

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:                        | ) |                                  |
|  | ) | OEA Matter No.: 1601-0100-11     |
| ERIK LAWSON,                             | ) |                                  |
| Employee                                 | ) |                                  |
|  | ) | Date of Issuance: March 11, 2013 |
| v.                                       | ) |                                  |
|  | ) |                                  |
| DISTRICT OF COLUMBIA                     | ) |                                  |
| DEPARTMENT OF TRANSPORTATION,            | ) |                                  |
| Agency                                   | ) | Sommer J. Murphy, Esq.           |
| _____                                    | ) | Administrative Judge             |
| Erik Lawson, Employee, <i>Pro Se</i>     |   |                                  |
| Carl Wilson, Esq., Agency Representative |   |                                  |

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On April 21, 2011, Erik Lawson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Transportation’s (“Agency”) action of terminating his employment based on a “confirmed positive drug test for cocaine while occupying a safety sensitive position under the Child and Youth Safety and Omnibus Amendment Act of 2004.”<sup>1</sup> The effective date of Employee’s termination was March 25, 2011.

I was assigned this matter on July 30, 2012. On August 8, 2012, I issued an order scheduling a Status Conference (“SC”) to be held on October 3, 2012. During the SC, the parties agreed to the submission of briefs in lieu of conducting an Evidentiary Hearing. Therefore, on October 17, 2012, I issued an order requiring the parties to address whether: 1) Employee was properly terminated for cause; and 2) whether the penalty of termination was within the range allowed by law, regulation, and any table of appropriate penalties.<sup>2</sup> On December 21, 2012, Agency submitted its brief in response to the October 17, 2012 order. Employee was required to submit his brief on or before February 21, 2013, but did not. I subsequently issued an Order for Statement of Good Cause on February 27, 2012 requiring Employee to address his failure to

<sup>1</sup> Agency Answer to Petition for Appeal (August 1, 2011).

<sup>2</sup> Post-Status Conference Order (October 17, 2012).

submit a brief. Employee was given until March 7, 2013 to provide a statement of cause. As of the date of this Initial Decision, Employee has neither submitted a brief nor responded to the Order for Statement of Good Cause. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether Employee's appeal should be dismissed for failure to prosecute.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states the following:

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.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule 621.3 provides that "if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant."<sup>3</sup> Failure of a party to prosecute an appeal includes, but is not limited 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.<sup>4</sup>

---

<sup>3</sup> 59 DCR 2129 (March 16, 2012).

<sup>4</sup> *Id.*

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Employee failed to submit a response to the October 17, 2012 Order. Employee also failed to provide a Statement of Good Cause on or before March 7, 2013 to explain his failure to submit a brief. Based on the foregoing, I find that Employee's lack of diligence in pursuing an appeal before OEA constitutes a failure to prosecute and serves as grounds for the dismissal of this matter.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

\_\_\_\_\_  
SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE