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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DOLORES MALATA,)	
Employee)	OEA Matter No. 1601-0198-11
)	
v.)	Date of Issuance: August 29, 2013
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Dolores Malata, Employee <i>Pro-Se</i>)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 25, 2011, Dolores Malata (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“the Agency”) action of removing her from service. I was assigned this matter on or about June 18, 2013. Thereafter, the undersigned issued an Order Convening a Prehearing Conference dated June 28, 2013. Pursuant to this Order, both parties were required to submit a written prehearing statement on or before July 15, 2013. Moreover, the parties were required to appear before the undersigned for a conference on August 6, 2013. Employee herein did not submit her prehearing statement nor did she appear for the conference as scheduled. Of note, the Agency complied with both requirements. Accordingly, on August 6, 2013, I issued an Order for Statement of Good Cause, wherein I required Employee to provide good cause for her failure to appear for the conference. Employee response was due on or before August 19, 2013. To date, I have not received a response from Employee. Due to Employee’s failure to actively prosecute her appeal, I have decided that no further proceedings are required. 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 matter should be dismissed.

BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

OEA Rule 621.3, *id.*, states 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:

- (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 or 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 did not file her prehearing statement response as she was required to do pursuant to my June 28, 2013, Order; Employee did not appear for the prehearing conference; And, Employee did not provide 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