

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0004-12
DANNY MCCULLOUGH,)	
Employee)	
)	Date of Issuance: March 31, 2014
v.)	
)	
D.C. METROPOLITAN POLICE DEPARTMENT,)	
Agency)	
_____)	
Danny McCullough, Employee, <i>Pro se</i>)	Arien P. Cannon, Esq.
Rahsaan Dickerson, Esq., Agency Representative)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Danny McCullough (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 7, 2011, contesting the Metropolitan Police Department’s (“Agency”) decision to remove him from his position as a Police Officer. Agency filed its Answer on November 10, 2011. I was assigned this matter on August 9, 2013.

A Prehearing Conference was initially scheduled in this matter for September 24, 2013. Employee requested a continuance for the Prehearing Conference, which was granted by the Undersigned. The Prehearing Conference was rescheduled for January 6, 2014. Due to inclement weather in the New England region, where Employee resides, he again requested a continuance in the Prehearing Conference. To accommodate Employee, the Prehearing Conference was conducted via telephone on January 6, 2014, where both parties were present. A Post Prehearing Conference Order was issued on the same date which required the parties to address the issues presented in this appeal. Agency’s brief was due on or before February 7, 2014. Employee’s brief was due on or before March 7, 2014. Agency timely submitted its brief on February 7, 2014. To date, Employee has failed to submit his brief in response to the Post Prehearing Conference Order. As such, a Show Cause Order was issued on March 19, 2014, requiring Employee to provide a statement of good cause for failing to respond to the Post Prehearing Conference Order. Employee was given until March 26, 2014, to provide a statement of good cause for failing to respond to the Prehearing Conference Order. To date, Employee has failed to respond to both the Post Prehearing Conference Order and the Show Cause Order. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

A Prehearing Conference was convened in this matter on January 6, 2014, via a conference telephone call. Subsequently, a Post Prehearing Conference Order was issued, which required the parties to submit briefs on the issues in this case. Agency's brief was due on or before February 7, 2014. Employee's brief was due on or before March 7, 2014. Agency timely submitted its brief on February 7, 2014. To date, Employee has failed to submit his brief in response to the Post Prehearing Conference Order. Therefore, a Show Cause Order was issued on March 19, 2014, requiring Employee to provide a statement of good cause for failing to respond to the Post Status Conference Order. Employee was given until March 26, 2014, to provide a statement of good cause for failing to respond to the Post Prehearing Conference Order. To date, Employee has failed to respond to both the Post Status Conference Order and the Show Cause Order.

In accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute his/her appeal. 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.¹ Failure of a party to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission. Here, Employee has failed to respond to both the Post Prehearing Conference Order and the Show Cause Order. Employee was warned in both orders that the failure to respond may result in the imposition of sanctions. Accordingly, I find that Employee has failed to exercise due diligence and take reasonable steps in prosecuting his appeal before this Office.

ORDER

Based on the aforementioned, it is hereby ORDERED that Employee's Petition for Appeal in this matter is DISMISSED for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

¹ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).