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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CARMEN FAULKNER,)	
Employee)	OEA Matter No. 1601-0135-15
)	
v.)	Date of Issuance: February 17, 2016
)	
D.C. PUBLIC SCHOOLS,)	Monica Dohnji, Esq.
)	Senior Administrative Judge
Agency)	
_____)	
Clarissa T. Edwards, Esq., Employee Representative)	
Nicole Dillard, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 4, 2015, Carmen Faulkner (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position as a Teacher, effective August 7, 2015. On October 7, 2015, Agency submitted its Answer to the Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on November 18, 2015. On November 23, 2015, I issued an Order directing the parties to attend a Prehearing/Status Conference on January 19, 2016. While Agency was present for the scheduled conference, Employee was a no-show.¹ Subsequently, on January 20, 2016, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to attend the scheduled conference. Employee was also referred back to the November 23, 2015 Order which stated that *all requests to reschedule the proceeding must be in writing* (emphasis added). Employee’s response to the January 20, 2016, Order was due on or before February 3, 2016. As of the date of this decision, Employee has not responded to this Order. The record is now closed.

¹ Employee’s attorney’s office left a message on the undersigned’s voice mail on Friday, January 15, 2016, noting that they will be unable to attend the scheduled conference.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

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 621.1 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.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;*
- (b) *Submit required documents after being provided with a deadline for such submission* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to appear at a scheduled proceeding after receiving notice, as well as a failure to submit required

² *Id.* at 621.3.

documents after being provided with a deadline for such submission.³ Here, Employee was informed in the November 23, 2015, Order that *all requests to reschedule the proceeding must be made in writing* (emphasis added). However, Employee failed to comply with this requirement. The Employee's attorney could have submitted a written request for a continuance in this matter. Instead, Employee's attorney's office left a voice message on the undersigned's phone noting that they will not be able to attend the scheduled conference.

Moreover, on January 20, 2016, the undersigned sent out an Order for Statement of Good Cause to Employee requesting an explanation for Employee's failure to appear for the January 19, 2016, conference. Employee's response was due on or before February 3, 2016. Employee was warned in the November 23, 2015, and the January 20, 2016, Orders that failure to comply could result in sanctions, including dismissal. Employee did not appear at the Status Conference, and did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merits. Once again, Employee's attorney could have filed a request for an extension to file Employee's response to the good cause order, but they failed to do so. I conclude that Employee's failure to prosecute her appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for her failure to attend a scheduled proceeding and for her failure to submit required documents after being provided with a deadline for such submission. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore, the matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

³ *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).