THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SLATEL DILLON	)	OEA Matter No. J-0024-06
Employee	)	
	)	Date of Issuance: April 21, 2006
v.	)	
	)	Lois Hochhauser, Esq.
D.C. WATER AND SEWER AUTHORITY	)	Administrative Judge
Agency	)	

Slatel Dillon, Employee
Stephen Cook, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on January 30, 2006, appealing his removal from Agency. At the time of the removal, Employee had been employed with Agency for 18 years and was in career permanent status.

This matter was assigned to this Administrative Judge on or about March 16, 2006. On March 17, 2006, she issued an *Order* notifying Employee that this Office's jurisdiction was at issue and directing him to submit legal and/or factual arguments to support his position regarding this Office's jurisdiction. He was further notified that employees have the burden of proof on issues of jurisdiction and that failure to respond to the *Order* in a timely manner without good cause would result in the dismissal of the petition without further notice. He was provided with a copy of this Office's Rules. Employee's submission was due at OEA by April 12, 2006. The parties were notified that unless they were advised to the contrary the

record would close on that date. Employee did not respond to the *Order.* The record closed on April 12, 2006.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSION

This Office has long held that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999). Pursuant to this Rule, failure to prosecute includes the failure to "[s]ubmit required documents after being provided with a deadline for such submission." An employee's failure to respond to an *Order* from the presiding official constitutes a failure to prosecute. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee did not respond to the March 17, 2006 *Order* despite being notified that the failure to do so would result in the dismissal of this appeal. He did not contact the Administrative Judge to seek an extension and so the Administrative Judge cannot find that good cause exists for the failure to respond. The Administrative Judge concludes that Employee has failed to prosecute this appeal and that the petition should be dismissed.

With regard to the jurisdictional issue, Agency argues that OEA lacks jurisdiction to hear this matter and Employee has presented no fact or argument to the contrary. The Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, D.C. Law 11-111, effective April 18, 1996, established Agency as an independent authority. Pursuant to 21 D.C.M.R. 5209.8, Agency employees were provided with a process for appealing disciplinary actions, which does not involve OEA. OEA Rule 629.2, 46 D.C. Reg. 9202 (1999), places the burden of proof on employees to establish the jurisdiction of this Office. Employee has presented no evidence or argument on this issue. The Administrative Judge concludes that Employee has failed to meet his burden of proof that this Office has jurisdiction of this matter. This provides an alternative ground for dismissing this petition.

ORDER

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

FOR THE OFFICE:

Lois Hochhauser / DH
LOIS HOCHHAUSER, Esq.
Administrative Judge