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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MELAKU TEFERA,)	
Employee)	OEA Matter No. 1601-0022-15
)	
v.)	Date of Issuance: February 11, 2015
)	
OFFICE OF UNIFIED COMMUNICATIONS,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
Melaku Tefera, Employee <i>Pro Se</i>		
Gregory Evans, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 26, 2014, Melaku Tefera (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of Unified Communications’ (“Agency”) decision to terminate him from his position as an Electronic Technician effective October 31, 2012. This Office issued a letter dated December 2, 2014, to Agency’s Director Jennifer Greene, which required Agency to submit an Answer to Employee’s Petition for Appeal on or before January 2, 2015.¹

Following Agency’s failure to comply with the December 2, 2014, letter, this matter was assigned to the undersigned Administrative Judge (“AJ”) in January 2015. Thereafter, on January 9, 2015, I issued an Order for Statement of Good Cause to Agency wherein, Agency was ordered to submit a statement of good cause based on its failure to submit its Answer by the required deadline as noted in the December 2, 2014, letter. On January 20, 2015, Agency filed a response to the show cause order, along with a Request for Enlargement of Time to file its Answer. Agency stated in its Request for Enlargement of Time to file its Answer that it will “deliver its

¹ This letter informed Agency that failure to file an Answer by the stated deadline shall result in the matter being referred to an Administrative Judge who may impose sanctions, including issuing a decision in favor of the Employee.

Answer to OEA on or before February 6, 2015.”² As of the date of this decision, Agency has not submitted its Answer. The 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.

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 621.1 grants an 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.³ 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.

² D.C. Office of Unified Communications Request for Enlargement of Time to file Agency Answer (January 20, 2015).

³ *Id.* at 621.3. *See also* OEA Rule 609.3.

This Office has consistently held that a matter may be decided in favor of the Employee when an Agency fails to submit required documents.⁴ Here, Agency was warned in the December 2, 2014, letter, and again in the January 9, 2015, Order that failure to comply could result in sanctions, including dismissal. Agency did not provide its Answer as required under OEA Rule 607.2. Agency's Answer was required for a proper resolution of this matter on its merits. Additionally, Agency's representative in his request for enlargement of time to file its Answer noted that he will submit Agency's Answer to OEA on or before February 6, 2015, however, he failed to do so. I find that Agency has not exercised the diligence expected when defending an appeal before this Office. Accordingly, I further find that Agency's behavior constitutes a failure to defend its action of separating Employee and this is a violation of OEA Rule 621.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record and reimburse him all back-pay, and benefits lost as a result of his removal; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁴*Dwight Gopaul v. District of Columbia Public Schools*, OEA Matter No. 2401-0114-02, (June 16, 2005); *Morris v. Department of Mental Health*, OEA Matter No. 2401-0080-03R04 (April 14, 2004); *James v. Office of Boards & Commissions*, OEA Matter No. 2401-0069-04 (October 8, 2004).