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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of: EMPLOYEE ¹)	OEA Matter No. 1601-0037-22
)	
v)	Date of Issuance: January 9, 2023
DISTRICT OF COLUMBIA PUBLIC LIBRARY, Agency)	LOIS HOCHHAUSER, ESQ. Administrative Judge

Ancel Carter, Employee, *Pro Se*²
Monika Taliaferro, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a petition with the District of Columbia Office of Employee Appeals (“OEA”) on January 12, 2022, appealing the decision of the District of Columbia Public Library (“Agency”) to terminate his employment, effective December 17, 2021. At the time of his termination, Employee was in the career service and held a permanent appointment as “Special Police Armed.” By letter dated January 13, 2022, Sheila Barfield, Esq., OEA Executive Director, notified Richard Reyes-Gavilan, Agency Executive Director, of the appeal and informed him that the deadline for filing Agency’s response was February 12, 2022. A copy of Employee’s Petition for Appeal (“POA”) was attached to the letter. Agency filed its “Motion to Dismiss and/or Stay Proceedings and Answer” (“Motion and Answer”) on February 14, 2022.

Following her appointment on March 17, 2022 to hear this matter, the undersigned Administrative Judge (“AJ”) issued an Order on March 24, 2022, directing, in pertinent part, Employee to file a response to Agency’s Motion and Answer by April 11, 2022. Employee did not comply. On June 7, 2022, the AJ issued an Order that stayed the proceedings temporarily and directed the parties to file monthly status reports beginning on June 30, 2022. No reports were filed. On November 17, 2022, the AJ issued an Order, notifying Employee that his continued

¹ This Office does not identify the employee who filed the petition by name in any published decision.

² Employee appeared “*pro se*” in this matter, .A party appearing without representation is considered “*pro se*,” *i.e.*, acting "for oneself, on one's own behalf." *See, e.g. Rivera v. Florida Department of Corrections*, 526 U.S. 135 (1999). Orders were mailed to F. Peter Silva, Esq. as a courtesy. He did not represent Employee in this matter, but rather represented him in the litigation referenced in this *Initial Decision*. Mr. Silva did not enter an appearance or contact the AJ or anyone at OEA about this matter.

failure to comply with Orders could be considered as a failure to prosecute this appeal for which sanctions could be imposed. Employee was directed to file a response by December 1, 2022. The parties were informed that unless they were notified to the contrary, the record would close on that date. Employee did not respond, and the record closed on December 1, 2022.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (1999 repl.).

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The basis of Agency's motion to either dismiss or stay this appeal was that Employee raised the same allegations in a lawsuit that was pending before the Superior Court of the District of Columbia. In the March 24, 2022 Order, the AJ directed Employee to respond to the motion to stay and to attach recent rulings by the Court by April 11, 2022. He did not do so and did not contact the AJ. The second Order, issued on June 7, 2022, notified the parties that the matter was stayed temporarily, and directed them to file monthly status reports starting on June 30, 2022. Neither Employee nor Agency complied or contacted the AJ. In the third Order, issued on November 17, 2022, the AJ notified Employee that his failure to comply with the two previous Orders could be considered a failure to prosecute this appeal for which sanctions could be applied, including the dismissal of the appeal. She also noted that Employee's failure to comply could mean that he no longer wished to continue with this matter. Employee was given another opportunity to demonstrate his interest in pursuing this appeal. However, Employee again failed to comply and did not contact the AJ.

Each Order issued in this matter was sent to Employee by first class mail, postage prepaid, to the address that Employee listed in the PFA. None of the Orders was returned to this Office by the U.S. Postal Service, and all three are presumed to have been timely received by Employee. Each Order contained a filing deadline. Employee did not respond to any of the Orders, and did not contact the AJ at any time.

The AJ notified the parties in the initial Order that that compliance with both OEA Rules and AJ directives was mandatory throughout the proceeding; and that failure to comply could result in the imposition of sanctions. The Order also informed the parties where to obtain copies of the Rules:

Compliance with OEA Rules and directives issued by this Administrative Judge are mandatory. Failure to comply without may result in the imposition of sanctions. OEA rules were recently revised, and are now available on-line and at OEA. (emphasis in original)

In the November 17, 2022 Order, the AJ notified Employee that his failure to comply with Orders could be considered as a failure to prosecute for which sanctions could be imposed,

including dismissal of the appeal. In the Order, she referenced OEA Rule 624, and cited the relevant language. Employee was given another opportunity to demonstrate his interest in pursuing this matter by complying with the Order.³ Employee did not comply and did not contact the AJ.⁴

This Office's Rule 624.1, authorizes the AJ to impose sanctions, "as necessary to serve the ends of justice." OEA Rule 624.3(b) states that the failure of a party to "[s]ubmit required documents after being provided with a deadline for such submission" represents a failure to prosecute or defend a matter, and can result in the imposition of sanctions. Employee failed to comply with the three Orders issued in this matter, each of which had a stated deadline. Employee is presumed to have been timely received each Order. Employee was notified that compliance with OEA Rules and AJ directives was mandatory and that failure to comply could result in the dismissal of his appeal. Nevertheless, he did not respond to any Order and did not contact the AJ.

In sum, the AJ determines, for the reasons stated above, that Employee's failure to respond to three Orders directing him to file a response by a date-certain, constitutes a failure to prosecute this appeal. Employee had an affirmative duty to prosecute the appeal that he filed, and consistently failed to do so, despite being notified of requirements. The AJ concludes that sanctions should therefore be imposed, and further, that the sanction of dismissal of this appeal is warranted "to serve the ends of justice" pursuant to OEA Rule 624.1.

ORDER

It is hereby:

ORDERED: This Petition for Appeal is dismissed.

FOR THE OFFICE:



Lois Hochhauser, Esq.
Administrative Judge

³ The AJ gave "special care" because of Employee's *pro se* status, but did not give him "special treatment [or] substantial assistance." *Palou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010). The Orders clearly informed him of requirements, deadlines, relevant procedural rules as well as the consequences of noncompliance. *Macleod v. Georgetown Univ. Med. Center*, 736 A.2d 977 (D.C. 1999).

⁴ The AJ did not include Agency in the November 17 Order, although it did not comply with the June 7 Order. This AJ generally will not threaten sanctions the first time a party fails to comply with an Order. However, Employee had already failed to comply with two Orders by the time the November 17 Order was issued. In addition, the November 17 Order gave Employee a third chance to show that he wanted to pursue his appeal. Employee was sanctioned for failing to meet his affirmative duty of prosecuting this appeal, by failing to respond to three Orders with stated deadlines or contacting the AJ. If this matter had proceeded and Agency failed to comply with another directive, it too would have risked the imposition of sanctions for failing to defend in this matter.