THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0277-09
LASHON BRYANT-JORDAN,	)	
Employee	)	
	)	Date of Issuance: August 31, 2011
v.	)	
	)	
D.C. DEPARTMENT	)	
OF TRANSPORTATION,	)	
Agency	)	Sommer J. Murphy, Esq.
	)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 17, 2009, LaShon Bryant-Jordan ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Department of Transportation's ("Agency") action of abolishing her position through a Reduction-in-Force ("RIF"). The effective date of the RIF was August 21, 2009. Employee's position of record was an Equal Opportunity Specialist. Employee was serving in career status at the time she was separated from service.

I was assigned this matter on or around January 2011. On July 11, 2011, I issued an Order convening a Status Conference on August 3, 2011 for the purpose of assessing the parties' arguments and to determine whether a hearing was required. The Order directed both Employee and Agency to attend the Status Conference. The parties were further informed that failure to attend may result in sanctions, including dismissal of the appeal. Neither party appeared at the Status Conference.

I subsequently issued an Order for Statement of Good Cause on August 8, 2011. The Order required the parties to submit a statement of good cause for their failure to appear at the August 3, 2011 Status Conference. Neither Employee nor Agency responded to the Order for Statement of Good Cause.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) states 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) Appear at a scheduled proceeding after receiving notice; or (b) Submit required documents after being provided with a deadline for such submission.

This Office has consistently held that failure to follow directives from this Office constitutes a failure to prosecute.[1] The employee was warned in each order that failure to comply could result in sanctions, including dismissal of her appeal. The employee never complied. Employee's behavior constitutes a failure to prosecute therefore, her petition for appeal is dismissed.

ORDER

It is hereby ORDERED that Employee's petition for appeal is DISMISSED for failure to prosecute.

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Sommer J. Murphy, Esq.
Administrative Judge

[1] *See Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985).