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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
|----------------------|---|--------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| ANDRE TITUS, |) | |
| Employee |) | OEA Matter No. 1601-0128-13 |
| |) | |
| v. |) | Date of Issuance: July 3, 2014 |
| |) | |
| D.C. PUBLIC SCHOOLS, |) | Monica Dohnji, Esq. |
| Agency |) | Administrative Judge |
| _____ |) | |

Andre Titus, Employee *Pro Se*
Carl K. Turpin., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 1, 2013, Andre Titus (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Behavioral Technician, effective August 10, 2013. Employee was terminated for receiving an “Ineffective” rating under IMPACT, the DC Public Schools’ Effective Assessment System for School-Based Personnel during school year 2012-2013. On September 9, 2013, Agency submitted its Answer to the Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on May 14, 2014. On May 16, 2014, I issued an Order directing the parties to attend a Status Conference on June 18, 2014. While Agency was present for the scheduled Status Conference, Employee was a no-show. Subsequently, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to attend the June 18, 2014, Status Conference, on or before June 30, 2014. As of the date of this decision, Employee has not responded to the June 18, 2014, Order. 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 for failure to prosecute.

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 Administrative Judge (“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.¹ 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 consistently 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.² Employee did not appear at the Status Conference, and did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merits. I conclude that Employee’s failure to prosecute his appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for his failure to attend a scheduled proceeding. Accordingly, I find that

¹ *Id.* at 621.3.

² *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); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore, the matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge