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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KENNETH JOHNSON,)	
Employee)	OEA Matter No. 1601-0209-11
)	
v.)	Date of Issuance: January 17, 2014
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Kenneth Johnson, Employee <i>Pro-Se</i>)	
Carl K. Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 6, 2011, Kenneth Johnson (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“the Agency”) action of removing him from service. The effective date of his removal was July 29, 2011. I was assigned this matter on or around June 18, 2013. Thereafter, I issued an Order Convening a Prehearing Conference (“PH Order”) scheduling a Prehearing Conference in order to assess the parties’ arguments. Moreover, the PH Order required the parties to submit prehearing statements on or by July 29, 2013. The conference was scheduled for August 13, 2013. Employee did not appear for this conference. In contrast, Agency was present and had timely submitted its prehearing statement. I then issued an Order for Statement of Good Cause to Employee dated August 13, 2013 wherein I required him to provide good cause for his failure to appear for the above mentioned Prehearing Conference and explain his failure to timely submit his prehearing statement. I have received Employee’s response. AS part of his response, Employee filed his prehearing statement. After taking into consideration Employee’s arguments and the documents of record, I have decided that no further proceedings are required. 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 appear for the prehearing conference as scheduled and his statement of good cause did not credibly explain his inaction. In his response to my Order for Statement of Good Cause, Employee explains his absence by alleging that the PH Order did not have an address for where the prehearing was to be held. At best, Employee is mistaken, the PH order clearly stated on page 1 that “A PREHEARING CONFERENCE in the above matter will be held at **10:30 a.m. on August 13, 2013** at the Office of Employee Appeals, 1100 4TH Street, S.W., Suite 620E, Washington, D.C. 20024.” Employee then alleges that he was misinformed by his representative that there was nothing to report in this matter. However, after a thorough review of the record, Employee never designated a person to represent him in this matter. Moreover, the PH order required **both** Employee and his chosen representative to appear for the prehearing conference. *See* PH Order at 1. I also take note that Employee’s response was prepared by Employee and not his alleged representative. Also of note, the person alleged to have represented Employee did not submit a statement explaining his involvement (or lack thereof) in this matter. In a nutshell, despite Employee arguments to the contrary, he was required to appear for the Prehearing Conference. I further find that Employee’s response failed to establish good cause for his absence. Moreover, I further find that 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