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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0005-17
REVENIA MILLER,)	
Employee)	
)	Date of Issuance: September 19, 2017
v.)	
)	Arien P. Cannon, Esq.
DISTRICT OF COLUMBIA DEPARTMENT OF)	Administrative Judge
HEALTH,)	
Agency)	
_____)	
Revenia Miller, Employee, <i>Pro se</i>)	
Nada Paisant, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 28, 2016, Revenia Miller (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Health’s (“Agency”) decision to separate her from her position pursuant to a Reduction-in-Force. This matter was assigned to the undersigned on December 16, 2016.

A Prehearing Conference was convened in this matter on May 23, 2017. On May 26, 2017, a Post Prehearing Conference Order was issued which required the parties to submit legal briefs addressing the issues in this matter. This Order provided that: Agency’s brief was due on or before July 7, 2017; Employee’s brief was due on or before August 7, 2017; and an optional sur-reply brief by Agency was due by August 21, 2017. Agency filed a Motion for Extension of Time on July 6, 2017. Agency’s motion was granted on July 10, 2017, and the briefing schedule was amended as follows: Agency’s brief was due on or before July 28, 2017, and Employee’s brief was due on or before August 28, 2017. Agency’s brief was submitted on July 31, 2017.¹ Employee did not submit her brief.

¹ This Office was closed on July 28, 2017, due to an administrative closure as a result of relocating. The undersigned granted Agency permission, via e-mail, to submit its brief on the next business day when OEA reopened at its new location. Thus, Agency’s brief was not late.

Agency filed a Motion to Dismiss on September 6, 2017, for Employee's failure to submit her brief by the August 28, 2017, deadline. Accordingly, a Show Cause Order was also issued, on September 8, 2017, for Employee to provide a statement of good cause for failing to submit her brief. To date, Employee has failed to submit her brief pursuant to the undersigned's July 10, 2017 Order. The record is now closed.

JURISDICTION

Jurisdiction of this Office is established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.² "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.

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.³

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3⁴ provides that the Administrative Judge, 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. 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.⁵

This Office has consistently held that failure to prosecute an appeal includes a failure to

² 59 DCR 2129 (March 16, 2012).

³ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

⁴ 59 DCR 2129 (March 16, 2012).

⁵ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

submit required documents after being provided with a deadline for such submission.⁶ Here, Orders were issued on May 26, 2017, and subsequently on July 10, 2017, which set forth deadlines for the parties to submit their legal briefs. Because Employee did not submit her brief by the deadline in the July 10, 2017 Order, a Show Cause Order was issued. To date, Employee has failed to respond to the July 10, 2017 Order, and the September 8, 2017 Show Cause Order.

Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁶ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).