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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DELORES JUNIOUS,)	
Employee)	OEA Matter No. 1601-0015-18
)	
v.)	Date of Issuance: August 24, 2018
)	
DEPARTMENT OF HUMAN SERVICES,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
_____)	

Delores Junious, Employee, *Pro Se*
Ryan Donaldson, Agency Representative
Robert C. Warren, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 27, 2017, Delores Junious ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Human Services' ("Agency") decision to suspend her for thirty (30) days effective October 30, 2017. Agency filed its Response to Employee's Petition for Appeal on December 29, 2017.

Following a failed attempt to resolve this matter through mediation, it was assigned to the undersigned Senior Administrative Judge ("SAJ") on April 4, 2018. Thereafter, I issued an Order scheduling a Status/Prehearing Conference for April 25, 2018. On April 24, 2018, Agency filed a Request for Continuance. In an Order dated April 25, 2018, the undersigned granted Agency's request and this matter was rescheduled for June 13, 2018, at 1:00 p.m. On June 13, 2018, Employee emailed the undersigned at 1:01 p.m. noting that "I am requesting a further continuance on this hearing. I have not yet secured an attorney for this matter due to financial challenges being unemployed. I hope to have an attorney in place within the next 10 days." Accordingly, I issued an Order dated July 5, 2018, rescheduling the Status/Prehearing Conference for August 6, 2018. While Agency was present for the scheduled conference,

Employee was absent.¹ On the same day, I issued an Order for Statement of Good Cause, wherein, Employee was ordered to explain her failure to appear for the Status/Prehearing Conference. Employee's response to the Show Cause Order was due on or before August 18, 2018². As of the date of this decision, Employee has not responded to this Order. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable

¹ Employee emailed the undersigned at 12:50 p.m. on August 6, 2018, noting that "I mistakenly mixed up the hearing time to be 1:30PM. I apologize for this error. I should be there by 1:30PM." Upon receipt of this email, the undersigned informed Agency's representatives of Employee's request and asked if they could wait until 1:30 p.m. for the conference, to which they agreed. However, Employee was a no-show at 1:30 p.m. At that time, Agency's representatives were dismissed. At 2:12 p.m., Employee emailed the undersigned noting that "... I am stuck in traffic on New York Avenue. Im on my way." Employee showed up at OEA at about 3:00 p.m. She was informed that a Show Cause Order had been issued and a response was required in order for this matter to continue.

² Because August 18, 2018, was a Saturday, Employee's response was now due on August 20, 2018.

steps to prosecute or defend an appeal.³ 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* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party *fails to appear at a scheduled proceeding after receiving notice* or *fails to submit required documents* (emphasis added).⁴ Employee did not appear at the Prehearing Conference and she did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merits. I conclude that Employee's failure to prosecute her appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for her failure to attend a scheduled proceeding. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore, the matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

³ OEA Rule 621.3.

⁴ *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).