, 2015.

I was assigned this matter on November 25, 2015. A Prehearing Conference Order was issued on February 9, 2016, which scheduled this matter for a Prehearing Conference on March 14, 2016. This Order required the parties to submit a Prehearing Statement on or before March 10, 2016. Agency submitted its Prehearing statement accordingly and its representative was present at the March 14, 2016 Prehearing Conference. However, Employee failed to submit her Prehearing Statement and also failed to appear at the Prehearing Conference. As such, a Show Cause Order was issued on March 14, 2016. Upon consideration of Employee's response to the Show Cause Order, the Prehearing Conference was rescheduled for April 22, 2016. Both parties were present at the April 22, 2016 Prehearing Conference. Upon review of the parties' Prehearing Statements and after discussion at the Prehearing Conference, I determined that

Employee's witness list needed to be revised and address the relevance of each potential witness she listed in her Prehearing Statement. A Status Conference to address the revised witness list was convened telephonically on June 1, 2016. Employee's second submitted witness list still did not provide enough information regarding the anticipated information to be elicited from Employee's witnesses. Employee was afforded another opportunity to submit a witness list with specific facts that she anticipated each witness to testify about.

On June 30, 2016, Employee submitted an updated Prehearing Statement, which provided specific information regarding the anticipated testimony of her potential witnesses. However, Employee did not address the 120-day time limit and Whistleblower Protect arguments, as set forth in the order issued on June 1, 2016. On July 8, 2016, with Agency's counsel on the phone, the undersigned attempted to contact Employee at the scheduled 9:30 a.m. Status Conference time, to no avail. A voice message was left for Employee. The undersigned again tried to contact Employee at approximately 10:30 a.m., again, to no avail. Accordingly a second Show Cause Order was issued to Employee on July 8, 2016, which ordered her to provide a statement of good cause for failing to make herself available for the July 8, 2016 telephonic Status Conference. Employee was ordered to submit a response to this Show Cause Order on or before July 15, 2016. On July 11, 2016, Employee sent an e-mail to the undersigned and Agency's counsel apologizing for missing the July 8, 2016 Status Conference. Although this e-mail was not a direct response to the Second Show Cause Order, in the interest of fairness, the undersigned treated it as such and rescheduled this telephonic Status Conference for August 12, 2016.¹

The telephonic Status Conference was convened on August 12, 2016. Given Employee's lengthy witness list, Agency requested to file written objections to some of the witnesses listed by Employee. This request was granted. Employee was again ordered to submit written legal arguments addressing the time limit issue and her Whistleblower Protection arguments by August 26, 2016. Employee was warned that failure to submit her legal arguments prior to this date would deem these issues waived at any potential evidentiary hearing. This matter was again scheduled for an in-person Status Conference for September 12, 2016. Agency's representative was present at this proceeding; however, Employee again failed to appear. As such, a third Show Cause Order was issued on September 12, 2016. To date, Employee has failed to respond to the third Show Cause Order. Despite repeated warnings that sanctions may be imposed for failing to appear at scheduled proceedings and timely filing requested submissions in this matter, Employee once again has failed to follow the directives of this Office. The record is now closed.

JURISDICTION

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

ANALYSIS AND CONCLUSION

In accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to

¹ Employee was also notified that an e-mail submission is not a formal filing and that she should follow the proper procedures to formally file any pleadings with this Office.

prosecute his/her appeal. 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.² *Failure of a party to prosecute or defend an appeal includes, but is not limited to, failing to appear at a scheduled proceeding after receiving notice, and failing to submit required documents after being provided a deadline to file such submission (emphasis added).*

Here, Employee has failed to appear or make herself available at three scheduled proceedings: March 14, 2016 Prehearing Conference (in-person), July 8, 2016 Status Conference (telephonic), and September 12, 2016 Status Conference (in-person). Employee has also failed to address her Whistleblower Protection and 120-day time limit arguments in submissions to this Office after being given ample opportunity to do so. All orders scheduling proceedings or requesting additional filings were issued to both parties via U.S. Postal Service to the parties' address of record.

Based on Employee's failure to appear or make herself available for several proceedings in this matter, including the latest scheduled Status Conference for September 12, 2016, I find that Employee has failed to exercise due diligence and take reasonable steps in prosecuting her appeal before this Office. Employee's inactions fall well below of what is expected by a petitioner filing an appeal with this Office.

ORDER

Based on the aforementioned, it is hereby **ORDERED** that Employee's Petition for Appeal in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).