THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SHARON YOUNG-WESTER	)	OEA Matter No. J-0033-03
Employee	)	
	)	Date of Issuance: September 19, 2006
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sharon Young-Wester ("Employee") worked as an ET-15 teacher with the D.C. Public School system ("Agency"). On December 26, 2002, she received a notice of termination from Agency. The notice provided that due to low student enrollment, her position as a cosmetology teacher would be abolished. She was placed on paid administrative leave until her effective termination date of January 30, 2003. Employee filed a grievance action with Agency and a discrimination claim with the Equal Employment Opportunity Commission ("EEOC"). While

both matters were still pending before those respective offices, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA").[1] Employee's petition alleged that she was wrongfully terminated and that her termination was a form of retaliation for filing a grievance against Agency.

On November 12, 2003, Agency filed a response to Employee's Petition for Appeal. Agency argued that Employee was terminated pursuant to the terms provided in the collective bargaining agreement between the Washington Teacher's Union and Agency. It went on to provide that Employee was excessed based on student enrollment.[2] Agency contended that Employee was not terminated by an adverse action or in retaliation for any grievances filed; she was terminated because of student enrollment and nothing more.

On February 6, 2004, the Administrative Judge ("AJ") issued an Order Scheduling Pre-hearing Conference. The Order stated that representatives for the Employee and Agency were required to attend the conference. It outlined the purpose of the pre-hearing conference along with deadlines for each party to submit pre-hearing statements. The conference was scheduled for March 1, 2004.[3]

Agency submitted its Pre-hearing Statement on February 23, 2004. It provided the same arguments that were outlined in its Response to Employee's Petition for Appeal. It also provided a list of witnesses who could substantiate their claims. A pre-hearing statement from Employee was never received.

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[1] *Petition for Appeal* (February 26, 2003).
[2] The "excess" process is based on a student enrollment equalization formula that provides a teacher-student ratio. When a school has less students than the ratio of teachers allowed, the number of teachers must be decreased at that school. *Agency's Response to Employee Petition of Appeal*, p. 2 (November 12, 2003).
[3] If this date was inconvenient for either party, the AJ requested that he be contacted and an alternative date could be assigned.

On March 2, 2004, the AJ issued his Initial Decision. It provided that Employee did not supply a Pre-hearing Statement, and she failed to attend the Pre-hearing Conference. Pursuant to OEA Rule 622.3, the AJ dismissed Employee's Petition for Appeal for failure to prosecute.[4]

On April 5, 2004, Employee filed a Petition for Review with OEA. Employee argued that the only correspondence that she received from OEA was a notice for the Office's mediation program. She provided that she did not receive the AJ's February 6, 2004 Order. It was Employee's belief that either OEA failed to send out the notice, or it was mailed to the wrong address.[5]

OEA has several safeguards in place to ensure that all documents are mailed to parties. The Office understands what is at stake for employees trying to get their jobs back, and it would never impede the service of justice. One way that OEA offers as proof that correspondence was mailed out is to attach a certificate of service to the document. The certificate of service attached to the Order Scheduling Pre-hearing Conference listed Employee's address as 157 Rhode Island Avenue, NE, Washington, DC 20001.[6] Employee provided in her Petition for Appeal that this was the correct address.[7] The Order was mailed to Employee and Agency on the same day. Agency received it and filed a timely response; Employee claims that she did not receive it. According to USCS Fed Rules Civil Procedure Rule 5 and D.C. Superior Court Rules of Civil Procedure Rule 5(b)(2)(B), service by mail is complete upon mailing a copy of the document to a party's last known address. Furthermore,

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[4] *Initial Decision*, p. 2 (March 2, 2004).
[5] *Petition for Review*, p. 2 (April 5, 2004).
[6] *Order Scheduling Pre-hearing Conference*, p. 3 (February 6, 2004).
[7] *Petition for Review*, p. 2 (April 5, 2004).

because the record does not include any returned mail it is highly unlikely that it was sent to the wrong address.

Additionally, OEA takes one other step to document the correspondence mailed from our office. The Office's Administrative Assistant keeps a log of all the mail sent out. The log contains a description of the document mailed, the date, and the party to whom the document was sent. According to the Office log, on February 6, 2004, the Order Scheduling Pre-hearing Conference was mailed to Employee. Because OEA can prove that the order was mailed to Employee's correct address, Employee's arguments must fail.

As the AJ provided in his Initial Decision, OEA Rule 622.3 provides the following:

> "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."

Employee failed to adhere to subsections (a) and (b) of this regulation, and subsection (c) does not apply in this matter. Therefore, the Board upholds the AJ's decision to dismiss this case for failure to prosecute. Accordingly, Employee's Petition for Review is **DENIED**.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED.**

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

Jeffrey J. Stewart

Barbara D. Morgan

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.