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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0018-10
BERNARD LEE,)	
Employee)	
)	Date of Issuance: November 29, 2011
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Bernard Lee, Pro Se		
Bobbie Hoye, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 6, 2009, Bernard Lee (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public School System’s (“Agency” or “DCPS”) action of terminating his employment through a Reduction-in-Force (“RIF”). Employee’s position of record at the time he was terminated was a Custodian. The effective date of the RIF was November 2, 2009.

I was assigned this matter on or around October of 2011. On October 21, 2011, I issued an Order scheduling a status conference on November 16, 2011, for the purpose of assessing the parties’ arguments in reference to this appeal. Counsel for Agency appeared at the conference; however, the employee did not. After unsuccessfully attempting to reach Employee via telephone on the day of the conference, I issued an Order for Statement of Good Cause on November 17, 2011, directing the employee to submit a statement of cause for his failure to appear at the status conference. Employee was ordered to submit a response no later than the close of business on November 25, 2011. Employee did not file a response to the Order.

JURISDICTION

Jurisdiction in this matter has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

OEA Rule 629.2, 46 D.C. Reg. at 9317, states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 629.1, *id*, a party’s burden of proof is by a “preponderance of the evidence”, which is defined as “[t]hat 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 622.3, 46 D.C. Reg. at 9313 (1999) provides 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.

According to OEA Rule 609.5, “an employee's failure to include a complete address, or to advise the Office of a change in address, shall constitute a waiver of any right to notice and service, and may result in the appeal being dismissed.” Employee therefore had the burden to inform this Office of any change to his address that may have occurred after filing his petition for appeal.

The undersigned Administrative Judge’s October 21, 2011 Order scheduling a Status Conference was returned to this Office by the US Postal Service on October 25, 2011. The address Employee indicated on his petition for appeal, 612 Notabene Drive, Apartment #7, Alexandria, VA 22305 was used in all correspondence from this Office. The November 17, 2011 Order for Statement of Good Cause also reflected the aforementioned address. Agency’s correspondence regarding this matter also reflected the same address.

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 any required

documents.¹ In this case, Employee was warned that the failure to appear at a scheduled conference may lead to the imposition of sanctions, including dismissal of the appeal. Employee was further afforded an opportunity to establish good cause for his failure to appear at the October 27, 2011 conference. Employee did not comply with either order. Employee has not exercised diligence in pursuing his appeal, thus the petition for appeal is dismissed for failure to prosecute.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

¹ *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), ___ D.C. Reg. ___ (); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ()