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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LISA FINLEY)	
Employee)	OEA Matter No. 1601-0056-16
)	
v.)	Date of Issuance: February 28, 2017
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
_____)	
Lisa Finley, Employee, <i>Pro-Se</i>		
Lynette Collins, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 24, 2016, Lisa Finley, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Public Schools, Agency, to remove her from her position of Educational Aide, effective June 3, 2016.

Upon reviewing the file, after assignment to this matter on August 18, 2016, the Administrative Judge (AJ) determined that additional information was needed to establish jurisdiction, since Employee had not identified the type of appointment that she held in her petition. On August 22, 2016, the AJ issued an Order directing the parties, in pertinent part, to file documentation establishing the type of appointment held by Employee, by September 16, 2016. Agency responded, stating that Employee held permanent status at the time she was removed, and that this Office had jurisdiction to hear her appeal.

By Order dated November 10, 2016, the parties were notified that the prehearing conference (PHC) would take place at 3:00 p.m. on December 8, 2016. At the PHC, Employee stated that she did not dispute the facts that led to her removal, but disputed Agency's decision to terminate her employment, arguing that she had been an excellent employee and also that there was no nexus between her criminal conviction and her job duties. Employee then informed the AJ that she wanted to retain counsel. The AJ stopped the proceeding, and advised the parties that the PHC would be rescheduled to allow Employee sufficient time to retain counsel. The

parties agreed that the PHC would be rescheduled for 3:00 p.m. on February 3, 2017. An Order memorializing the date and time of the rescheduled PHC was issued on December 9, 2016. The Order was sent by first class mail, postage prepaid, to Employee at the address she listed in her petition and on the attendance sheet. This Office had sent mail to Employee at that address several times before, and no mail had ever been returned to OEA as undelivered.

On February 3, 2017, Agency counsel appeared at the rescheduled PHC in a timely manner. Employee, however, did not appear, and did not contact the AJ or the Office. On February 6, 2017, the AJ issued an Order directing Employee to submit good cause for her failure to attend the February 3 PHC. The Order stated that if Employee did not respond by the February 15, 2017 deadline, the record would close and that her appeal could be dismissed without further notice based on her failure to prosecute this matter. The Order was sent to Employee in the same manner and to the same address as the previous Orders; and it was not returned. Employee did not respond to the Order. The record closed on February 15, 2017.

JURISDICTION

This Office has jurisdiction pursuant to D.C. Office Code Section 1-606.03 (2001).

ISSUE

Should this appeal be dismissed?

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) states:

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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

In this matter, this AJ issued four Orders that were mailed to Employee by first class mail, postage prepaid, to the address that Employee provided in her petition for appeal and on the December 8, 2016 attendance sheet. None of these Orders was returned by the U.S. Postal Service as undelivered; and all are presumed to have been received by Employee in a timely manner. The fact that Employee attended the December 8, 2016 PHC supports the finding that Employee received Orders mailed by this Office, since the Order was the only notification of the first PHC. With regard to the rescheduled PHC, there is no basis to believe that Employee did not receive the Order issued on December 9, 2016. However, Employee had agreed to the

date and time of the rescheduled PHC at the December 8 PHC and therefore was aware of the date and time.

OEA Rule 621.3 states that an appeal can be dismissed at the AJ's "sound discretion" if a party fails to take reasonable steps to prosecute or defend an appeal. The AJ concludes that Employee's failure to appear at the February 3, 2017 scheduled proceeding despite oral and written notifications violated OEA Rule 621.3(a), cited above. She also concludes that Employee's failure to respond to the February 6, 2017 Order by the stated deadline violated OEA Rule 621.3(b), cited above. Employee was cautioned in the February 6 Order that her failure to respond could result in the imposition of sanctions, including the dismissal of the appeal. Further, the AJ concludes that these violations of OEA Rule 621, establishes that Employee failed to take "reasonable steps" to prosecute her appeal. Based on these findings and conclusions, the AJ concludes, in an exercise of "sound discretion," that this petition for appeal should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge