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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOSEPH KIM,)	
Employee)	OEA Matter No. 2401-0296-09
)	
v.)	Date of Issuance: October 25, 2011
)	
D.C. DEPARTMENT OF HEALTH,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Joseph Kim, Employee <i>Pro Se</i>)	
Kevin Turner, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 24, 2009, Joseph Kim (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Health’s (“Agency”) action of abolishing his position as a Special Project Coordinator through a Reduction-In-Force (“RIF”). The effective date of the RIF was September 4, 2009.

I was assigned this matter on or around September 6, 2011. On September 7, 2011, I issued an Order directing the parties to submit a Prehearing Statement on or before September 21, 2011, and to attend a Prehearing Conference set for September 28, 2011. Agency timely submitted its Prehearing Statement. Both parties were present on September 28, 2011. However, Employee’s representative on record Mr. Bunn¹, with consent from Agency’s representative requested that the Prehearing Conference be rescheduled for October 12, 2011, since he was only made aware of the Prehearing Conference that morning by Agency’s representative and has not had the opportunity to speak with Employee. Thereafter, I issued an Order rescheduling the Prehearing Conference for October 12, 2011. I further directed Employee’s representative to submit his Prehearing Statement by October 5, 2011.

On October 11, 2011, I received a notice of Withdrawal of Appearance from Mr. Bunn, stating that the Union has been unsuccessful in its attempts to contact Employee. While Agency was present for the October 12, 2011, Prehearing Conference, Employee was not in attendance, nor did he submit a Prehearing Statement to this Office. Subsequently, on October 12, 2011, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of cause based on his failure to submit a

¹ Mr. Bunn (Union representative) was Employee’s representative on record until October 11, 2011, when this Office received his Notice of Withdrawal of Appearance.

Prehearing Statement and to attend the Prehearing Conference. Employee had until October 21, 2011, to respond. As of today's date, 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 petition for appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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.

This Office has 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 Here, Employee was warned in each Order that failure to comply could result in sanctions including dismissal. Employee did not appear at the Prehearing Conference, and 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 merit. I conclude that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for Employee's failure to prosecute his 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), ___ D.C. Reg. ___ (); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ().