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

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 2401-0093-17
KHALED FALAH,	)	
Employee	)	
	)	Date of Issuance: January 17, 2018
v.	)	
	)	
DISTRICT OF COLUMBIA OFFICE OF	)	
THE CHIEF TECHNOLOGY OFFICER,	)	Monica Dohnji, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Khaled Falah, Employee, <i>Pro Se</i>	)	
Pamela Brown, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 22, 2017, Khaled Falah (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the Chief Technology Officer’s (“Agency”) decision to abolish his position as a Program Manager through a Reduction-In-Force (“RIF”). The effective date of the RIF was September 30, 2017. On November 1, 2017, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter on November 3, 2017. Thereafter, I issued an Order dated November 15, 2018, requiring the parties to submit written briefs. Agency’s brief was due on December 5, 2017, while Employee’s brief was due on December 26, 2017. On December 4, 2017, Agency’s attorney filed a Motion for Continuance, noting that due to previously scheduled annual leave, she would not be able to submit her brief on December 5, 2017. She, however, noted that she would submit her brief on December 19, 2017. Following Agency’s failure to submit its brief by the December 19, 2017, deadline, on January 3, 2018, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a Statement of Good Cause based on its failure to submit its brief by the required deadline. Agency had until January 16, 2018 to respond. As of the date of this decision, Agency has not responded to either Order. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether this appeal should be dismissed.

### 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 621.1 grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “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.<sup>1</sup> 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 consistently held that a matter may be decided in favor of the Employee when an Agency fails to submit required documents.<sup>2</sup> Here, Agency was warned in the

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<sup>1</sup> *Id.* at 621.3.

<sup>2</sup> *Dwight Gopaul v. District of Columbia Public Schools*, OEA Matter No. 2401-0114-02, (June 16, 2005); *Morris v. Department of Mental Health*, OEA Matter No. 2401-0080-03R04 (April 14, 2004); *James v. Office of Boards & Commissions*, OEA Matter No. 2401-0069-04 (October 8, 2004).

November 15, 2017, and January 3, 2018, Orders that failure to comply could result in sanctions, including dismissal. Agency did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. Additionally, Agency failed to adhere to the December 19, 2017, extension deadline it requested. Further, the November 15, 2017, and January 3, 2018, Orders to Agency were not returned to this Office. Moreover, the certificate of service attached to the Orders shows that a copy of these Orders was mailed to Agency's representative's address of record. This Office has not been notified by Agency of a change of address. Accordingly, I find that Agency's behavior constitutes a failure to defend its action of separating Employee and this is a violation of OEA Rule 621.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record and reimburse him all back-pay, and benefits lost as a result of the RIF; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge