

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MELVIN BRAY,)	
Employee)	OEA Matter No. 2401-0281-09
)	
v.)	Date of Issuance: August 1, 2011
)	
DISTRICT DEPARTMENT OF)	
TRANSPORTATION,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Clifford Lowery, Employee Representative)	
Melissa Williams, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2009, Melvin Bray (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of Transportation’s (“Agency”) action of abolishing his position as a Masonry Worker through a Reduction-In-Force (“RIF”). I was assigned this matter on or about March 28, 2011. On March 29, 2011, I issued an Order directing the parties to attend a Prehearing Conference set for April 15, 2011. This was later rescheduled for July 12, 2011 in an Order dated May 10, 2011. The Order specifically noted that if either party did not appear at the Prehearing Conference, sanctions may be imposed pursuant to OEA Rule 622, 46 D.C. Reg. at 9312. Agency complied, but Employee did not. On July 13, 2011, the May 10, 2011, Order mailed to Employee’s representative rescheduling the Prehearing Conference was returned to this Office marked “NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” On July 12, 2011, I issued an Order for Statement of Good Cause to Employee and his representative¹. The deadline for responding to this Order was July 21, 2011. To date, nothing has been received by this Office in response. This record is now closed.

JURISDICTION

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

¹ The Order was sent to Employee’s representative’s new address on file.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.² Here, Employee was warned in each Order that failure to comply could result in sanctions including dismissal. Employee did not appear at the Prehearing Conference, and did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merit. I conclude that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010), ___ D.C. Reg. ___ (); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ().