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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOSEPH JEFFERSON,)	
Employee)	OEA Matter No. 1601-0250-12
)	
v.)	Date of Issuance: February 18, 2014
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Joseph Jefferson, Employee <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 10, 2012, Joseph Jefferson (“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 August 10, 2012. On October 12, 2012, Agency submitted its Answer to Employee’s Petition for Appeal, along with other supporting documents.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 9, 2013. On December 31, 2013, I issued an Order scheduling a Status Conference for January 29, 2014. Employee’s copy of the December 31, 2013, Order which was mailed to his address on record was returned to this Office marked “RETURN TO SENDER; NOT DELIVERABLE AS ADDRESSED; UNABLE TO FORWARD.” While Agency’s representative was present at the January 29, 2014, Status Conference, Employee was a no-show. Thereafter, I issued an Order for Statement of Good Cause based on Employee’s failure to appear for the January 29, 2014, Status Conference. Employee had until February 10, 2014, to respond. Employee’s copy of the Order for Statement of Good Cause was returned to this Office on February 11, 2014. As of the date of this decision, Employee has not responded to either Order. 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 for failure to prosecute.

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 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.¹ 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 consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.²

¹ *Id.* at 621.3.

² *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Employee did not appear at the Status Conference, and did not provide a written response to my Order for Statement of Good Cause. Additionally, Employee failed to inform this Office of a change in his address, and as such, the December 31, 2013, and January 29, 2014, Orders from this Office to Employee were returned. These actions were required for a proper resolution of this matter on its merits. I conclude that Employee's failure to prosecute his appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for his failure to attend a scheduled proceeding. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore; this matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be dismissed for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge