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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KEVIN BELLINGER,)	
Employee)	OEA Matter No. 1601-0179-11
)	
v.)	Date of Issuance: September 10, 2013
)	
DISTRICT OF COLUMBIA)	STEPHANIE N. HARRIS, Esq.
PUBLIC SCHOOLS,)	Administrative Judge
Agency)	
_____)	

Kevin Bellinger, Employee *Pro-Se*
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 18, 2011, Kevin Bellinger (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools (“Agency” or “DCPS”) decision to terminate him from his position as an Administrative Officer. The effective date of Employee’s termination was July 29, 2011. Agency submitted its Answer in response to Employee’s Petition for Appeal on September 22, 2011.

I was assigned this matter on or around June 18, 2013. On July 19, 2013, the undersigned issued an Order (“July 19th Order”) scheduling a Prehearing Conference for August 20, 2013, to assess the status of this matter and address pending issues requiring further review. On July 30, 2013, Employee’s July 19th Order was returned to OEA by the Post Office marked “Forward Time Exp; Return to Sender.” Agency was present for the Prehearing Conference, but Employee did not appear at the scheduled date and time. Subsequently, the undersigned issued an Order for Statement of Good Cause on August 20, 2013 (“August 20th Order”). Employee was ordered to submit a statement of good cause based on his failure to appear at the scheduled Prehearing Conference. Employee’s response to the August 20th Order was due on or before August 30, 2013. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned Order for Statement of Good Cause. Based on the record to date, 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.

ISSUE

Whether this appeal should be dismissed.

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 621.1¹ 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 Additionally, OEA Rule 621.3(a)-(c), states that failure to prosecute an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice; or
- (b) Submit required documents after being provided with a deadline for such submission.
- (c) Inform this Office of a change of address which results in correspondence being returned.

Moreover, 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, submit required documents, or

¹ 59 DCR 2129 (March 16, 2012).

² *See* OEA Rule 621.3.

update this Office with a change of address.³ Employee did not appear at the scheduled Prehearing Conference and he failed to submit a response to the August 20th Order for Statement of Good Cause. Employee's appearance at the scheduled Prehearing Conference was necessary to address pertinent issues in this matter and was required for a proper resolution of this matter on its merits. Further, both the July 19th and August 20th Orders advised Employee that failure to comply could result in sanctions, including dismissal. The undersigned concludes that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee's failure to prosecute his appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

³ See also *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).