THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
BILLY MIMS,	)	OEA Matter No. 1601-0148-08
Employee	)	
	)	Date of Issuance: July 30, 2010
	)	
	)	
D.C. FIRE & EMERGENCY MEDICAL SERVICES,	)	
	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mr. Billy Mims ("Employee") worked as a technician/firefighter with the D.C. Fire and Emergency Medical Services ("Agency"). On July 7, 2008, Employee was arrested and charged with a third degree sex offense. He notified his supervisor of his arrest, and on July 14, 2008, Agency issued a final decision placing Employee on administrative leave for five work days and on enforced leave thereafter. The notice went on to note that Employee was on enforced leave until corrective or adverse action was effected, or until a determination was made that disciplinary action would be taken.[1]

On August 12, 2008, Employee filed a Petition for Appeal with the Office of

[1] *Petition for Appeal*, p. 6-7 (August 12, 2008).

Employee Appeals ("OEA"). He argued that he was not guilty of the crime for which he was accused. He also provided that if he was placed on enforced leave, it would cause extreme financial hardship on his family. Moreover, he stated that he had an impressive record with Agency and had no previous police record. As a result, Employee requested that he be reinstated to his position; that he be placed on administrative leave; or that he be placed on "limited duty" with no public contact.[2]

Agency filed an answer to Employee's Petition for Appeal on September 19, 2008. It contended that Employee's guilt or innocence of the crime bore no relationship on its decision to place him on enforced leave. Agency reasoned that in accordance with 6 District Municipal Regulations § 1620.1, it was justified in placing Employee on enforced leave if he was "indicted on, arrested for, or convicted of a felony charge . . . or convicted of any crime (including conviction following a plea of nolo contendere) that bears a relationship to his or her position." Thus, Employee could have been on enforced leave until a decision was made about disciplinary action. Additionally, Agency argued that because of its unique mission and purpose, it is irrefutable that a direct relationship existed between Employee's position and the crime for which he was charged.[3]

On January 26, 2009, the Administrative Judge ("AJ") issued an Order scheduling a Pre-hearing conference and setting the deadline for Pre-hearing statements. The conference was to be held on February 27, 2009, and the statements for both parties were due on February 24, 2009. On February 27, 2009, the AJ issued his Initial Decision. He noted that Agency attended the Pre-hearing conference and submitted its Pre-hearing

[2] *Id.* at 10.
[3] *Agency's Answer to Employee's Petition for Appeal* (September 19, 2008).

statement. Employee did not comply with either, despite prior warnings that failure to comply could result in sanctions. Thus, the AJ dismissed Employee's case for failure to prosecute.[4]

Employee filed a Petition for Review with the OEA Board. The petition simply provided that he did not receive the Order Scheduling the Pre-hearing Conference and Statement. Employee also asked that future correspondence be sent via certified mail.[5]

As the AJ provided in his Initial Decision, OEA Rule 622.3 provides the following:

> "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."

Employee failed to adhere to subsections (a) and (b) of this regulation.

OEA has several safeguards in place to ensure that all documents are mailed to parties. The Office understands what is at stake for employees attempting to get their jobs back, and it would never impede the service of justice. One way that OEA offers as proof that correspondence was mailed out is to attach a certificate of service to the document. The certificate of service attached to the Order Scheduling Pre-hearing Conference listed Employee's address as 5950 Weaver Court, St. Leonard, Maryland

[4] *Initial Decision* (February 27, 2009).
[5] *Petition for Review* (April 1, 2009).

20685.[6] Employee provided this address in his Petition for Appeal.[7] The Order was mailed to Employee and Agency on the same day. Agency received it, appeared at the Pre-hearing Conference, and filed a timely Pre-hearing Statement. Employee claims that he did not receive it although OEA did not receive any returned mail, and Employee provided the exact same address used on the order in his Petition for Review.[8] According to USCS Fed. Rules Civil Procedure Rule 5 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. Furthermore, because the record does not include any returned mail it is highly unlikely that the order was sent to the wrong address.

Additionally, OEA takes one other step to document the correspondence mailed from our office. The Office's Administrative Assistant keeps a log of all the mail sent to parties. The log contains a description of the document mailed, the date, and the party to whom the document was sent. According to the Office log, on January 26, 2009, the Order Scheduling Pre-hearing Conference was mailed to Employee. Because OEA can prove that the order was mailed to Employee's correct address, Employee's argument must fail.

Accordingly, we uphold the AJ's Initial Decision and dismiss Employee's Petition for Review.

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[6] *Order Scheduling Pre-hearing Conference*, p. 3 (January 26, 2009).
[7] *Petition for Appeal*, p. 1 (August 12, 2008).
[8] *Petition for Review* (April 1, 2009).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

_____
Clarence Labor, Jr., Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.