THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
MAURITA NOBLE Employee	
v.	OEA Matter No. 2401-0091-04P04
	Date of Issuance: March 4, 2005
D.C. PUBLIC SCHOOLS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee was a Social Studies teacher at the time that Agency abolished her position pursuant to a modified reduction in force ("RIF"). The RIF took effect June 30, 2004. Employee timely filed a Petition for Appeal and this matter was assigned to an administrative judge. On August 18, 2004, this Office's Executive Director sent a letter to Agency stating that Agency was required to file an answer to the Petition for Appeal. Agency was informed that its response was due by September 17, 2004. Further, the

letter warned Agency that failure to file the answer could result in the imposition of sanctions including having a decision rendered in favor of Employee.

Shortly thereafter, Agency requested to have until October 8, 2004 to file its answer. The Administrative Judge granted that request. Agency failed, however, to file its answer by the extended deadline. Thus, in an Initial Decision issued October 18, 2004, the Administrative Judge found that Agency had failed to defend the appeal. As a result, the RIF action was reversed and Agency was ordered to reinstate Employee.

On October 18, 2004, Agency filed its answer and on November 24, 2004, Agency filed a Petition for Review. In its Petition for Review, Agency argues that it was not able to meet the October 1, 2004 filing deadline due to the fact that its lead attorney had to leave town to attend to an ailing family member and no other attorney in its office was sufficiently familiar or experienced with the appeal to formulate an answer or to request another extension. Further, Agency argues that Employee was not prejudiced by the delay. For these reasons Agency has asked us to vacate the Initial Decision and remand the appeal to the Administrative Judge.

We believe that the case of *Murphy v. Beiro Construction Co.*, 679 A.2d 1039 (D.C. 1996), while not squarely on point, is nonetheless instructive. In that case Beiro Construction Company entered into a contract with the District to build a school. Before the work was completed the District terminated the contract and determined that Beiro was in default. The District's Department of Administrative Services upheld that determination and awarded considerable damages to the District. Beiro appealed to the District's Contract Appeals Board ("CAB").

During the course of the proceedings before the CAB, the District's lead counsel resigned. The District filed a motion for a continuance of a previously scheduled hearing and, in support of its motion, argued that no other attorney was prepared at that time to go forward with the hearing. The CAB denied the motion and entered a default judgment against the District. The District appealed that decision to the Court of Appeals. The Court held that the CAB had abused its discretion when it denied the District's motion for a continuance. The Court went on to state the following:

> The entry of a default judgment is an extreme sanction, and it should be imposed only upon a showing of severe circumstances. . . . [S]evere circumstances arise from the nonmovant's deliberate or willful non-compliance with court rules and orders, resulting prejudice to the movant's ability to successfully pursue the litigation, and the conclusion that alternative, less severe sanctions will not suffice. . . .

Id. at 1044. The Court concluded by stating that "[d]ecisions on the merits are preferred whenever possible. . . ." *Id.* Thus, the Court reversed the CAB's decision and remanded the appeal. *See also* Graces v. Bradley, 299 A. 2d 142 (D.C. 1973) (dismissal for want of prosecution amounts to a final and definitive doom, and a more normal course of pleading in ways less abrupt is generally favored).

Admittedly, Agency did not file its answer in a timely fashion. Rather, the answer was filed 10 days after it became due. Nevertheless, there is nothing in the record to indicate that Agency *deliberately or willfully* failed to timely file its answer nor is this a situation where Agency failed altogether to file an answer. In fact in its Petition for Review Agency states that its lead attorney had to leave town around the time that the answer was due and there was no other attorney with enough knowledge or experience

who could have taken over the appeal. Further, Employee has not indicated how she may have been prejudiced by Agency's 10-day delay in filing its answer nor has she indicated how she would be prejudiced by allowing her appeal to be decided on the merits. Except for failing to request even more time within which to file an answer, we believe the circumstances in this appeal are similar to those in *Murphy* and thus warrant the same result. We, however, caution Agency that we are not endorsing delays and that should the Administrative Judge be confronted with any further delays, the sanction of dismissal will be looked upon favorably. Based on the foregoing, we grant Agency's Petition for Review, reverse the Initial Decision, and remand this appeal for consideration on the merits.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, the Initial Decision is **REVERSED**, and this appeal is **REMANDED**.

FOR THE BOARD:

Erias A. Hyman, Chair

Horace Kreitzman

Brian Lederer

Jeffrey J. Stewart

Keith E. Washington

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.