

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CARMEN FAULKNER,)	
Employee)	OEA Matter No. 1601-0135-15
)	
v.)	
)	Date of Issuance: March 29, 2016
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Carmen Faulkner (“Employee”) was a Teacher with D.C. Public Schools (“Agency”). Agency issued a notice to Employee that she would be terminated from her position because she received a score of “minimally effective” under IMPACT, its performance assessment system. The effective date of Employee’s termination action was August 7, 2015.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 4, 2015. In her petition, she alleged that her principal provided inaccurate information on her evaluation. Additionally, she asserted that she was not provided with the requisite meetings and that the meeting dates that were offered were during a period that she was on Family Medical Leave. Therefore, she requested that she be reinstated with back pay and

¹ *Petition for Appeal*, p. 5-6 (September 4, 2015).

attorney's fees.²

On October 7, 2015, Agency filed its response to Employee's Petition for Appeal. It contended that Employee was assessed over the course of three cycles with five separate observations. Agency provided that at the conclusion of each evaluation, Employee had a conference with her evaluator. Moreover, it claimed that when Employee was unable to meet with the evaluator, several attempts were made via email to schedule conferences within the required fifteen-day period.³

Before issuing her Initial Decision, the Administrative Judge ("AJ") issued an Order Scheduling Pre-hearing Conference on January 19, 2016.⁴ Neither Employee, nor her attorney, attended the Pre-hearing Conference. Consequently, the AJ issued an Order for Statement of Good Cause to Employee because she failed to attend the conference. Employee had until February 3, 2016, to respond.⁵

The AJ issued her Initial Decision on February 17, 2016. She ruled that in accordance with OEA Rule 621, Employee's case was dismissed for failure to prosecute due to her failure to attend the scheduled Pre-hearing Conference and her failure to submit a Good Cause Statement. Therefore, Employee's case was dismissed.⁶

On February 24, 2016, Employee's attorney filed a Petition for Review with the OEA Board. Employee's counsel provides that she was out of the office because her mother passed away on January 17, 2016, after suffering a massive stroke. She notified all parties and her staff via email that she was out of the office. Funeral services were held on January 27, 2016, but due to a blizzard, the burial did not occur until February 2, 2016. Employee's counsel explained that

² *Id.* at 2.

³ *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 1-7 (October 7, 2015).

⁴ *Order Scheduling Pre-hearing Conference* (November 23, 2015).

⁵ *Order for Statement of Good Cause* (January 20, 2016).

⁶ *Initial Decision*, p. 2-3 (February 17, 2016).

a new law clerk attempted to mail a Statement of Good Cause to OEA on February 3, 2016, but she did not list the complete address for OEA. As a result, Employee requests that the matter be remanded to the AJ and scheduled for a hearing.⁷

Employee has provided sufficient evidence that her representative was unavailable due to the sudden death of her mother. While this Board recognizes the AJ's authority to dismiss appeals for failure to prosecute under OEA rule 621.3, we are confident that if she had been aware of the circumstances before issuing the Initial Decision, the AJ would have granted an extension in this matter. In *Murphy v. A.A. Beiro Construction Co. et al.*, 679 A.2d 1039, 1044 (D.C. 1996), the District of Columbia Court of Appeals held that "decisions on the merits of a case are preferred whenever possible, and where there is any doubt, it should be resolved in favor of trial."⁸ This Board believes that in the interest of justice and fairness, this matter must be remanded to the Administrative Judge to consider the merits of Employee's appeal.

⁷ *Petition for Review*, p. 1-2 (February 24, 2016).

⁸ The OEA Board also followed this holding in *Diane Gustus v. Office of Chief Financial Officer*, OEA Matter No. 1601-0025-08, *Opinion and Order on Petition for Review* (December 21, 2009) and *Jerelyn Jones v. D.C. Public Schools*, OEA Matter No. 2401-0053-10, *Opinion and Order on Petition for Review* (April 30, 2013).

ORDER

Accordingly, it is hereby **ORDERED** that this matter is **REMANDED** to the Administrative Judge to consider the case on its merits.

FOR THE BOARD:

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.