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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EARNEST TELFAIRE,)	
Employee)	OEA Matter No. 1601-0201-12
)	
v.)	Date of Issuance: May 23, 2014
)	
DEPARTMENT OF PUBLIC WORKS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Earnest Telfaire, Employee <i>Pro Se</i>		
Eric Huang, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 14, 2012, Earnest Telfaire (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Public Works’ (“Agency”) decision to terminate him from his position as a Motor Vehicle Operator effective July 23, 2012. On September 19, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

Following a failed mediation attempt, this matter was assigned to the undersigned Administrative Judge (“AJ”) on November 22, 2013. On December 2, 2013, I issued an Order directing the parties to attend a Status Conference on December 17, 2013. On December 9, 2013, Agency’s representative filed a request for a Continuance of the Status Conference due to a conflict in his schedule. This request was granted in an Order dated December 13, 2013. Pursuant to this Order, the Status Conference was rescheduled to January 22, 2014. Both parties attended the Status Conference. On January 23, 2014, I issued a Post Status Conference Order requiring the parties to submit briefs addressing the issues raised during the Status Conference. Agency’s brief was due on or before February 14, 2014, and Employee’s brief was due on or before March 7, 2014. Agency also had the option to submit a reply brief by March 21, 2014. Agency timely submitted its brief. Following several emails between the undersigned and the parties, Employee’s brief deadline was extended to March 14, 2014, while Agency’s reply brief deadline was extended to March 28, 2014. Employee did not submit his brief as required.

Subsequently, on March 21, 2014, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit his brief by the March 14, 2014 deadline. Employee had until March 31, 2014, to respond to the March 21, 2014 Order. In an email from Employee to the undersigned dated March 31, 2014, Employee stated that "...I have no help I just want to resign."

Following several email communications between the undersigned and the parties, the undersigned was informed that Agency had offered Employee the opportunity to resign during the failed mediation attempt and that Employee was now willing to accept that offer. On April 11, 2014, Agency notified the undersigned via email that Employee had accepted the offer to resign in lieu of termination and the parties were drafting the paperwork with regards to the resignation. In another email dated May 5, 2014, Agency's representative advised the undersigned that a final draft agreement was sent to Employee on April 23, 2014, along with a follow-up email on April 28, 2014 and May 5, 2014, but, Employee failed to respond to the communications. On May 13, 2014, the undersigned emailed the parties advising Employee that if this Office does not receive any information from him with regards to this matter by May 16, 2014, this matter will be dismissed. On May 20, 2014, Agency's representative emailed the undersigned (Employee was copied on the email) requesting that the matter be dismissed since he has not heard from Employee via email or phone. As of the date of this decision, Employee has not responded to either 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, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.² Here, Employee was warned in the January 23, 2014, and March 21, 2014, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. I find that Employee’s failure to prosecute his appeal is a violation of OEA Rule 621. In addition, Employee was advised in the May 13, 2014, email that if he did not submit any information with regards to this matter by May 16, 2013, this matter would be dismissed. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, this matter should be dismissed for his 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

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).