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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
RODNEY OLIVE,)	
Employee)	OEA Matter No. 2401-0280-09
)	
v.)	Date of Issuance: August 1, 2011
)	
DISTRICT DEPARTMENT OF)	
TRANSPORTATION,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Clifford Lowery, Employee Representative)	
Melissa Williams, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2009, Rodney Olive (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of Transportation’s (“Agency”) action of abolishing his position as a Civil Engineering Tech through a Reduction-In-Force (“RIF”). I was assigned this matter on or about June 5, 2011. On June 6, 2011, I issued an Order directing the parties to attend a Prehearing Conference set for June 28, 2011, and to submit a Prehearing Statement by June 21, 2011. The Order specifically noted that if either party did not appear at the Prehearing Conference, sanctions may be imposed pursuant to OEA Rule 622, 46 D.C. Reg. at 9312. Agency showed up for the July 12, 2011, Prehearing Conference, but Employee did not. However, later that day, it was brought to my attention by Employee’s representative that Employee recently passed and he was withdrawing this matter. I then issued an Order on June 28, 2011, requesting Employee’s representative to submit in writing, his request to withdraw this matter, and also to submit to this Office, documentations (death certificate, obituary announcement, etc) relating to Employee’s death. The deadline for responding to this Order was July 18, 2011. To date, nothing has been received by this Office in response. This 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 appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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 fails to appear at a scheduled proceeding or fails to submit required documents.¹ Here, Employee's representative made an oral request² to have this matter dismissed due to Employee's passing, but failed to comply with the Order requesting documentation to support this statement and to provide a written request to withdraw this matter. Additionally, Employee's representative was warned in both the Order Convening the Prehearing Conference and the June 28, 2011, Order that failure to comply could result in sanctions including dismissal. Employee did not provide a written Prehearing Statement, a written request to withdraw this matter and failed to appear at the Prehearing Conference as required by the aforementioned Orders. I conclude 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 the petition in this matter is dismissed for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

¹ *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), ___ D.C. Reg. ___ (); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ().

² Agency's Representative Melissa Williams was present when Employee's Representative Clifford Lowery informed this Office of Employee's passing and his subsequent request to withdraw this matter.