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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
NATARSHA GUEST)	OEA Matter No. 1601-0022-17
Employee)	
)	Date of Issuance: April 17, 2018
v.)	
OFFICE OF THE STATE SUPERINTENDENT)	Lois Hochhauser, Esq.
OF EDUCATION)	Administrative Judge
Agency)	
Natarsha Guest, Employee, <i>Pro Se</i>)	
Hillary Hoffman-Peak, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Natarsha Guest, Employee, filed a petition with the Office of Employee Appeals (OEA) on January 6, 2018, appealing the decision of the Office of the State Superintendent of Education, Agency, to terminate her employment as a Motor Vehicle Operator, effective December 9, 2016. Following unsuccessful efforts to mediate a resolution, the matter was assigned to this Administrative Judge (AJ) on July 7, 2017.

Employee stated, in her petition for appeal, that she had been employed for eight months at the time of her removal, and was in probationary status. Although Agency did not challenge this Office's jurisdiction in its February 6, 2017 Answer, Employee's responses on the petition, stated above, raised a question about the jurisdiction of this Office. By Order issued on August 25, 2017, the parties were directed to address Employee's status at the time of her removal.

In her response, Employee changed her position, arguing that she was in permanent status at the time of her removal. She submitted the Notification of Personnel Action which listed her start date as October 5, 2015, and her termination date as December 9, 2016. Agency, on the other hand, contended that Employee was in probationary status at the time of her removal, but offered no documentation to support its contention. The AJ, by Order dated September 4, 2017, directed Agency to submit documentation to support its position. Agency then conceded that Employee was in permanent status at the time of her removal.

The prehearing conference (PHC) took place on January 17, 2018. Employee did not dispute the charges that led to removal, *i.e.*, that a special needs child had been left on the van that she operated. She contended, however, that she should not have been charged with misconduct,

arguing that Agency never reviewed appropriate procedures with her. She maintained that, in any event, the penalty of removal was too harsh, given her otherwise positive performance reviews. Agency contended that the penalty was appropriate, that Employee had received training regarding her responsibilities, that Employee was responsible for ensuring the safety of the children that she was driving, and that she failed to do so in this instance. Employee requested an evidentiary hearing, and one was scheduled for 9:15 a.m. on March 14, 2018. An Order issued on January 17, 2018 also stated the hearing date and included deadlines and actions required by the parties before the hearing.

On March 14, 2018, at 9:15 a.m., the time the hearing was scheduled to begin, Agency representative and Agency witnesses were present. However, Employee did not appear, and did not contact OEA or this AJ to request a continuance or delay. At about 9:30 a.m., the AJ telephoned Employee, who answered the call. Employee did not deny receiving the Order scheduling the proceeding, but stated that she did not attend the hearing because she was under stress due to illnesses of several family members. The AJ responded that while she sympathized with her situation, and if she had sought a continuance, it may well have been granted, but that failing to appear was not an acceptable alternative. The AJ told Employee that the Court Reporter, Agency representative and Agency witnesses were present, and her failure to attend or request a continuance had resulted in unnecessary cost and inconvenience. The AJ stated that she would allow Employee to appear late, if she could get to the proceeding in about an hour. However, Employee declined to do so. The AJ stated that she would issue an Order directing Employee to show good cause for her failure to attend this scheduled proceeding, and that if she did not establish good cause, the matter could be dismissed.

In the March 16, 2018 Order, Employee was directed to show good cause by March 30, 2018, if such existed, for her failure to appear at the scheduled proceeding and her failure to request a continuance. The Order stated that if Employee did not file a timely submission, the record would close at 5:30 p.m. on March 30, 2018 and the petition for appeal would be dismissed. Employee did not respond to the Order or contact the AJ to request an extension. The record closed at 5:30 p.m. on March 30, 2018.

JURISDICTION

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

ISSUE

Should the petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 621.3, 59 D.C.R. 2129 (March 16, 2012) states, in pertinent part:

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.

The Rule states that both failing to appear at a scheduled proceeding and failing to respond to an Order constitute failure to prosecute. In this matter, Employee did not appear at the scheduled evidentiary hearing. She was notified of the date and time at the PHC. In addition, she did not deny receiving the Order with the pertinent information, when asked during the telephone conversation on the hearing date. Employee did not respond to the Order which had a deadline of March 30, 2018. She did not contact the AJ to request an extension of time. Orders sent to Employee in this matter were all mailed, postage prepaid, to Employee at the address given by her, and none were returned as undelivered. The Orders, including the March 16 Order, are presumed to have been timely received by Employee.

Employee told the AJ that she was under a great deal of stress because of illnesses of family members. She did not state there was any emergency or that something unexpected had arisen. While the AJ was and is sympathetic to her situation, Employee had ample time to request a continuance. She was given the opportunity to go forward with the hearing on the scheduled date, and when she declined that opportunity; she was told that an Order would be issued directing her to show good cause for her failure to attend the proceeding. She did not respond, and she not seek an extension. In the first Order, issued on August 25, 2017, the parties were notified that failure to comply with OEA Rules or Orders issued in this matter, could result in the imposition of sanctions. They were also notified of the procedures for requesting a continuance or extension, and provided with contact information for the other representative and for the AJ. The AJ finds that Employee's failure to attend the proceeding and to respond to the March 16 Order both constitute failure to prosecute.

Parties appearing *pro se* must comply with OEA Rules and Orders issued by the AJ. In this matter, these requirements were stated in the August 25, 2017 Order. The AJ had given Employee some leeway in the past, without imposing any sanctions. In the October 4, 2017 Order, for example, the AJ noted that Employee failed to submit a certificate of service with her pleading and did not state in her submission if she had served Agency with a copy, as directed by OEA Rule 607.7. The AJ gave Employee additional time to file the certificate of service, and to serve Agency, if she had not already done so.

Employee's failure to appear at the evidentiary hearing resulted in unnecessary cost and inconvenience. Employee could have sought a continuance, and was provided with the procedure for doing so. She had the contact information for the AJ and Agency representative. The AJ also agreed to allow her to appear over an hour after the proceeding was scheduled to begin to go forward with the proceeding, but she declined to do so. The March 16 Order had a stated deadline. If Employee could not meet that deadline, she was given the procedure for seeking an extension. However, Employee did not respond to the Order or seek an extension.

Therefore, pursuant to OEA Rule 621.3, the AJ concludes that Employee's failure to attend the March 14 evidentiary hearing and her failure to respond to the March 16 Order by the stated deadline constitute failure to take "reasonable steps" to prosecute this appeal. In the exercise of "sound discretion," the AJ concludes that dismissal of the petition for appeal is the appropriate penalty.

ORDER

The petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge