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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
DWIGHT GOPAUL)	OEA Matter No. 2401-0114-02
Employee)	
v.)	Date of Issuance: June 16, 2005
D.C. PUBLIC SCHOOLS)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.

Harriet Segar, Esq., Agency Representative
Dwight Gopaul, Employee pro se

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On August 30, 2002, Employee, a Project Manager with the District of Columbia Public Schools, filed a petition for appeal from Agency's final decision separating him from Government service due to a Reduction-in-Force (RIF).

This Matter was initially assigned to Judge Blanca Torres on October 29, 2002. It was then reassigned to me on May 16, 2005, after Judge Torres changed employment. I issued a May 16, 2005 Order directing the parties to attend a May 27, 2005 Status Conference. Although Employee showed up at the conference, Agency did not appear.

During a subsequent telephone conversation, the Agency Representative indicated that she could not appear as she had to go out of town. I informed her that she would just have to respond to a Show Cause Order that I issued on June 1, 2005. However, Agency also failed to respond to the Order to show cause for its failure to defend by the June 13, 2005 deadline, nor has it done so to date. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action should be reversed for its failure to defend.

ANALYSIS AND CONCLUSIONS

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides 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.


Agency was warned in each order that failure to comply could result in sanctions including reversal. The agency never complied. Agency's behavior constitutes a failure to defend its action against the employee and that is sound cause for dismissal.

ORDER

It is hereby ORDERED that:

1. Agency's action separating Employee from service pursuant to the removal is REVERSED; and
2. Agency restore Employee to his position of record or a comparable position with all back pay and benefits due him; and
3. Agency file with this Office, within 30 calendar days of the day on which this decision becomes final, documents showing compliance with the terms of this Order.

FOR THE OFFICE:



JOSEPH E. LIM, Esq.
Senior Administrative Judge