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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TYRONE HERRING)	
Employee)	OEA Matter No. 1601-0022-10
)	
v.)	Date of Issuance: May 2, 2012
)	
DEPARTMENT OF PUBLIC WORKS)	
Agency)	Lois Hochhauser, Esq.
)	Administrative Judge
_____)	
Pamela Smith, Esq., Agency Representative)	
Clifford Lowery, Employee Representative ¹)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 6, 2009, Tyrone Herring, Employee herein, filed a petition for appeal with the Office of Employee Appeals (OEA) appealing the decision of the Department of Public Works, Agency herein, to suspend him from his position of Lead Parking Officer for fifteen days without pay, effective September 28, 2009. At the time of the suspension, Employee was in career status and held a permanent appointment. The matter was assigned to me on or about June 15, 2011.

On July 7, 2011, I issued an Order scheduling the prehearing conference for July 26, 2011. At the prehearing conference, the parties agreed to avail themselves of the mediation services offered by OEA, and the matter was immediately referred for mediation. A hearing was tentatively scheduled for September 20, 2012. An Order was thereafter issued, memorializing

¹ Although Mr. Lowery entered his appearance as Employee representative in the Petition for Appeal, he did not appear at any proceeding, file any submissions on Employee's behalf or respond to any telephone calls. Employee waived Mr. Lowery's appearance at the prehearing conference. However, since Mr. Lowery, had entered his appearance, both he and Employee each were sent copies of all Orders issued by the undersigned.

the decisions reached at the prehearing conference and directing the parties to submit status reports. Agency submitted a timely status report stating that the mediation session had not yet been scheduled because Employee had not responded to the Mediator's request regarding his availability. Employee did not respond to the Order. The Administrative Judge issued another Order on September 13, 2011, postponing the September 20 proceeding, and directing the parties to file status reports by October 14, 2011. In this Order she cautioned the parties that failure to comply with the Order could result in the imposition of sanctions, "including the dismissal of the petition".

On or about February 8, 2012, the file was returned to the undersigned, with a notation from the Mediator that neither the Employee nor his representative had appeared at the scheduled mediation session, and that the Mediator had been unable to reach either by telephone. On February 8, 2012, the undersigned issued an Order directing Employee to show good cause why he did not attend the scheduled mediation session and to state whether or not he was being represented by Mr. Lowery or any third party. Employee was directed to submit his response by March 2, 2012, and was again notified that his failure to comply could result in the imposition of sanctions "including the dismissal of this appeal". To date, Employee has not responded. The record is hereby closed on March 2, 2012.

JURISDICTION

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

ISSUE

Should this appeal be dismissed for failure to prosecute?

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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.

Consistent with OEA Rule 622.3, this Office has consistently held that a matter may be dismissed for failure to prosecute if a party fails to appear at a scheduled proceeding or fails to submit respond to Orders that provide specific dates for responses. *See e.g., Employee v. Agency*, No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); and *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010), ___ D.C. Reg. ___ (). In this matter, Employee did not submit appear at the scheduled mediation session, and did not respond to several Orders issued by the undersigned with specific deadlines, despite being notified that his failure to comply could result the dismissal of this appeal. The Orders were sent by first class mail, postage prepaid, by the U.S. Postal Service, to both Employee and his representative at the addresses listed in the petition for appeal, and were not returned to this Office. They are presumed to have been delivered. Neither Employee nor Mr. Lowery ever contacted the undersigned in response to any of the Orders issued. Based on these facts, the undersigned concludes that Employee has failed to prosecute his appeal, and that the matter should therefore be dismissed.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed.

LOIS HOCHHAUSER, Esq.
Administrative Judge

FOR THE OFFICE: