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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LENA EPPS,)	
Employee)	OEA Matter No. 1601-0407-10
)	
v.)	Date of Issuance: October 5, 2012
)	
D.C. DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Lena Epps, Employee <i>Pro-Se</i>		
Steven N. Rubenstien, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 16, 2010, Lena Epps (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Department of Youth Rehabilitation Services (“the Agency”) action of removing her from service. I was assigned this matter on or about July 18, 2012. Thereafter, on August 14, 2012, I issued an Order Convening a Prehearing Conference. Pursuant to this order, both parties were required to submit their respective prehearing statements on or before September 4, 2012, and both parties were required to appear before the undersigned on September 17, 2012, at 10:30 a.m. Neither party appeared for this conference. Of note, the aforementioned Order was sent to both parties’ address of record as contained within the file of the above-captioned matter. The U.S. Postal Service returned both orders to the OEA as undeliverable.

Accordingly, on September 17, 2012, I issued an Order for Statement of Good Cause, wherein I required both parties to do the following:

1. Submit a statement of good cause that explains your failure to submit your prehearing statement and your failure to appear for the Prehearing

Conference as was mandated by my August 14, 2012, Order. **AND;**

2. Both parties are required to file your prehearing statement as was mandated by my August 14, 2012, Order.

Both parties were required to respond on or before September 27, 2012. In its response, the Agency explained that the OEA mailed the prior order to the Agency's old address to the attention of an attorney who is no longer employed by the Agency. *See* Agency's Statement of Good Cause dated September 27, 2012. Moreover, the Agency also supplied its prehearing statement in accordance with the aforementioned orders. I find that the Agency's response is acceptable and that it has successfully established good cause for its initial noncompliance in this matter.

To date, I have not received a response from Employee. Employee's has failed to actively prosecute her appeal. Therefore, I have decided that no further proceedings are required. 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 matter should be dismissed.

BURDEN OF PROOF

OEA Rule 628 *et al.*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

OEA Rule 621.3, *id.*, states as follows:

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 for a proceeding after receiving notice or fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, Employee did not file her prehearing statement, she did not appear for the prehearing conference, she did not respond to my Order for Statement of Good Cause, and Employee failed to update the OEA of her change of address. All were required for a proper resolution of this matter on its merits. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, I find that this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED due to Employee's failure to prosecute her petition for appeal.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
Senior Administrative Judge