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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CAROL CARTER,)	
Employee)	OEA Matter No. 2401-0008-10
)	
v.)	Date of Issuance: March 9, 2012
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
_____)	
John Mercer, Esq., Employee Representative)	
W. Iris Barber, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 5, 2009, Carol Carter (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools’ action of abolishing her last position of record through a reduction in force (“RIF”). I was assigned this matter on or around October 17, 2011. On November 14, 2011, a prehearing conference was held in the above captioned matter. As a result of this conference, I issued a written order dated November 15, 2012 wherein the parties were required to submit legal briefs regarding whether DCPS adequately followed all applicable laws, rules and regulations with respect to Employee’s removal via RIF.

Initially, Mr. Mercer was required to submit his brief on or before December 5, 2011. However, Mr. Mercer requested an extension of time in which to file his brief. I then issued an Order dated January 13, 2012, wherein I extended Mr. Mercer’s filing deadline to January 26, 2012. On February 22, 2012, I issued an Order for Statement of Good Cause to Mr. Mercer because of his still ongoing failure to submit Employee’s brief in this matter. According to this order, Mr. Mercer was required to submit both his statement for good cause as well as the aforementioned brief on or before March 5, 2012. To date, the OEA has not received either document. The record is closed.

JURISDICTION

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

ISSUE

Whether this matter should be dismissed.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part 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:

- (b) Submit required documents after being provided with a deadline for such submission...

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, Employee, through counsel, did not provide her legal brief regarding the legal adequacy of the RIF after having been granted a generous extension of time in which to comply. Moreover, Employee, through counsel, failed to submit a written response to my Order for Statement of Good Cause. All were required for a proper resolution of this matter on its merits. Employee has not exercised the diligence expected of an appellant pursuing

an appeal before this Office. Accordingly, I find that this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED due to Employee's failure to prosecute her petition for appeal.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
Senior Administrative Judge