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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
SANDRA PERRY,	)	
Employee	)	OEA Matter No. 2401-0002-10
	)	
v.	)	Date of Issuance: November 15, 2011
	)	
DISTRICT DEPARTMENT OF	)	
TRANSPORTATION,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
_____	)	
Sandra Perry, Employee <i>Pro-Se</i>	)	
Terry Bellamy, Agency Director	)	

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL HISTORY

On October 1, 2009, Sandra Perry (“Employee”) filed a Petition for Appeal contesting the District Department of Transportation’s (“DDOT” or “the Agency”) action of abolishing her position through a Reduction-In-Force (“RIF”). As part of the appeal process, the Agency<sup>1</sup> was notified, via letter dated October 17, 2009, sent at the behest of then OEA Director Warren Cruise, that it was required to submit an Answer to Employee’s petition for appeal. This letter provided in pertinent part that:

Pursuant to OEA Rule 608.2, 46 D.C. Reg. 9297, 9302 (1999), the agency is required to file an Answer within 30 calendar days of service of this Petition for Appeal. Accordingly, Agency’s Answer must be filed by **December 17, 2009. Failure to file an Answer by the stated deadline shall result in the matter being referred to an Administrative Judge who may impose sanction, including issuing a decision in favor of the Employee.** Emphasis in original.

<sup>1</sup> The letter requiring Agency’s Answer was sent to then DDOT Director Gabe Klein at 2000 14<sup>th</sup> Street, N.W. Washington, DC, 20009.

To date, the OEA has not received Agency's Answer in the above captioned matter.

The Undersigned was assigned this matter on or around October 17, 2011. After reviewing the file, I noticed that the Agency had not submitted its Answer in this matter. On October 17, 2011, I issued an Order for Statement of Good Cause to the current Agency Director – Terry Bellamy<sup>2</sup>. As part of this Order, the Agency was required to both establish good cause for its failure to file its Answer in this matter and it was required to file its Answer. The deadline for responding to the aforementioned Order was November 1, 2011. To date, the OEA has not received the Agency's response to the aforementioned Order for Statement of Good Cause. The Undersigned has determined that no further proceedings are warranted in this matter. 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 Agency's action should be reversed for its failure to defend.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part as follows:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. 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...

This Office has consistently held that a matter may be decided in favor of the Employee when an Agency fails to submit required documents. *See, e.g., Dwight Gopaul v. District of Columbia Public Schools*, OEA Matter No. 2401-0114-02, (June 16, 2005). Here, the Agency did not submit its Answer in this matter. Moreover, the Agency failed to respond to the Order for Statement of Good Cause. Both were required for an orderly adjudication of the instant matter. I conclude that the Agency has not exercised the diligence expected of a District of Columbia government agency attempting to defend its actions before this Office. Consequently,

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<sup>2</sup> The Order for Statement of Good Cause was sent to the current DDOT Director Terry Bellamy at 55 M Street, S.E., Washington, DC, 20003.

I conclude that Agency's behavior constitutes a failure to defend its action against the Employee and that is sound cause for reversing Agency's RIF action.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of abolishing Employee's last position of record through a RIF is REVERSED; and
2. The Agency shall reinstate the Employee to her last position of record or a comparable position and reimburse her all back-pay and benefits lost as a result of her removal; and
3. The Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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Eric T. Robinson, Esq.  
Administrative Judge