

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:)	
)	OEA Matter No. 1601-0088-19
ANTHONY MALONE,)	
Employee)	
)	Date of Issuance: April 30, 2020
v.)	
)	ARIEN CANNON, ESQ.
DISTRICT OF COLUMBIA)	Administrative Judge
DEPARTMENT OF PUBLIC WORKS,)	
Agency)	
)	
Anthony Malone, Employee, <i>Pro se</i>		
Bradford Seamon, Esq., Agency Representative		

INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 3, 2019, Anthony Malone (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Works’ (“Agency” or “DPW”) decision to terminate him from his position as a Sanitation Worker. The effective date of termination was August 14, 2019. On October 7, 2019, Agency filed its Answer to Employee’s Petition for Appeal. This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 3, 2019.

An Order was issued on January 21, 2020², scheduling a Prehearing Conference for February 25, 2020. Agency’s representative was present at the Prehearing Conference; however, Employee did not appear until well after the scheduled time of the Prehearing Conference, and after Agency’s counsel had been dismissed. The Prehearing Conference was subsequently rescheduled for March 10, 2020. Agency’s representative appeared for the March 10th Prehearing Conference, but Employee again, failed to appear. A Show Cause Order was issued on March 10, 2020, which required Employee to provide a statement of good cause for failing to appear at the rescheduled Prehearing Conference. Employee had until March 17, 2020, to provide a response to the Show Cause Order. As of the date

¹ This decision was issued during the District of Columbia's COVID-19 State of Emergency.

² The Prehearing Conference Order inadvertently provided that the date of issuance was January 21, 2019, and not 2020.

of this decision, Employee has not provided a statement to the Show Cause Order. 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 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 621.3³ provides that the Administrative Judge, 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. 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.⁴ (Emphasis added).

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.⁵ In the instant

³ 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁵ See *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

matter, Employee was provided notice in the February 26, 2020 Order Rescheduling Prehearing Conference and in the Show Cause Order issued on March 10, 2020, that a failure to comply could result in sanctions, including dismissal of his appeal. Employee was late for the February 25, 2020 Prehearing Conference, and he failed to appear for the rescheduled March 10, 2020 Prehearing Conference. Employee also failed to respond to the Show Cause Order issued on March 10, 2020, which afforded him the opportunity to provide a statement of good cause for failing to appear at the March 10th Prehearing Conference.

It is noted that Employee changed and updated his address on January 30, 2020. The Order Rescheduling Prehearing Conference and Show Cause Order were both sent to Employee's most current address. Employee's presence at the Prehearing Conference and a response to the Show Cause Order were required to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Arien P. Cannon
ARIEN P. CANNON, ESQ.
Administrative Judge