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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
AKIME HAWKINS,	)	
Employee	)	OEA Matter No. 1601-0024-11
	)	
v.	)	Date of Issuance: December 27, 2012
	)	
OFFICE OF UNIFIED	)	
COMMUNICATIONS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge
_____	)	
Akime Hawkins, Employee <i>Pro-Se</i>	)	
Margaret Radabaugh, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On December 22, 2010, Akime Hawkins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Office of Unified Communications (“Agency” or “OUC”) decision to suspend her for cause from her position as a Customer Service Specialist for ten (10) days. Agency submitted its Answer in response to Employee’s Petition for Appeal on January 24, 2011.

I was assigned this matter on July 26, 2012. On September 25, 2012, the undersigned issued an Order (“September 25<sup>th</sup> Order”) scheduling a Status Conference for October 18, 2012. Both parties were in attendance. After considering the parties’ arguments as presented during the Status Conference, the undersigned issued an Order on October 23, 2012 (“October 23<sup>rd</sup> Order”), scheduling a telephonic Prehearing Conference for November 16, 2012, with Prehearing Statements due on or by November 9, 2012. Agency submitted its Prehearing Statement on November 7, 2012. Employee, however, did not submit a Prehearing Statement by the prescribed deadline.

On November 15, 2012, Employee called the undersigned and requested to withdraw her appeal. I informed Employee that all voluntary withdrawals must be made in writing and submitted to this Office. Employee indicated that she would submit her voluntary withdrawal the following day by facsimile. The undersigned also informed Employee that if she decided not to voluntarily withdraw her appeal, her prehearing statement, which was past due at the time, was required to be submitted and that the telephonic Prehearing Conference would be rescheduled. In light of this conversation with Employee, I contacted Agency’s Representative on November 16, 2012, to inform her that the telephonic Prehearing Conference was being canceled pending Employee’s submission of a voluntary withdrawal statement.

On November 26, 2012, the undersigned called Employee to address the status of this matter because no statement from Employee had been received. Employee stated that she had submitted the voluntary withdrawal via facsimile and indicated that she would submit it again since it had not been received by this Office. However, this Office received no statements from Employee. Subsequently, on December 3, 2012, I issued an Order for Statement of Good Cause (“December 3<sup>rd</sup> Order for Good Cause”) to Employee for her failure to submit her Prehearing Statement by the prescribed deadline. The Order for Statement of Good Cause also stated that in the event that Employee still wished to voluntarily withdraw her appeal, she could submit this statement in lieu of her Statement of Good Cause and Prehearing Statement. As of the date of this decision, OEA has not received a response from Employee regarding the December 3<sup>rd</sup> Order for Statement of Good Cause. Based on the record to date, I have determined that no further proceedings are warranted. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03.

### ISSUE

Whether this appeal should be dismissed.

### 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<sup>1</sup> 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.<sup>2</sup> Additionally, OEA Rule 621.3 (b), states that failure to prosecute an appeal includes, but is not limited to, a failure to submit required documents after being provided with a deadline for such

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> See OEA Rule 621.3.

submission. Moreover, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents.<sup>3</sup>

In this case, the December 3<sup>rd</sup> Order for Good Cause advised Employee that failure to comply could result in sanction, including dismissal of this matter. Employee did not provide a written response to the December 3<sup>rd</sup> Order for Good Cause, which was required for a proper resolution of this matter on its merits. Therefore, the undersigned concludes that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee's failure to prosecute her appeal.

ORDER

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

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge

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<sup>3</sup> See also *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).