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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHERRI BENNETT,)	
Employee)	OEA Matter No. 1601-0195-12
)	
v.)	Date of Issuance: March 7, 2014
)	
DISTRICT DEPARTMENT OF TRANSPORTATION,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Sherri Bennett, Employee <i>Pro Se</i>)	
Nana Bailey-Thomas, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 13, 2012, Sherri Bennett (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of Transportation’s (“Agency” or “DDOT”) decision to terminate her from her position as a Safety Technician effective May 3, 2012. Employee was terminated for violating District Personnel Manual (“DPM”) §1603.3(e) and §1619.15(c). On September 17, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

Following a failed mediation attempt, I was assigned this matter on November 22, 2013. Thereafter, I issued an Order dated December 2, 2013, requiring the parties to attend a Status Conference on December 17, 2013. Both parties attended the Status Conference. On December 18, 2013, I issued a Post Status Conference Order requiring the parties to submit briefs addressing the issues raised during the Status Conference. Agency’s brief was due on January 22, 2014, and Employee’s brief was due on February 12, 2014. While Agency timely submitted its brief, Employee did not submit her brief as requested. Subsequently, on February 19, 2014, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the December 18, 2013 Order, on or before February 28, 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 Administrative Judge ("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, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.² Here, Employee was warned in the December 18, 2013, and February 19, 2014, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, this matter should be dismissed for her failure to prosecute.

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).

ORDER

It is hereby **ORDERED** that the petition in this matter is DISMISSED for Employee's failure to prosecute her appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge