THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
ROBIN SUBER, Employee	
v.	OEA Matter No. 1601-0107-07
	Date of Issuance: November 23, 2009
D.C. PUBLIC SCHOOLS, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Robin Suber ("Employee") worked as a teacher with D.C. Public Schools ("Agency"). According to Agency, Employee was informed on May 21, 2007, that she had until June 11, 2007, to submit her teaching certification documents to avoid termination. On July 5, 2007, she received a letter from Agency informing her that she would be separated from service for failure to provide the certification documents. On August 6, 2007, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA").

She argued that her personnel file was missing documentation of her education and that when she learned of it, she requested transcripts from her undergraduate and graduate programs. Because there was a five to seven day waiting period for her undergraduate transcript, Employee

submitted a copy of her degree along with her graduate school transcript. Additionally, she informed Agency that she was scheduled to take her Praxis examination. Employee stated in her Petition for Appeal that she did not have enough time to submit all of the information requested. Nevertheless, she asked to be reinstated to her position.[1]

On September 17, 2007, Agency issued its Response to Employee's Petition for Appeal. It provided that Employee was on notice that her employment was contingent on her satisfactory maintenance of her teacher certification and license requirements. After Employee failed to provide her certification, she was terminated. Agency asserted that because Employee was terminated for her failure to provide the requisite documents, OEA lacked jurisdiction.[2] Hence, it asked that the case be dismissed.[3]

On October 12, 2007, the Administrative Judge ("AJ") issued an Order Convening a Pre-hearing Conference. In the order, he stated that a pre-hearing conference was scheduled for November 6, 2007. The AJ also provided that parties should submit pre-hearing statements by October 30, 2007.[4] The order concluded by stating that "if either party or representative fails to appear at the prehearing, or fails to provide the material specified by the above deadline, sanctions may be imposed pursuant to OEA Rule 622, 46 D.C. 9312."

On November 6, 2007, the AJ issued his Initial Decision. He held that Agency failed to submit its pre-hearing statement as required by his order. He also stated that Agency failed to

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[1] *Petition for Appeal,* P. 4-5 (August 6, 2007).
[2] Agency outlined that OEA has jurisdiction to hear cases involving adverse actions, reductions-in-force, or suspensions for 10 days or more. It contended that Employee's case did not fall under any of these grounds for appeal.
[3] *District of Columbia Public Schools' Response to Employee's Petition for Appeal,* p. 1-2 (September 17, 2007).
[4] The pre-hearing statements were to include a statement of the facts in the case; a specific statement of why Agency's action was proper or improper; a list of witnesses that would be called if a hearing was necessary; a list of written documents to prove their case; and any written motions.

appear at the pre-hearing conference. Therefore, in accordance with OEA Rule 622.3, he dismissed the case for Agency's failure to defend. As a result, he reversed Agency's action removing Employee and ordered that she be reinstated to her position with back pay and benefits.[5]

Agency filed a Petition for Review with the OEA Board requesting that the case be reversed and remanded for the AJ to consider the case on its merits. Agency claimed that it misplaced the Order Convening a Pre-hearing Conference, however, it did reach out to the AJ to explain. Agency suggested that dismissal was a severe sanction in this matter and that such a severe sanction should be used sparingly. It further provided that Employee was not prejudiced by its unintentional delay of the proceeding. Finally, Agency noted that it was unclear if Employee filed a pre-hearing statement as required by the AJ.[6]

OEA Rule 622.3, 46 D.C. Reg. at 9313 provides that:

> "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:
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> 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 rule clearly applies to both parties and requires Employee to prosecute and Agency to defend its actions. The AJ held Agency to the requirements highlighted in OEA Rule 622.3, however, he failed to hold Employee to the same standard. His Order Convening Pre-hearing Conference provided that *both* parties submit pre-hearing statements. Yet, the record does not

[5] *Initial Decision,* p. 1-2 (November 6, 2007).
[6] *Petition for Review of Initial Decision,* p. 2-3 (December 11, 2007).

include a pre-hearing statement from Employee. Thus, neither party submitted the required pre-hearing statement. The order provided that "if either party or representative fails to appear at the prehearing, *or fails to provide the material specified by the above deadline,* sanctions may be imposed pursuant to OEA Rule 622, 46 D.C. 9312." Therefore, we find it highly prejudicial for the AJ to apply sanctions against one party when neither party fully adhered to the requirements of his order. Accordingly, we grant Agency's Petition for Review and remand the matter to the AJ to consider the case on its merits.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, and the matter is **REMANDED** to the Administrative Judge to consider the case on its merits.

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

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Hilary Cairns

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Clarence Labor, Jr.

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.