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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHAUN FRIDAY,)	
Employee)	OEA Matter No. 1601-0170-11
)	
v.)	Date of Issuance: July 15, 2013
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Shaun Friday, Employee <i>Pro Se</i>		
W. Iris Barber, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 15, 2011, Shaun Friday (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency”) decision to terminate him from his position as a Maintenance Worker effective July 29, 2011. Employee was terminated for receiving a ‘Minimally Effective’ rating under the IMPACT Performance Assessment System for the 2009-2010, and 2010-2011 school years. On September 22, 2011, Agency submitted its Answer to Employee’s petition for appeal, along with other supporting documents.

I was assigned this matter on June 18, 2013. On June 20, 2013, I issued an Order directing Employee to address the jurisdiction issue in this matter because he noted in his Petition for Appeal that he filed a grievance with the Union on July 18, 2011, before filing his Petition for Appeal with this Office. On June 27, 2013, Employee’s copy of the June 20, 2013, Order which was mailed to his address on record was returned to this Office marked “RETURN TO SENDER; ATTEMPTED-NOT KNOWN; UNABLE TO FORWARD.” Thereafter, on June 28, 2013, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on his failure to update his address with this Office. Employee had until July 10, 2013, to respond. The Order specifically noted that a party’s failure to advise this Office of a change of address shall constitute a failure to prosecute, and may result in the

appeal being dismissed pursuant to OEA Rule 621.3(c), 59 DCR 2129 (March 16, 2012). As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

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.¹ 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.

¹ *Id.* at 621.3.

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.² Employee did not submit a brief addressing the jurisdiction issue in this matter as required by the June 20, 2013 Order, and he did not provide a written response to my Order for Statement of Good Cause. Additionally, Employee failed to inform this Office of a change in his address, and as such, the June 20, 2013, Order from this Office to Employee was returned. These actions were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute his appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for his failure to update his address with this Office. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore; this matter should be dismissed for his failure to prosecute.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *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).