

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CHRISTOPHER WHITEHOUSE,)	OEA Matter No. 1601-0105-12
Employee)	
)	Date of Issuance: October 20, 2015
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Christopher Whitehouse (“Employee”) worked as an Officer with the Metropolitan Police Department (“Agency”). On March 6, 2012, Agency issued a Final Notice of Adverse action informing Employee that he would be terminated. Employee was charged with being involved in the commission of any act which would constitute a crime and conduct unbecoming of an officer.¹ The effective date of termination was May 4, 2012.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 24, 2012. He argued that Agency violated his due process rights; Agency’s evidence did not support a guilty finding; and that the penalty was improper. Accordingly, Employee

¹ Agency found that on August 22, 2011, Employee entered a guilty plea for an assault charge in the Prince George’s County Circuit Court. *Petition for Appeal*, p. 13 (May 24, 2012).

² *Id.* at 2.

requested to be reinstated to his position.³

On October 7, 2013, the OEA Administrative Judge (“AJ”) scheduled a Status Conference for November 19, 2013.⁴ On November 18, 2013, Employee filed a Request to Postpone the Status Conference.⁵ The AJ subsequently granted this request and rescheduled the matter for January 13, 2014.⁶ On the day of the Status Conference, Employee arrived one hour late and the AJ had already released Agency’s representative. As a result, the matter was rescheduled for January 29, 2014.⁷ However, Employee did not appear for the rescheduled conference.⁸

The AJ issued her Initial Decision on February 18, 2014. She found that Employee failed to prosecute his appeal. She reasoned that Employee did not appear for the Rescheduled Status Conference or submit an explanation for his failure to appear. Further, Employee’s conduct was consistent with OEA Rule 621. Accordingly, the Petition for Appeal was dismissed for Employee’s failure to prosecute.⁹

On March 20, 2014, Employee filed a Petition for Review with the OEA Board. He states that attached to his November 18, 2013 Request to Postpone the Status Conference was information regarding his updated address and telephone number. He states that he did not receive any mail from OEA and was not notified of the rescheduled Status Conference. Moreover, Employee argues that new and material evidence is available regarding the incident

³ *Id.* at 2. In Agency’s Answer to the Petition for Appeal, it denied Employee’s allegations. *Metropolitan Police Department’s Answer to the Petition* (June 25, 2012).

⁴ *Order Convening a Status Conference* (October 7, 2013).

⁵ *Request to Postpone the Status Conference* (November 18, 2013).

⁶ *Order Rescheduling Status Conference* (November 22, 2013).

⁷ *Order Rescheduling Status Conference* (January 14, 2014).

⁸ On January 30, 2014, the AJ issued an Order for Statement of Good Cause to Employee for his failure to appear for the rescheduled Status Conference, but he did not respond to her Order. *Order for Statement of Good Cause* (January 30, 2014).

⁹ *Initial Decision*, p. 2-3 (February 18, 2014).

that led to his termination.¹⁰ Therefore, Employee requests to continue to prosecute his appeal before OEA.¹¹

In response to the Petition for Review, Agency argues that Employee's claim that he did not receive any correspondence regarding the Status Conference should be rejected. Agency reasons that Employee appeared for the January 13, 2014 Status Conference and also filed a Petition for Review. With regard to Employee's claim of new and material evidence, Agency asserts that Employee did not describe or submit the new evidence, nor did he explain why it was not available when the record closed. Accordingly, Agency argues that Employee did not meet the requirements established by OEA's rules and requests that the Petition for Review be denied.¹²

Pursuant to the Rules of this Office, it is a party's duty to inform the Office of any change in address. In his November 18, 2013 Request to Postpone the Status Conference, Employee provides the address and telephone number at which he may be contacted. Moreover, within this same document Employee asks that he be "contact[ed] . . . at the address listed" below his signature.¹³ That contact information differs from the address and telephone number which he initially provided in his Petition for Appeal. It was incumbent upon the Office at this point to ensure that the record reflected Employee's change of address and then to mail all future correspondence to the new address. Unfortunately, the Office continued to mail all subsequent correspondence to Employee's former address.¹⁴ Because the Office failed to send

¹⁰ Employee explains that a civil trial was held in the Prince George's County Circuit Court of Maryland regarding the incident for which he was terminated. He asserts that the testimony and outcome of that case is crucial to his appeal before OEA. *Petition for Review*, p. 2 (March 20, 2014).

¹¹ *Id.*

¹² *Agency's Opposition to the Petition for Review*, p. 2-3 (April 24, 2014).

¹³ *Request to Postpone the Status Conference* (November 18, 2013).

¹⁴ Because the November 18, 2013 document contains Employee's change of address, it is not necessary for the record to contain any returned mail in order to accept Employee's claim that he did not receive any correspondence from the Office after November 18, 2013.

correspondence to Employee's correct address, despite having knowledge of the new address, we must grant Employee's Petition for Review and remand this appeal for further proceedings consistent with this decision.¹⁵

¹⁵ Because we are remanding this appeal, it is not necessary that we decide Employee's other argument regarding the availability of new evidence.

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **GRANTED** and this matter is **REMANDED** for proceedings consistent with this decision.

FOR THE BOARD:

William Persina, Chair

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.