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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| GARY LANE, |) | |
| Employee |) | OEA Matter No. 1601-0369-10 |
| |) | |
| v. |) | Date of Issuance: November 13, 2012 |
| |) | |
| D.C. PUBLIC SCHOOLS – |) | |
| DIVISION OF |) | |
| TRANSPORTATION ¹ , |) | |
| Agency |) | Eric T. Robinson, Esq. |
| |) | Senior Administrative Judge |
| _____ |) | |
| Gary Lane, Employee <i>Pro-Se</i> |) | |
| Hillary Hoffman-Peak, Esq., Agency Representative |) | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 18, 2010, Gary Lane (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ Division of Transportation (“the Agency”) action of removing him from service. I was assigned this matter on or about July 17, 2012. On August 20, 2012, I issued an Order Convening a Prehearing Conference. In this order, both parties were required to submit a prehearing statement that detailed their understanding of the law and facts that gave rise to this action. The prehearing statements were due on or before September 17, 2012. The Agency timely submitted its prehearing statement. Employee did not submit his prehearing statement. The aforementioned order also required the parties to appear for a proceeding at the OEA before the undersigned on September 25, 2012. However, on August 29, 2012, the Agency’s representative requested that the prehearing conference be rescheduled due to scheduling concerns. This request was granted and pursuant to an Order issued on September 7, 2012, the prehearing conference was rescheduled for October 23, 2012. On October 23, 2012, both the

¹ During the pendency of this matter, the Office of the State Superintendent of Education has absorbed the former Division of Transportation, within the District of Columbia Public Schools.

Agency representative and I were ready to proceed; however, Employee failed to appear for the prehearing conference. Later that day, I issued an Order for Statement of Good Cause to Employee that required him to provide a written explanation that explained his failure to provide his prehearing statement, his failure to appear for the prehearing conference and he was required to submit his past due prehearing statement. Employee's response to the Order for Statement of Good Cause was due on or before November 2, 2012. To date, Employee has not complied with any of the aforementioned orders. Given the instant circumstances, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this matter should be dismissed.

BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

OEA Rule 621.3, *id.*, states as follows:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. 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.

This Office has held that a matter may be dismissed for failure to prosecute when a party does not appear for scheduled proceedings after having received notice or fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, Employee did not file his prehearing statement, he did not appear for the prehearing conference as scheduled, and he did not submit a statement of good cause in an attempt to explain his inaction. All of the preceding were required for a proper resolution of this matter on its merits. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, I find that this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED due to Employee's failure to prosecute his petition for appeal.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
Senior Administrative Judge