THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the matter of:	)	
	)	
KARL CONRAD	)	OEA Matter No. 1601-0045-10
Employee	)	
	)	Date of Issuance: April 5, 2012
v.	)	
	)	Lois Hochhauser, Esq.
D.C. FIRE AND EMERGENCY	)	Administrative Judge
MEDICAL SERVICES	)	
Agency	)	

Karl Conrad, Employee, *pro se*
Thelma Chichester, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Karl Conrad, Employee herein, filed this petition on October 19, 2009 with the Office of Employee Appeals (OEA), appealing the decision of the D.C. Fire and Emergency Medical Services, Agency herein, to place him on enforced leave status, effective October 9, 2009. The letter advised him that if he successfully grieved the matter, he would be reinstated and all benefits restored; but if the enforced leave lasted more than ten days, he could appeal the matter to OEA. The letter included an explanation of his appeal rights to this Office. At the time of this action, Employee was a firefighter was in career service with a permanent appointment.

Following assignment of the matter to me on November 22, 2011, I issued an Order scheduling a prehearing conference for December 14, 2011. I also directed the parties to submit additional documentation needed to establish this Office's jurisdiction by December 6, 2011. The Order stated that failure to attend the prehearing conference or otherwise comply with the Order in a timely manner, could result in the imposition of sanctions, including the dismissal of the petition.

According to the certificate of service accompanying the Order, it was sent to Employee on November 21, 2011, by regular mail, to the address listed by Employee as his home address in his petition. The Order was not returned to OEA and is presumed to have been received by Employee.

Employee did not respond to the Order. He did not file the required submission, he did not appear at the prehearing conference and he did not seek a continuance or extension.

On December 14, 2011, I issued an Order directing Employee to show good cause why the appeal should not be dismissed based on his failure to comply with the November 21 Order. Employee was directed to file this submission by no later than 4:00 p.m. on December 30, 2011. The Order stated that unless the parties were notified to the contrary, the record would close at 4:15 p.m. on December 30, 2011. This Order, according to the accompanying certificate of service, was sent to Employee by regular mail at his listed home address. It was not returned to OEA, and is presumed delivered. Employee did not respond to this Order. The record in this matter closed at 4:15 p.m. on December 30, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSION

Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on all issues of jurisdiction. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, as 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." The jurisdictional issue raised in this matter is whether Employee was in fact suspended for ten days or more. The information in the final Agency notice, referred to "enforced leave status." Employee filed his petition ten days after the effective date, but that alone, does not establish that he served a ten day suspension or was removed. Employee was required to submit documentation or argument that would establish that his suspension was at least ten days or that he was terminated. He did not submit any documentation and did not present any argument since he failed to attend the prehearing conference. Thus, he did not meet his burden of proof on the issue of jurisdiction and the petition should be dismissed for this reason.

Employee's failure to respond to the Orders issued by this Administrative Judge is another basis upon which to dismiss this petition. In accordance with OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). In this matter, Employee failed to respond to two Orders, each of which contained specific deadlines for submissions and/or attendance at a scheduled proceeding. Employee was notified that his failure to comply could result in the imposition of sanctions, including

the dismissal of the appeal. Employee did not comply with either Order and did not seek an extension or continuance. The Orders, as stated above, were sent to Employee at the address listed as his home address in his petition. The Orders were not returned to OEA, and both are presumed to have been delivered to Employee in a timely manner. Employee failed to respond to the second Order although it gave him another opportunity to establish why the petition should not be dismissed. The undersigned concludes that Employee did not prosecute his appeal and the petition should be dismissed for this reason.

In sum, the Administrative Judge concludes that Employee failed to meet his burden of proof on the issue of jurisdiction and also that he failed to prosecute his appeal. Either reason independently provides a sufficient basis to dismiss this petition for appeal.

ORDER

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

FOR THE OFFICE: LOIS HOCHHAUSER, Esq.
Administrative Judge