

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
DONALD PILSON,)
Employee)
)
)
CHILD AND FAMILY SERVICES)
AGENCY,)
Agency)
_____)

OEA Matter No. 1601-0027-04

Date of Issuance: April 2, 2007

OPINION AND ORDER
ON
PETITION FOR REVIEW

Donald Pilson (“Employee”) worked as a social worker with the Child and Family Services Agency (“Agency”). On December 18, 2003, he received a notice of final decision from Agency. The notice provided that Employee was terminated on the basis of negligence because of his poor performance and failure to complete assigned duties.

On January 15, 2004, he filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). Employee sought to be reinstated to his former position and compensated for lost payment. It was his position that he carried twice as many cases as other social workers and this was one of the reasons that he struggled to make deadlines. In conjunction with his already heavy caseload, Employee provided that he was diagnosed with Attention Deficit Hyperactivity

Disorder and Depressive Disorder. He provided Agency with medical statements that requested that his caseload be lessened and that he work less hours.¹

On October 21, 2004, the Administrative Judge ("AJ") issued an Order Convening a Pre-hearing Conference. The order provided that parties should attend the Pre-hearing Conference and submit a Pre-hearing Statement. The deadline to submit documents was November 1, 2004; the hearing was scheduled for November 9, 2004. Agency submitted its documentation and appeared at the hearing. However, Employee neglected to submit the required documents and failed to attend the conference.

Accordingly, the AJ issued an Initial Decision on November 15, 2004. She dismissed Employee's case for failure to prosecute because he failed to comply with the order. The AJ relied on OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), as her basis for dismissing the case.²

Employee filed a Petition for Review with the OEA Board on December 20, 2004. In his petition, he requested that the Board reverse the AJ's decision. Employee provided that he moved and contacted OEA to inform them of his change of address and telephone number. He said that although it is OEA's policy to only accept changes of address in writing, this is not clearly stated in the office's rules.³

As the AJ provided in her Initial Decision, OEA Rule 622.3 provides the following:

"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

¹ *Petition for Appeal*, p. 2-3 (January 15, 2004).

² *Initial Decision*, p. 2 (November 15, 2004).

³ *Petition for Review*, p. 1-2 (December 20, 2004).

- for such submission; or
- c. Inform this Office of a change of address which results in correspondence being returned.”

Employee failed to adhere to subsections (a) and (b) of this regulation. However, his failure to submit the documents and appear at the scheduled proceeding may have been because of subsection (c). The rule simply states that OEA must be informed of a change of address to guard against returned mail. However, it does not provide that such information must be in writing. It is reasonable to believe, as Employee provides in his Petition for Review, that he provided his change of address to a member of the OEA staff over the phone. The individual may have simply forgotten to place the updated information in Employee's file. Accordingly, this Board finds that the only fair remedy is to remand the matter to the Administrative Judge so that she may consider the case on its merits.

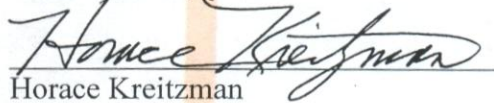
ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this appeal is **REMANDED** for consideration on the merits.

FOR THE BOARD:

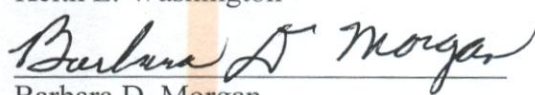


Brian Lederer, Chair



Horace Kreitzman

Keith E. Washington



Barbara D. Morgan



Richard Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.