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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

_____)	
In the Matter of:)	
)	
FRED MORRIS, JR.,)	
Employee)	
)	OEA Matter No. J-0015-16
v.)	
)	Date of Issuance: March 22, 2016
D.C. FIRE AND EMERGENCY)	
MEDICAL SERVICES DEPARTMENT,)	
Agency)	
_____)	
Fred Morris Jr., Employee, <i>Pro Se</i>)	MICHELLE R. HARRIS, Esq.
Andrea Comentale, Esq., Agency Representative)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 8, 2015, Fred Morris Jr., (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department’s (“Agency” or “DCFEMS”) pay step decision. On January 8, 2016, Agency filed its Motion to Dismiss. This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 29, 2015.

On January 12, 2016, I issued an Order directing Employee to address the jurisdiction issue raised by Agency in its Motion to Dismiss. Employee’s brief was due on or before January 25, 2016. Additionally, Agency had the option to submit a response to Employee’s brief. Employee did not submit his brief by the deadline. Consequently, I issued an Order for Statement of Good Cause to Employee on February 3, 2016. On February 16, 2016, I re-issued the Order for Statement of Good Cause due to an internal office error which caused Employee’s Order to be returned. Employee was ordered to submit his brief and a statement of good cause based on his failure to provide a response to the January 12, 2016 Order. Employee had until March 1, 2016, to respond. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

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 621.3 states in relevant part 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 (Emphasis added);* or
- (c) Inform this Office of a change of address which results in correspondence being returned.”¹

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 a submission.² In the instant matter, Employee was provided notice in both the January 12, 2016, and February 16, 2016, Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all the Orders were sent via mail to the address provided by Employee in his Petition for Appeal. A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. 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 his appeal is a violation of OEA Rule 621. For these reasons, this matter should be dismissed for failure to prosecute.

¹ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

² *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).

ORDER

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

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge