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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHERMAN JACKSON,)	
Employee)	OEA Matter No. 1601-0245-12
)	
v.)	Date of Issuance: March 28, 2014
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Sherman Jackson, Employee <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 10, 2012, Sherman Jackson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency”) decision to terminate him from his position as a Business Manager effective August 10, 2012. Employee was terminated for receiving an ‘Ineffective’ rating under the IMPACT Performance Assessment System for the 2010-2011 school year. On October 11, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 9, 2013. On December 31, 2013, I issued an Order directing the parties to attend a Status Conference on January 29, 2014. Both parties attended the Status Conference. On January 29, 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 February 19, 2014, and Employee’s brief was due on March 12, 2014. While Agency submitted its brief, Employee did not submit his brief as requested. Subsequently, on March 18, 2014, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the January 29, 2014 Order, on or before March 24, 2014. 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,

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 was warned in the January 29, 2014, and March 18, 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. 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