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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
FRANCES HOLMES,)	
Employee)	OEA Matter No. J-0062-13
)	
v.)	Date of Issuance: June 21, 2013
)	
DISTRICT OF COLUMBIA)	STEPHANIE N. HARRIS, Esq.
DEPARTMENT OF PUBLIC SCHOOLS,)	Administrative Judge
Agency)	
_____)	
Frances Holmes, Employee <i>Pro-Se</i>		
Carl K. Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 1, 2013, Frances Holmes (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) decision to terminate her. On April 4, 2013, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter on or around March 20, 2013. On April 11, 2013 (“April 11th Order”), I ordered the parties to submit briefs addressing whether OEA had jurisdiction in this matter in response to Agency’s contention that her Petition for Appeal was not timely filed within the statutory thirty (30) calendar days from the effective date of the action being appealed.¹ Employee’s brief was due on or before April 25, 2013. No response was received from Employee as directed by the April 11th Order. On April 30, 2013, the undersigned issued an Order for Statement of Good Cause (“April 30th Order”) for failure to submit her brief by the prescribed deadline. Employee was ordered to submit her Statement of Good Cause, along with her required brief, on or before May 10, 2013.

¹ See Agency Answer, p.2 (April 4, 2013).

On May 7, 2013, Employee contacted the undersigned via telephone to get clarification on the terms good cause and jurisdiction as they pertain to this matter. She also had questions about what should be included in her brief and if the deadline for her brief submission could be extended. I informed Employee that I would not be able to give her any legal advice regarding how to respond to the Order or address any legal merits of this case. The undersigned also relayed to Employee that she could submit a request for an extension of time, along with the specific reasons for the request, for my review and that I would determine whether request would be granted. I also advised Employee that she would also need to send a copy of the request for extension of time to opposing counsel at Agency. Employee failed to submit any of the required documents or a written request for an extension of time.

Although Employee did not submit a written request for extension of time, the undersigned issued a second Order for Good Cause on May 17, 2013 (“May 17th Order”) to ensure that Employee was provided ample time to submit the required documents, thereby extending the due date for Employee’s submissions. Employee was ordered to submit her Statement of Good Cause, along with her required brief, on or before May 31, 2013. A copy of Employee’s Order was sent back to this Office, marked as ‘Return to Sender; Unable to Deliver.’ The undersigned noted that there was an error in Employee’s mailing address, and subsequently reissued the order to Employee’s correct mailing address on May 31, 2013 (“May 31st Order”), with the deadline for Employee’s brief and Statement of Good Cause due on or before June 21, 2013. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned Orders. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed.

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 621.1² 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.³ Additionally, OEA Rule 621.3(a)-(b), states that failure to prosecute 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.

Moreover, 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.⁴ Employee failed to respond to the April 11th Order requesting a brief on jurisdiction and further failed to respond to the April 30th and May 31st Orders for Statement of Good Cause. The submission of Employee’s brief and Statement of Good Cause were necessary to address pertinent issues in this matter and was required for a proper resolution of this matter on its merits. Further, the April 11th, April 30th, and May 31st Orders advised Employee that failure to comply could result in sanctions, including dismissal. The undersigned concludes that Employee’s failure to prosecute her appeal is a violation of OEA Rule 621. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee’s failure to prosecute her appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee’s failure to prosecute his appeal.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

² 59 DCR 2129 (March 16, 2012).

³ See OEA Rule 621.3.

⁴ See also *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).