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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JAQUELINE GRAVES,)	
Employee)	OEA Matter No. 1601-0064-15
)	
v.)	
)	Date of Issuance: June 6, 2017
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Jaqueline Graves (“Employee”) worked as a Bus Driver with the Office of the State Superintendent of Education (“Agency”). On April 2, 2015, Agency suspended Employee for “any on-duty employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: neglect of duty.” The period of Employee’s suspension was Friday, April 3, 2015 to Friday, April 17, 2015.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on April 24, 2015. She argued that her ten-day suspension was improper and retaliatory. Therefore, Employee requested that the suspension be removed from her file and that she receive back pay

¹*Petition for Appeal*, p.5 (April 24, 2015).

and attorney's fees.²

On May 26, 2015, Agency filed its Answer to Employee's Petition for Appeal. It stated that Employee failed to obey directives; displayed disrespectful or discourtesy treatment to others; and failed to conduct pre- and post-trip inspections of her assigned bus. Agency argued that Employee's actions were a dereliction of duty and violated the Division of Transportation's ("DOT") policies and procedures. Therefore, it requested that Employee's petition be denied.³

On December 1, 2015, the OEA Administrative Judge ("AJ") issued an Order Scheduling a Pre-hearing Conference for February 16, 2016.⁴ While Agency was present for the scheduled conference, Employee and her attorney failed to appear. As a result, the AJ issued an Order for Good Cause Statement requesting Employee to explain why she failed to attend the scheduled conference. Employee had until March 2, 2016, to respond.⁵

On February 16, 2016, Employee's attorney filed a motion to withdraw his appearance.⁶ Employee did not submit her Good Cause Statement by the March 2, 2016 deadline. Therefore, the AJ issued an Initial Decision on March 7, 2016. She held that in accordance with OEA Rule 621.1, Employee failed to prosecute her appeal. Accordingly, she dismissed her case.⁷

On March 8, 2016, Employee filed a letter providing that she was unaware of the date of her proceeding because her attorney failed to inform her.⁸ She asserts that after she relieved her prior attorney of their duties, she attempted to retain new counsel. However, she explains that she unable to secure a new attorney because she was involved in a car accident on February 9,

² *Id.* at 2.

³ *The Office of the State Superintendent of Education's Answer to Jacqueline Graves's Petition for Appeal*, p. 1-4 (May 26, 2015).

⁴ *Order Scheduling a Pre-hearing Conference* (December 1, 2015).

⁵ *Order for Statement of Good Cause* (February 16, 2016).

⁶ Counsel cited, *inter alia*, that Employee failed to allow him to represent her; she failed to communicate with him; and she indicated to him that she would represent herself in the proceedings. *Counsel's Motion to Withdraw* (February 16, 2016).

⁷ *Initial Decision*, p. 1-3 (March 7, 2016).

⁸ This Board considers this filing a Petition for Review.

2016.⁹

Notwithstanding Employee's assertions, she failed to comply with the AJ's order to appear at the February 16, 2016 Pre-hearing Conference, and she failed to show cause why she did not appear. OEA Rule 621.3 provides the sanctions that the AJ may impose when a party fails to prosecute or defend a matter. The rule provides that:

- 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 (Emphasis added). 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 the Office of a change of address which results in correspondence being returned.

Based on the aforementioned, it was proper for the AJ to dismiss Employee's appeal. She failed to comply with OEA Rule 621.3(a) and (b). This Board has consistently upheld an AJ's ability to impose sanctions on these grounds.¹⁰ Additionally, the Good Cause Order provided that "failure to respond in a timely fashion or failure to establish good cause for your failure to attend the February 16, 2016 [] Status/Prehearing Conference WILL result in the imposition of sanctions including the dismissal of this matter, pursuant to OEA Rule 621. . . ." ¹¹ Therefore, Employee was on notice that dismissal of her appeal was a possibility if she failed to comply with the order.

⁹ *Petition for Review* (March 8, 2016).

¹⁰ *Marlon Ray v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0070-04, *Opinion and Order on Petition for Review* (May 15, 2007); *Sharon Young-Wester v. D.C. Public Schools*, OEA Matter No. J-0033-03, *Opinion and Order on Petition for Review* (September 19, 2006); *Francine H. James v. Office of Boards and Commissions (Board of Appeals and Review)*, OEA Matter No. 2401-0069-04, *Opinion and Order on Petition for Review* (July 31, 2007); *Isabelita Aglipay v. Department of Mental Health*, OEA Matter No. 1601-0072-08, *Opinion and Order on Petition for Review* (July 30, 2010); *Dametrious McKenny v. D.C. Public Schools*, OEA Matter No. 1601-0207-12, *Opinion and Order on Petition for Review* (February 16, 2016); and *Thomas Pierre v. D.C. Public Schools*, OEA Matter No. 1601-0186-12, *Opinion and Order on Petition for Review* (May 10, 2016).

¹¹ *Order for Statement of Good Cause* (February 16, 2016).

The record clearly demonstrates that all orders from OEA were mailed to Employee and her attorney. There was no returned mail received from any of the orders mailed from OEA. Additionally, Employee does not contend that she did not receive the order; she simply provides that her attorney did not inform her of the date. Thus, it is assumed that Employee received all OEA orders.¹² Furthermore, as of February 16, 2016, Employee was *pro se* in this matter. Therefore, it was not her former counsel's responsibility to inform her of the Pre-hearing Conference date or to submit her Good Cause Statement. Until she secured a new attorney, the responsibility rested solely on Employee to prosecute her appeal.

Employee contends that she was in a car accident on February 9, 2016, and unable to secure another attorney. Because it is assumed that she received both of the orders to appear and show cause, Employee was aware of the March 2, 2016 Show Cause deadline. According to Employee's former counsel's motion, Employee was representing herself in the appeal after February 16, 2016. She detrimentally chose not to respond to the AJ's Show Cause order until after the March 2nd deadline. Accordingly, this Board must uphold the AJ's decision to dismiss her appeal. Thus, Employee's Petition for Review is denied.

¹² According to USCS Federal Rules Civil Procedure Rule 5(b)(2)(c) and D.C. Superior Court Rules of Civil Procedure Rule 5(b)(2)(B), service by mail is complete upon mailing a copy of the document to a party's last known address. All of OEA's mailings to Employee were sent to the address on record.

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.