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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
RUDOLPH SMITH	)	OEA Matter No. J-0399-10
Employee	)	
	)	Date of Issuance: March 7, 2011
v.	)	
	)	Lois Hochhauser, Esq.
D.C. OFFICE OF THE STATE SUPERINTENDENT	)	Administrative Judge
OF EDUCATION	)	
Agency	)	
_____	)	
Rudolph Smith, Employee, <i>pro se</i>		
W. Iris Barber, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Rudolph Smith, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on September 8, 2010, appealing the final decision of the District of Columbia Office of the State Superintendent of Education, Agency herein, to remove him from his position as Motor Vehicle Operator. At the time of his removal, Employee was in permanent and career status.. Agency filed its response on October 15, 2010, asserting that OEA did not have jurisdiction of this appeal because Employee had previously filed a grievance regarding this removal pursuant to a negotiated agreement.

The matter was assigned to me on January 10, 2011. I issued an Order on January 19, 2011, notifying Employee that jurisdiction was at issue in this matter and directing him to submit legal and/or factual argument supporting his claim that this Office has jurisdiction of this matter despite the fact that he had initiated a grievance pursuant to a collective bargaining agreement prior to filing the petition for appeal with OEA. Employee was provided with the pertinent language on this issue contained in D.C. Code Section 1-616.52. Employee was informed that he had the burden of proof on jurisdictional issues. He was notified that his submission had to be filed with OEA by 4:00 p.m. on February 11, 2011. He was further notified that failure to respond to the Order in a timely manner could result in the dismissal of the petition without further notice. The parties were advised that the record in this matter would close at 4:15 p.m. on February 11, 2011, unless they were advised to the contrary. Employee did not respond to the Order and did not contact the Administrative Judge or

anyone at OEA to request additional time. The record closed, effective 4:15 p.m., on February 11, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), provides that a petition for appeal can be dismissed with prejudice if an employee fails to prosecute the appeal. The Rule states, in pertinent part, that the failure to prosecute includes the failure to “[s]ubmit required documents after being provided with a deadline for such submission.” *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). The January 19, 2011 Order was sent to Employee by first class mail, postage prepaid, to the address listed by Employee as the address effective October 1, 2010. The Order was not returned to this Office, and is presumed to have been received by Employee. Employee did not contact the Administrative Judge or any employee at OEA about the matter in response to the Order. The Administrative Judge finds that Employee failed to comply with the January 19 Order which contained a deadline of February 11, 2011 and further finds that Employee failed to comply with OEA Rule 622.3. Based on the aforesaid findings and analysis, the Administrative Judge concludes that this petition for appeal should be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

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LOIS HOCHHAUSER, ESQ.  
Administrative Judge