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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
REGINALD PARKER,)	
Employee)	OEA Matter No. 1601-0185-12
)	
v.)	Date of Issuance: March 18, 2013
)	
D.C. PUBLIC SCHOOLS,)	
)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Senior Administrative Judge
Reginald Parker, Employee <i>Pro-Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 7, 2012, Reginald Parker (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“the Agency”) action of removing him from service. Initially, this matter was assigned to the OEA Mediation department so that the parties could participate in mandatory mediation as is required by D.C. Official Code S 1-606.06(a). By notice dated January 23, 2012, the parties were informed that the mandatory mediation conference was set to occur on February 26, 2013. However, according to the mediator assigned to this matter, Monica Dohnji, Employee failed to appear for this mediation session as scheduled. I was assigned this matter on or about February 26, 2013. On March 1, 2013, I issued an Order for Statement of Good Cause to Employee that required him to provide, in writing, a good reason for his failure to appear for the aforementioned mandatory mediation conference. Employee’s response to the Order for Statement of Good Cause was due on or before March 11, 2013. To date, Employee has not submitted a response. Moreover, both of the aforementioned correspondence from the OEA sent to Employee has been returned by the United States Postal Service with the official notation “Return to Sender Vacant Unable to Forward.” Of note, the returned correspondence also had a handwritten notation of “deceased.” Given the instant circumstances, 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.

BURDEN OF PROOF

OEA Rule 628 *et al.*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

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 does not appear for scheduled proceedings after having received notice or fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, Employee did not appear for the mandatory mediation conference

scheduled in this matter and he did not submit a statement of good cause in an attempt to explain his absence. I also note that Employee herein (or his estate) failed to keep the OEA apprised of his change of address while his matter was pending before the OEA. Of note, if Employee is in fact deceased, his estate failed to keep the OEA abreast of this unfortunate change in circumstance and of its intention on how it wanted to proceed in light of same. All of the preceding was required for a proper resolution of this matter. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, I find that this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED due to Employee's failure to prosecute his petition for appeal.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
Senior Administrative Judge