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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
EMPLOYEE ¹)	OEA Matter No. 1601-0029-23
)	
v)	Date of Issuance: August 2, 2023
DISTRICT OF COLUMBIA DEPARTMENT OF)	
YOUTH REHABILITATION SERVICES)	LOIS HOCHHAUSER, Esq.
<u>Agency</u>)	Administrative Judge
Regina Robinson, Esq., Employee Representative)	
Connor Finch, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a petition with the District of Columbia Office of Employee Appeals (“OEA”) on February 15, 2023, appealing the decision of the District of Columbia Department of Youth Rehabilitation Services (“Agency”) to suspend her without pay for 14 days, effective January 11, 2023. At the time of this suspension, Employee was in the career service and held a permanent appointment as a Youth Development Officer.

By letter dated February 15, 2022, Sheila Barfield, Esq., OEA Executive Director, notified Tray Stanback, Agency Interim Director, of the appeal and of the March 17, 2023 deadline for Agency to file its answer. A copy of Employee’s Petition for Appeal (“PFA”) was attached to the letter. Agency filed its “Answer” on March 7, 2023. This Administrative Judge (“AJ”) was appointed to hear this matter on or about April 5, 2023.

On April 19, 2023, the AJ issued an Order scheduling a prehearing conference (“PHC”) for May 24, 2023 beginning at 2:00 p.m. at OEA. Copies of the Order were sent by first class mail on that date to Employee and her representative at the addresses listed on the PFA. Agency counsel made a timely appearance, but neither Employee nor her representative appeared. The PHC was

¹ This Office does not identify employees by name in its published decisions.

rescheduled for June 10, 2023, by agreement of the parties. The May 25, 2023 Order provided the parties with written notification of the date and time of the rescheduled PHC.²

On June 10, 2023. Agency counsel was present for the PHC, but neither Employee nor her representative appeared or contacted the AJ. On June 21, 2023, the AJ issued an Order directing Employee to show cause for her failure to appear at the PHC. The Order notified Employee that failure to respond could result in dismissal. The parties were advised that the record would close at 5:15 p.m. on that date unless they were notified to the contrary. Employee did not respond to the Order, and the record closed at 5:15 p.m. on July 14, 2023.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (1999 repl.).

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Three Orders were issued in this matter. Employee and her representative were sent each Order by first class mail at the addresses provided by them. No Order was returned to this Office, and all are presumed to have been received in a timely manner. The April 19, 2023 Order notified the parties that the PHC would take place at 2:00 p.m. on May 24, 2023. It also notified the parties of the requirements that were in effect throughout the proceeding. The first directive stated:

Compliance with OEA Rules and directives issued by this Administrative Judge are mandatory. Failure to comply without may result in the imposition of sanctions. OEA rules were recently revised, and are now available on-line and at OEA.
(emphasis in original)

On May 24, 2023, Connor Finch, Esq., Agency Representative; and Bruce Edwards, Esq., Agency Associate General Counsel appeared in a timely manner. Neither Employee nor Regina Robinson, Esq., Employee Representative appeared, and neither contacted the AJ. At about 2:20 p.m., the AJ telephoned Ms. Robinson, and there being no answer, the AJ left Ms. Robinson a voicemail message reminding her of the PHC, and asking her to return the call immediately. The AJ then telephoned Employee, who answered. Employee was apologetic, explaining that she had forgotten about the PHC. She asked if the PHC could be rescheduled. The AJ said that she would relay the request to Agency and determine if the matter could be resolved without the need for the parties to file pleadings. The AJ then reviewed the conversation with Agency. Agency did not oppose Employee's request, and proposed May 24, 2023 for the rescheduled PHC. The AJ spoke with Employee again, and notified her of the proposed time and date. Employee stated she was available, and the AJ cautioned her that sanctions could be imposed if she failed to attend the

² The Order also directed Agency to file a revised Answer redacting personal identifying information by that date. Agency complied, and the revised Answer was substituted for the initial filing at the hearing.

rescheduled proceeding. The Order issued on May 25, 2023 memorialized that the rescheduled PHC would take place on June 20, 2023 at 2:00 p.m..³

On June 20, 2023, Mr. Finch was present at the scheduled time, but neither Employee nor her representative appeared or contacted the AJ. At about 2:20 p.m., the AJ telephoned Ms. Robinson and then Employee. Neither answered, and the AJ left messages for both reminding them of the PHC and asking them to call back immediately. Neither returned the call. The AJ excused Mr. Finch at about 2:45 p.m..

On June 21, 2023, the AJ issued an Order directing Employee to explain the reason for failing to attend the PHC by 5:00 p.m. on July 14, 2023. The Order also stated that failure to file a timely response could result in the dismissal of the appeal. The parties were advised that the record would close at 5:15 p.m. on that date unless they were notified to the contrary. Employee did not respond to the Order, and the record closed at 5:15 p.m. on July 14, 2023.

This Office's Rule 624.1 authorizes the AJ to impose sanctions, "to serve the ends of justice." OEA Rule 624.3(b) states that the failure of a party to appear at a scheduled proceeding for which notice has been given represents a failure to prosecute, and can result in the imposition of sanctions, including dismissal of the appeal. In this matter, Employee failed to attend the first PHC, despite receiving timely notice. The AJ, with Agency's concurrence, excused her absence and on that day, the PHC was rescheduled to a time and date that Employee stated she was available. The May 25, 2023 Order provided written notice of the date and time of the PHC. Agency was in attendance on that day, but neither Employee nor her representative appeared or contacted the AJ. Finally, Employee did not respond to the May 25, 2023 Order directing her to show cause for her failure to appear at the PHC, and did not contact the AJ.

OEA Rule 624.3 provides that the AJ, "in the exercise of sound discretion," may dismiss an appeal if a party "fails to take reasonable steps to prosecute" the matter. The Rule provides that failure to prosecute includes:

- (a) Appear at a scheduled proceeding after receiving notice; [and]
- (b) Submit required documents after being provided with a deadline for such submission

The April 19, 2023 and May 25, 2023 Orders scheduling the prehearing conferences notified the parties of the dates and times of the proceedings. In addition, the April 19, 2023 Order stated that sanctions could be imposed for failing to comply with OEA Rules or AJ directives. The AJ excused Employee's failure to attend the first PHC, and with Agency's consent, the matter was rescheduled for a date and time that Employee was available. When she spoke with Employee on May 24, 2023, the AJ told Employee that failure to attend a proceeding could result in sanctions. Nevertheless, Employee failed to attend the rescheduled PHC although she received written or verbal notice of the time and date of the proceeding. The June 21, 2023 Order directed Employee

³ The Order also directed Agency to file a revised Answer redacting personal identifying information by that date. Agency complied in a timely manner. In addition, the Order also directed Employee to file a document by June 5, 2023. She did not do so. However, the AJ did not consider her failure to do so in reaching this decision.

to file her response by a specific deadline, and stated that sanctions could be imposed, including dismissal of the appeal, for failure to do so. Employee had the opportunity to explain her absence, but failed file a response or contact the AJ.

The AJ therefore concludes that Employee's failure to appear at the May 24 , 2023 PHC despite receiving written and verbal notice of the time and date of the proceeding and her failure to comply with the June 21, 2023 Order which directed her to file a response by a stated deadline, establish that Employee failed to take "reasonable steps to prosecute" her appeal. The AJ further concludes that sanctions are appropriate in this matter. Finally, the AJ determines "in the exercise of sound discretion" that dismissal of this appeal is an appropriate sanction and is warranted in this matter. *See* OEA Rule 624.3.

ORDER

It is hereby:

ORDERED: This Petition for Appeal is dismissed.

FOR THE OFFICE:



Lois Hochhauser, Esq.
Administrative Judge