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

In the Matter of:	)	
	)	
ELLIOTTE COLEMAN,	)	
Employee	)	OEA Matter No. J-0065-13
	)	
v.	)	Date of Issuance: May 20, 2013
	)	
D.C. DEPARTMENT OF GENERAL SERVICES,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	
Elliotte Coleman, Employee <i>Pro Se</i>		
C. Vaughn Adams, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On March 18, 2013, Elliotte Coleman (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of General Services’ (“Agency” or “DGS”) decision to terminate him from his position as a Program Analyst effective March 15, 2013. On April 19, 2013, Agency filed its Answer to Employee’s Petition for Appeal, along with a Motion to Dismiss. Agency noted in its Motion to Dismiss that Employee was a probationary employee at the time of his termination and as such, OEA lacks jurisdiction over Employee’s appeal.

I was assigned this matter on March 22, 2013. Subsequently, on April 23, 2013, the undersigned issued an Order requiring Employee to address the jurisdiction issue in this matter. Employee’s jurisdiction brief was due on or before May 2, 2013. Employee did not comply. Thereafter, on May 6, 2013, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on his failure to submit a response to the April 23, 2013, and May 6, 2013 Orders on or before May 15, 2013. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

**JURISDICTION**

As will be explained below, 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 621.1 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, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.<sup>2</sup> Here, Employee was warned in the April 23, 2013, and May 6, 2013, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. I find that Employee’s failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I

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

<sup>2</sup> *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); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; 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:

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MONICA DOHNJI, Esq.  
Administrative Judge