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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOHN COLEMAN,)	OEA Matter No. 2401-0030-11
Employee)	
)	
v.)	Date of Issuance: April 17, 2013
)	
D.C. HOMELAND SECURITY AND)	
EMERGENCY MANAGEMENT,)	
Agency)	
)	STEPHANIE N. HARRIS, Esq.
_____)	Administrative Judge
John Coleman , Employee <i>Pro-Se</i>		
Lolita Youmans, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 29, 2010, John Coleman (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Homeland Security and Emergency Management’s (“Agency” or “HSEMA”) action of abolishing his position through a Reduction-in-Force (“RIF”). Employee’s RIF notice was dated October 15, 2010, with an effective date of November 19, 2010. At the time his position was abolished, Employee’s official position of record within the Agency was an Emergency Video Interoperability Public Safety (“VIPS”) Technician. On December 29, 2010, Agency filed an Answer to Employee’s Petition for Appeal.

I was assigned this matter on July 26, 2012. On January 31, 2013, the undersigned issued an Order (“January 31st Order”) scheduling a Prehearing Conference for February 21, 2013, to address pending issues requiring further review. Agency was present for the Prehearing Conference, but Employee did not appear at the scheduled date and time. On February 12, 2013, Employee’s copy of the January 13th Order was returned to this Office marked “Forward Time Exp; Return to Sender.” Subsequently, the undersigned issued an Order for Statement of Good Cause on February 21, 2013 (“February 21st Order”). Employee was ordered to submit a statement of good cause based on his failure to appear at the scheduled Prehearing Conference. Employee’s response to the February 21st Order was due on or before March 11, 2013. On March 21, 2013, Employee’s copy of the Order for Statement of Good Cause was returned to this Office

marked “Forward Time Exp; Return to Sender.” As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned Order for Statement of Good Cause. Based on the record to date, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed.

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 621.1¹ 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 steps to prosecute or defend an appeal.² Additionally, OEA Rule 621.3(a)-(c), states that failure to prosecute an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice; or
- (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.

¹ 59 DCR 2129 (March 16, 2012).

² See OEA Rule 621.3.

Moreover, OEA has *consistently held* that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding, submit required documents, or inform this Office of a change in address, resulting in returned correspondence (emphasis added).³ Employee did not appear at the scheduled Prehearing Conference and he failed to submit both a Prehearing Statement and a response to the February 21st Order for Statement of Good Cause. Employee's appearance at the scheduled Prehearing Conference and the submission of a Prehearing Statement were necessary to address pertinent issues in this matter and were required for a proper resolution of this matter on its merits. Further, both the January 31st and February 21st Orders advised Employee that failure to comply could result in sanctions, including dismissal. The undersigned concludes that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee's failure to prosecute his appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

³ *Douglas v. District of Columbia Department of Mental Health*, OEA Matter No. 2401-0034-10 (January 27, 2012); *Johnson v. District of Columbia Office of the State Superintendent of Education*, OEA Matter No. J-0022-11 (April 18, 2011); *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); *Powell v. Office of Property Management*, OEA Matter No. J-0097-09 (August 10, 2009); *Veazie v. District of Columbia Public Schools*, OEA Matter No. 1601-0112-07 (January 16, 2008); *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985).