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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of:)	
)	OEA Matter No. 1601-0062-23
EMPLOYEE ¹)	
)	Date of Issuance: November 26, 2024
v)	
DISTRICT OF COLUMBIA DEPARTMENT OF)	LOIS HOCHHAUSER, Esq.
AGING AND COMMUNITY LIVING)	Administrative Judge
<u>Agency</u>)	
Connor Finch, Esq., Agency Representative		
Employee, <i>Pro Se</i>		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 28, 2023, Employee filed a petition with the District of Columbia Office of Employee Appeals (“OEA”), appealing the decision of the District of Columbia Department of Aging and Community Living (“Agency”) to terminate her employment, effective July 28, 2023. At the time of termination, Employee was in the career service and held a permanent appointment as a Program Coordinator.

By letter dated August 29, 2023, Sheila Barfield, Esq., OEA Executive Director, notified Charon Hines, Agency Director, of the appeal and of the deadline of September 28, 2023, for filing Agency’s answer. A copy of Employee’s Petition for Appeal (“PFA”) was attached to the letter. Agency filed its “Answer” on October 6, 2023. This Administrative Judge (“AJ”) was appointed to hear this matter on or about November 15, 2023.

The AJ issued an Order on December 19, 2023, scheduling the prehearing conference (“PHC”) for January 11, 2024. The PHC took place on that date, with Employee and Mr. Finch present. The parties summarized their positions, and a number of issues and concerns were discussed. The parties agreed that they would advise the AJ by January 31, 2024, if they agreed to mediation. Employee also agreed that she would either secure representation by that date or continue to represent herself. On January 30, 2024, Agency, through counsel, advised the AJ by email, the parties jointly requested an extension of time to February 9, 2024, since Employee had not decided on mediation or if she would be represented. The request was granted by Order dated

¹ This Office does not identify employees by name in its published decisions.

January 31, 2024. On February 23, 2024, the AJ issued an Order memorializing email notification by the parties that they agreed to mediation; and the matter was immediately referred to mediation.

Several months thereafter, the matter was returned to the AJ, since Employee had not responded to communications from the Mediator and had not appeared at mediation. On June 20, 2024, the AJ issued an Order directing the parties to, jointly or separately, file a status report by July 9, 2024. Agency responded on July 8, 2024, stating that Employee had not responded to “multiple emails and...voicemails” left by Agency in the past two months. Employee did not respond to the Order. By Order dated July 10, 2024, the AJ directed Employee, to show good cause for failing to respond to the June 20, 2024 Order and other directives from the AJ. A corrected Order, issued on July 18, 2024, changed the filing deadline to July 31, 2024.

On July 26, 2024, Employee forwarded a copy of her email correspondence that she had sent Agency. The AJ conducted a telephone conference with the parties on August 12, 2024. She issued a Summary and Order on August 13, 2024, which in part, directed the parties to file the executed Settlement Agreement by August 30, 2024, or advise the AJ by the anticipated filing date. The parties were told that they were required to file weekly reports until the final document was filed. On November 4, 2024, the final Order was issued in this matter. It directed Employee to establish good cause for her failure to comply with Orders and directives issued in this matter. The parties were advised that unless they were notified to the contrary, the record would closed at 5:30 p.m. on November 19, 2024. Employee did not respond, and the record closed at that time.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (1999 repl.).

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

During the PHC, Employee disclosed that she was going through a difficult period due to the serious illness of a close family member; and being unable to use the telephone and computer at work. The AJ gave Employee multiple opportunities to advise the AJ if she wanted to continue with this matter or settle it; not only because of these difficulties Employee was experiencing but also because she was appearing *pro se*. See, e.g., *Macleod v. Georgetown Univ. Med. Center*, 736 A.2d 977, 980 (D.C. 1999). Agency worked cooperatively with Employee and did not object to the extensions or Employee’s failure to respond to communications it sent. Agency expressed concerns that the delay in resolution could increase its financial exposure in the future.

Although Employee agreed to mediation, she did not respond to communications regarding mediation or attend the mediation session. After the matter was returned to the AJ, Employee failed to respond to several Orders and directives. The AJ then tried to schedule a telephone conference at Employee’s convenience, but Employee responded that she was unable to participate in a telephone conference for an extended period of time. The AJ then directed her, by email, to respond to two specific questions regarding her intentions in this matter. However, Employee did

not respond. About a month later, Agency informed the AJ that although settlement was achieved, despite Agency's efforts to bring the matter to closure, Employee did not return the signed settlement agreement or respond to inquiries about the matter. The AJ scheduled a telephone conference with the parties on a date and time convenient for Employee. At the August 12, 2024 telephone conference, the AJ explained that Agency was understandably becoming increasingly concerned about the extensive delays in this matter, and stressed to Employee the necessity and importance of communication. Employee stated that she would return the signed settlement agreement, but failed to do so. Additional Orders followed in which Employee was directed to explain the reasons she did not return the signed Order, and ultimately to show cause for her failure to respond.

Eight Orders were issued in this matter. All Orders were sent by this Office to Employee by first class mail, postage prepaid, at the address listed by Employee in the PFA. None of the Orders was returned to this Office as undeliverable. Employee never denied receiving these Orders, and it is presumed that she received them in a timely manner. However, she did not respond to any Order that required a response, and did not contact the AJ to seek an extension. In addition, she did not respond to the directives by the AJ to contact her. Employee confirmed that the telephone number and email address used by the AJ were correct, and the AJ assumes that Employee received the messages.

Employee was well aware that her continued failure to comply with Orders and directives could result in the imposition of sanctions, including the dismissal of her appeal. Of the eight Orders issued, six² stated that failure to timely respond could result in the imposition of sanctions, including the dismissal of the appeal. In addition, the importance of responding to Orders and directives was discussed at the PHC and during communications. The December 19, 2023 Order, for example, stated, in pertinent part:

Compliance with OEA Rules and directives issued by this Administrative Judge are mandatory. Failure to comply may result in the imposition of sanctions, including dismissal of this appeal. (emphasis in original)

This Office's Rule 624.1 authorizes the AJ to impose sanctions "to serve the ends of justice." OEA Rule 624.2 allows the AJ to draw an inference "adverse to the party who failed to comply," for failing to comply with an Order or ruling. OEA Rule 624.3 authorizes the AJ, "in the exercise of sound discretion," to dismiss an appeal based if a party fails to take "reasonable steps" to prosecute the appeal. The Rule identifies the failure to "[s]ubmit required documents after being provided with a deadline for such submission" as a failure to take reasonable steps to prosecute an appeal. *See*, OEA Rules 624.3(b)." In this matter, Employee failed to comply with multiple Orders and directives with deadlines, despite timely notice and warnings of possible sanctions. The AJ was aware of and sensitive to the problems Employee was experiencing, and gave Employees given numerous opportunities to avoid dismissal. Employee could have asked for additional time or for an evidentiary hearing. Her failure to respond to multiple Orders and directives resulted in considerable delay without any expectation of resolution. She failed to take "reasonable steps" to prosecute this appeal and fairness to Agency required bringing closure to this matter.

² These were the Orders issued on December 19, 2023; June 20, 2024; July 10, 2024; July 18, 2024; August 13, 2024; and November 4, 2024.

The AJ concludes that Employee's continued failure to respond to the AJ's multiple Orders and directives is sufficient to establish a failure to take "reasonable steps to prosecute" her appeal. The AJ further concludes, "in the exercise of sound discretion" that the sanction of dismissal of this appeal is appropriate and serves the "ends of justice." *See* OEA Rule 624.3.

ORDER

It is hereby:

ORDERED: This Petition for Appeal is dismissed.

FOR THE OFFICE:

A handwritten signature in blue ink that reads "Lois Hochhauser". The signature is written in a cursive style and is positioned above a horizontal line.

Lois Hochhauser, Esq.
Administrative Judge