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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0186-12
THOMAS PIERRE,)	
Employee)	
)	Date of Issuance: September 30, 2014
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
Agency)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge
_____)	
Raymond Jones, Esq., Employee Representative)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 7, 2012, Thomas Pierre (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”), challenging the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate him from his position as a teacher. Employee’s termination became effective on August 31, 2012. Agency filed its Answer on October 1, 2012. I was assigned this matter on October 25, 2013.

A Status Conference was originally scheduled for March 4, 2014. In an e-mail sent on February 28, 2014, Employee requested that the Status Conference be rescheduled for a later date. On March 3, 2014, I granted Employee’s continuance request via e-mail.¹ The Status Conference was rescheduled for June 18, 2014, at 9:30 a.m. Employee and his representative were present; however, Agency’s Representative failed to appear. Subsequently, a Show Cause Order was issued, which required Agency to provide a statement of good cause for failing to appear at the June 18, 2014 Status Conference. Agency provided its response on June 25, 2014.

¹ Although there was no objection from Agency regarding Employee’s continuance request, it should be noted that the District government was operating on a two-hour delay due to inclement weather on March 4, 2014. Thus, the March 4, 2014 Status Conference would have been rescheduled even if Agency had an objection.

Upon consideration of Agency's response to the Show Cause Order, this matter was again rescheduled for a Status Conference for July 22, 2014. On July 8, 2014, Employee sent an e-mail to the undersigned indicating that he was unavailable on July 22, 2014. After a lengthy e-mail exchange between the parties, the Status Conference was rescheduled for August 4, 2014. The Status Conference was ultimately held on August 4, 2014, with both parties in attendance. A Post Status Conference Order ("PSCO") was issued on August 5, 2014; setting forth dates for the parties to submit their briefs. Agency's brief was due on or before September 5, 2014. On September 19, 2014, a Show Cause Order was issued to Agency for its failure to submit its brief in accordance with the August 5, 2014, PSCO. Agency had until September 26, 2014 to respond to the Show Cause Order. To date, Agency has not responded to the PSCO, or the Show Cause Order. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed.

ANALYSIS AND CONCLUSION

OEA Rule 621.1 provides that an Administrative Judge may impose sanctions upon the parties as necessary to serve the ends of justice. If a party fails to take reasonable steps to defend an appeal, the Administrative Judge, in the exercise of sound discretion, may rule for the appellant/Employee.² 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; or
- (b) Submit required documents after being provided with a deadline for such submission.³

A Status Conference was originally scheduled for March 4, 2014. In an e-mail sent on February 28, 2014, Employee requested that the Status Conference be rescheduled for a later date. On March 3, 2014, I granted Employee's continuance request via e-mail. The Status Conference was then rescheduled for June 18, 2014, at 9:30 a.m. Employee and his representative were present; however, Agency's Representative failed to appear. The undersigned does note that the 9:30 a.m. Status Conference was delayed because the undersigned's 9:00 a.m. proceeding lasted longer than anticipated and caused the Status Conference in this matter to start late. In an e-mail sent by Agency's Representative on June 18, 2014, the same day as the Status Conference, she stated that she was at the OEA and had to leave since the 9:00 a.m. proceeding was still going on "well after 10 am."

² See OEA Rule 612.3, 59 DCR 2129 (March 26, 2012).

³ *Id.*

Subsequently, a Show Cause Order was issued for Agency's failure to attend the June 18, 2014 Status Conference. Upon consideration of Agency's response to the Show Cause Order, this matter was rescheduled for a Status Conference for July 22, 2014. On July 8, 2014, Employee sent an e-mail to the undersigned indicating that he was unavailable on July 22, 2014. After a lengthy e-mail exchange between the parties, the Status Conference was ultimately rescheduled for August 4, 2014. The Status Conference was finally held on August 4, 2014, with both parties present. A Post Status Conference Order ("PSCO") was issued on August 5, 2014; setting forth dates for the parties to submit their briefs. Agency's brief was due on or before September 5, 2014. On September 19, 2014, a Show Cause Order was issued to Agency for its failure to submit its brief in accordance with the August 5, 2014, PSCO. Agency had until September 26, 2014 to respond to the Show Cause Order. To date, more than three weeks after Agency's brief was due, Agency has not responded to the PSCO, nor has it responded to the Show Cause Order.

It is noted that Agency's Representative sent the undersigned an e-mail on Friday, September 5, 2014, stating the following: "My son severely sprained his ankle this morning. I am going to turn in the briefs due today on Monday as I am unable to work today." The undersigned did not respond to this declarative statement. On Monday, September 8, 2014, Agency's Representative sent another e-mail stating: "On Friday I had a family emergency and today I am ill. I believe I'll be back in the office tomorrow, and will submit my brief on Wednesday. I greatly apologize for not asking for the extension, but health issues are out of my control. I completely consent to an extension for employee for the days that I have had since Friday." Employee's representative responded that he had "no problem with an extension due to [Agency's Representative's] illness." Again, the undersigned did not respond to this e-mail exchange. To date, more than two weeks have passed since Agency's Representative sent an e-mail stating that she would file Agency's brief pursuant to the PSCO.

This Office has consistently held that a matter may be decided in favor of an employee when an Agency fails to submit required documents.⁴ Here, in the PSCO and in the Show Cause Order, issued August 5, 2014 and September 19, 2014, respectively, the parties were warned that a failure to respond may result in the imposition of sanctions. Agency has failed to respond to the PSCO and the Show Cause Order. The undersigned is perplexed that Agency's Representative has failed to file Agency's brief after being provided ample time to provide such. The undersigned has been more than lenient with the conduct tolerated throughout the adjudication of this matter. Agency's failure to file its brief demonstrates a complete disregard for the adjudication process before this Office. Nearly a month after Agency's brief was due, it has yet to file the brief that was ordered to be submitted in the August 5, 2014 PSCO. Accordingly, I find that Agency has failed to exercise due diligence and take reasonable steps in defending this appeal before this Office.

⁴ *James v. Office of Boards and Commission*, Opinion and Order, OEA Matter No. 2401-0069-04 (July 31, 2007); *Gopaul v. DCPS*, Initial Decision, OEA Matter No. 2401-0114-02 (June 16, 2005).

ORDER

Accordingly, it is hereby **ORDERED** that:

1. Agency's termination of Employee is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record and reimburse him all back-pay, and benefits lost as a result of his termination;
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge