

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Maytiller Evans)	OEA Matter No. 2401-0121-09
Employee)	
)	Date of Issuance: January 7, 2010
v.)	
)	Senior Administrative Judge
D.C. Dept. of Parks & Recreation)	Joseph E. Lim, Esq.
Agency)	
_____)	

Maytiller Evans, Employee Pro se
Marie-Claire Brown, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On May 26, 2009, Employee, a Staff Assistant, DS-301-12-12, with the Agency, filed a petition for appeal from Agency’s final decision separating her from Government service due to a Reduction-in-Force (RIF).

This Matter was assigned to me on November 30, 2009. I issued a December 2, 2009 Order directing the parties to attend a January 6, 2010, Prehearing Conference and to submit a Prehearing Statement. Although Employee complied, Agency did not. The record is 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.

ANALYSIS AND CONCLUSIONS

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides 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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

Agency was warned in each order that failure to comply could result in sanctions including reversal. The agency never complied. Agency's behavior constitutes a failure to defend its action against the employee and that is sound cause for reversal.

ORDER

It is hereby ORDERED that:

1. Agency's action separating Employee from service pursuant to the removal is REVERSED; and
2. Agency restore Employee to her position of record or a comparable position with all back pay and benefits due her; and
3. Agency file with this Office, within 30 calendar days of the day on which this decision becomes final, documents showing compliance with the terms of this Order.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge