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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0064-18
APRIL CLARK,)	
Employee)	
)	Date of Issuance: October 24, 2018
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
Agency)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge

April Clark, Employee, *Pro se*
Lynette A. Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

April Clark (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 24, 2018, challenging the District of Columbia Public Schools’ (“Agency”) decision to remove her from her position as an Instructional Aide pursuant to an IMPACT rating. Employee’s removal was effective July 27, 2018. Agency filed its Answer, along with a Motion to Dismiss on August 21, 2018. I was assigned this matter on September 7, 2018.

An Order for Employee to Respond to Agency’s Motion to Dismiss was issued on September 27, 2018. Pursuant to this order, Employee was required to respond to Agency’s Motion to Dismiss on the basis that Employee was still a probationary employee. Employee was ordered to respond on or before October 11, 2018. Employee did not respond. A Show Cause Order was issued on October 12, 2018, ordering Employee to show good cause for failing to respond to the September 27, 2018 Order. Employee had until October 19, 2018, to respond to the Show Cause Order. To date, Employee has not submitted a response to the September 27, 2018 Order, or the October 12, 2018 Show Cause Order. The record is now closed.

JURISDICTION

As explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this matter should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “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.

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.²

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3³ provides that the Administrative Judge, 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. 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.⁴

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, Agency submitted its Answer, along with a Motion to Dismiss based on lack of jurisdiction, asserting that Employee was still in her probationary period when she was terminated. To address the jurisdiction issue, Employee was ordered to submit a response to Agency’s Motion to Dismiss.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁵ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Orders were issued on September 27, 2018, and on October 12, 2018, which set forth deadlines for Employee to submit a written response to Agency's Motion to Dismiss. Because Employee did not submit a response by the deadline in the September 27, 2018 Order, a Show Cause Order was issued. The Show Cause Order required that Employee respond on or before October 19, 2018. To date, Employee has failed to respond to either Order.

Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge