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

_____	)	
In the Matter of:	)	
	)	
THERON WILLIAMS,	)	
Employee	)	OEA Matter No. 1601-0252-12
	)	
v.	)	Date of Issuance: June 16, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Theron Williams, Employee <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 10, 2012, Theron Williams (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency”) decision to terminate him from his position as a Custodian effective August 10, 2012. On October 12, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 9, 2013. On December 31, 2013, I issued an Order directing the parties to attend a Status Conference on February 11, 2014. While Agency’s representative was present for the Status Conference, Employee was a no-show. Thereafter, on February 11, 2014 I issued an Order for Statement of Good Cause to Employee, wherein, Employee was required to submit a statement of good cause based on his failure to attend the February 11, 2014, Status Conference. Employee had until February 21, 2014, to respond. On February 20, 2014, Employee submitted his response to the February 11, 2014 Order. Subsequently, on February 24, 2014, I issued an Order rescheduling the Status Conference for March 11, 2014. While Employee was present for the Status Conference, Agency was a no-show. On March 14, 2014, I issued an Order for Statement of Good Cause to Agency. Because this Order had the incorrect OEA case number, on March 18, 2014, I issued an Amended Order for Statement of Good Cause to Agency. Agency was ordered to submit a statement of good cause based on its failure to attend the March 11, 2014 Status

Conference. Agency had until March 24, 2014 to respond. On March 19, 2014, Agency submitted its response to the March 18, 2014 Order.

In an Order dated March 26, 2014, the Status Conference in this matter was rescheduled for April 29, 2014. Both parties were in attendance. During the Status Conference, Employee noted that he may need additional time to decide whether or not he needed representation in this matter. Employee was granted until May 16, 2014, to inform the undersigned of his decision with regards to whether or not he had retained counsel in this matter. Following Employee's failure to update the undersigned by the May 16, 2014, deadline, on May 30, 2014, the undersigned issued an Order wherein, Employee was required to submit a written statement advising the undersigned of the status of the issue of representation. Pursuant to this Order, Employee had until June 10, 2014, to respond. As of the date of this decision, Employee has not responded to this 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 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, during the April 29, 2014, Status Conference, Employee was ordered to submit a written document, updating this Office of whether or not he was able to retain counsel, no later than May 16, 2014, but he failed to do so. Additionally, Employee was warned in the May 30, 2014, Order that failure to comply could result in sanctions, including dismissal, if Employee did not provide a written response to the May 30, 2014, Order. Again, Employee failed to comply. I find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, this matter should be dismissed for his failure to prosecute.

#### ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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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).