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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0054-18
FRANK COPELAND,)	
Employee)	
)	Date of Issuance: April 9, 2019
v.)	
)	Arien P. Cannon, Esq.
D.C. DEPARTMENT OF PUBLIC WORKS,)	Administrative Judge
Agency)	
)	
_____)	
Frank Copeland, Employee, <i>Pro se</i>		
Milena Mikailova, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Frank Copeland (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 11, 2018, challenging the District of Columbia Department of Public Works’ (“Agency”) decision to remove him from his position as Parking Enforcement Officer. Employee’s removal was effective May 11, 2018. Agency filed its Answer on July 13, 2018. I was assigned this matter on February 21, 2019.

A Prehearing Conference Order was issued on February 22, 2019, scheduling this matter for a Prehearing Conference on March 26, 2019. Agency’s Representative appeared for the Prehearing Conference; however, Employee failed to appear. A Show Cause Order was issued on the same date, ordering Employee to show good cause for failing to appear at the March 26, 2019 Prehearing Conference. Employee had until April 2, 2019, to respond to the Show Cause Order. To date, Employee has not submitted a response to 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 for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “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.

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.²

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3³ provides that the Administrative Judge, 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. 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.⁴

This Office has consistently held that failure to prosecute an appeal includes a failure to appear at a scheduled proceeding and failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, a Prehearing Conference was scheduled for March 26, 2019. A Prehearing Conference Order was issued on February 22, 2019, to Employee’s address of record. Despite this, Employee failed to appear for the Prehearing Conference. A Show Cause Order was subsequently issued to Employee’s address of record which required him to provide cause as to why he failed to attend the Prehearing Conference. To date, Employee has not responded to the Show Cause Order or provided any other response addressing his failure to appear for the March 26, 2019 Prehearing Conference.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁵ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Accordingly, I find that Employee has failed to exercise the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be 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:

Arien P. Cannon, Esq.
Administrative Judge