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

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In the Matter of:	)	
	)	OEA Matter No. J-0064-16
JAMES HAVER,	)	
Employee	)	
	)	Date of Issuance: November 2, 2016
v.	)	
	)	Michelle R. Harris, Esq.
UNIVERSITY OF THE	)	Administrative Judge
DISTRICT OF COLUMBIA,	)	
Agency	)	
_____	)	

James Haver, Employee, *Pro Se*  
Anessa Abrams, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 13, 2016, James Haver (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the University of the District of Columbia’s (“Agency” or “UDC”) decision to terminate him. This matter was assigned to me on July 18, 2016. On August 12, 2016, Agency filed its Motion to Dismiss Employee’s Petition for Appeal along with a Motion to Hold the Answer in Abeyance and Extension of Time to File an Answer. On August 24, 2016, Employee submitted responses to Agency’s Motions, along with an addendum to his Petition for Appeal. On August 29, 2016, the undersigned issued an Order denying Agency’s request for an extension and to hold the Answer in abeyance. Agency was ordered to submit its Answer on or before September 9, 2016. Agency submitted its Answer on September 9, 2016. On September 13, 2016, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency in its Answer. Employee had until September 27, 2016, to respond.

On September 21, 2016, Employee filed a Motion requesting an extension of time in which to file his brief. On September 23, 2016, I issued an Order granting Employee’s request. Employee’s brief was now due on or before October 4, 2016. Agency could submit its response on or before October 19, 2016. Employee did not submit his brief by the deadline. Consequently, on October 12, 2016, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit his brief, and a statement of good cause based on his failure to provide a response to the September 23, 2016 Order. Employee had until October 20, 2016, to respond. To date, Employee has not

responded to either Order. On October 20, 2016, Agency sent its response to the October 12, 2016 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."<sup>1</sup>

This Office has consistently held that failure to prosecute an appeal includes a failure to 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 both the September 23, 2016, and October 12, 2016,

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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).

Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all Orders were sent via postal mail service 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, 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 and Agency's Motion to Dismiss is hereby **GRANTED**.

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge