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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
NICOLE TURNER,)	
Employee)	OEA Matter No. 1601-0295-10
)	
v.)	Date of Issuance: November 14, 2012
)	
D.C. OFFICE OF UNIFIED)	
COMMUNICATIONS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Nicole Turner, Employee <i>Pro Se</i>		
Kevin Turner, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 19, 2010, Nicole Turner (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Office of Unified Communication’s (“Agency”) decision to terminate her from her position as a Telecommunication Operator. On April 23, 2010, OEA notified Agency of Employee’s Petition for Appeal in this matter.

I was assigned this matter on or around July 10, 2012. Upon review of the case file, the undersigned noticed that Agency had not filed its Answer to Employee’s Petition for Appeal as required by the April 23, 2010 letter. On July 12, 2012, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a statement of good cause based on its failure to submit an Answer to Employee’s petition for appeal. Agency had until July 30, 2012 to respond. Agency submitted a timely Answer. Subsequently, on August 1, 2012, the undersigned issued an Order scheduling a Status Conference for August 15, 2012. Both parties attended the Status Conference. During the Status Conference, the parties requested that the matter be submitted to Mediation. Following a failed mediation attempt on October 4, 2012, the undersigned issued another Order dated October 9, 2012, scheduling another Status Conference for October 31, 2012. Agency was present for the Status Conference, but Employee was a no-show. Thereafter, on October 31, 2012, I issued an Order for Statement of Good Cause. Employee was ordered to

submit a statement of good cause based on her failure to attend the October 31, 2012 Status Conference. Employee had until November 9, 2012, to respond. As of the date of this decision, Employee has not responded to this Order. The record is now closed.

JURISDICTION

The Office 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 steps to prosecute or defend an appeal.¹ 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.

¹ *Id.* at 621.3.

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 or fails to submit required documents.² Employee did not appear at the Status Conference scheduled for October 31, 2012, and she did not provide a written response to my Order for Statement of Good Cause. These actions 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; therefore, the matter should be dismissed for her failure to prosecute.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *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).