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

In the Matter of:	)	
	)	OEA Matter No. 1601-0042-18
JEROME KENNEDY,	)	
Employee	)	
	)	Date of Issuance: September 10, 2018
v.	)	
	)	Michelle R. Harris, Esq.
D.C. DEPARTMENT OF	)	Administrative Judge
BEHAVIORAL HEALTH,	)	
Agency	)	
Jerome Kennedy, Employee, <i>Pro Se</i>	)	
Charles Frye, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On April 2, 2018, Jerome Kennedy (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Behavioral Health’s (“Agency” or “DBH”) decision to suspend him from service for fifteen (15) days. On June 2, 2018, Agency filed its Answer and Motion to Dismiss Employee’s Appeal. Following an unsuccessful attempt to resolve this matter through mediation, this matter was assigned to the undersigned Administrative Judge (“AJ”) on July 3, 2018. On July 12, 2018, I issued an Order Convening a Prehearing Conference for August 21, 2018. Prehearing statements were due on or before August 13, 2018.

On August 21, 2018, Employee failed to appear for the Prehearing Conference. Agency’s representative was present. As a result, on August 21, 2018, I issued an Order to Show Cause to Employee. Employee was required to submit a statement of good cause based on his failure to appear for the Prehearing Conference. Employee had until September 4, 2018, to respond. To date, Employee has not responded to the Order. The record is now closed.

**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 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;* (Emphasis Added)
- (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.”<sup>1</sup>

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and submit required documents after being provided with a deadline to comply with such orders.<sup>2</sup> In the instant matter, Employee was provided notice in all of the Orders that a failure to comply could result in sanctions, including dismissal. Employee did not submit a Prehearing Statement or appear for the August 21, 2018 Prehearing Conference in accordance with the July 12, 2018 Order. Further, Employee did not respond to the August 21, 2018 Order to Show Cause. Employee’s response to each of these Orders, and his appearance at the Prehearing Conference was required to ensure an appropriate review and resolution of the matter. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. 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

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<sup>1</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

<sup>2</sup> *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).

his appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

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

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge