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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
HELEN PHAM,	)	
Employee	)	OEA Matter No. 1601-0144-15
	)	
v.	)	Date of Issuance: March 11, 2016
	)	
DISTRICT OF COLUMBIA DEPARTMENT	)	Monica Dohnji, Esq.
OF HUMAN RESOURCES,	)	Senior Administrative Judge
Agency	)	
_____	)	
Helen Pham, Employee, <i>Pro Se</i>		
Nada Paisant, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 17, 2015, Helen Pham (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Human Resources’ (“Agency”) decision to terminate her from her position as a Customer Service Communications Specialist, effective August 23, 2015. On October 21, 2015, Agency submitted its Answer to the Petition for Appeal.

Following a failed mediation attempt, this matter was assigned to the undersigned Administrative Judge (“AJ”) on January 11, 2016. On January 15, 2016, I issued an Order scheduling a Status/Prehearing Conference for February 23, 2016. While Agency was present for the scheduled conference, Employee was absent. Thereafter, on February 23, 2016, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to attend the scheduled conference. Employee’s response to this Order was due on or before March 7, 2016. As of the date of this decision, Employee has not responded to the Statement of Good Cause 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.<sup>1</sup> 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 (emphasis added); 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 after receiving notice* or *fails to submit required documents* (emphasis added).<sup>2</sup> Employee did not appear at the Status/Prehearing 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 her appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for her failure to attend a scheduled proceeding. Accordingly, I find that 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.

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<sup>1</sup> OEA Rule 621.3, 628.1, 59 DCR 2129 (March 16, 2012).

<sup>2</sup> *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).

ORDER

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

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge