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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

\_\_\_\_\_  
In the Matter of: )  
)  
Phillip Coles ) OEA Matter No. 2401-0160-09  
Employee )  
) Date of Issuance: October 1, 2010  
v. )  
) Senior Administrative Judge  
D.C. Child & Family Services ) Joseph E. Lim, Esq.  
Agency )  
\_\_\_\_\_)

Frank McDougald, Esq., Agency Representative  
Stephen White, Esq., Employee Representative

**INITIAL DECISION**

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On July 13, 2009, Employee, a Child Information Systems Administrator, DS-301-12-01-N, filed a petition for appeal with this Office from Agency's final decision separating him from Government service effective June 12, 2009, due to budgetary reasons. The matter was assigned to the undersigned on February 24, 2010. After a postponement requested by Employee, I issued an Order directing the parties to attend a June 2, 2010 Prehearing Conference and to submit a Prehearing Statement by May 17, 2010. Agency complied, but Employee did not.

On June 3, 2010, I ordered Employee to show cause for his non-compliance. Despite prior warnings that failure to comply could result in sanctions, including dismissal; to date, Employee failed to respond. The record is closed.

JURISDICTION

The 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.

ANALYSIS AND CONCLUSION

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides as follows:

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.” 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.

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee’s behavior constitutes a failure to prosecute her appeal and that is sound cause for dismissal.

ORDER

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

FOR THE OFFICE:

  
\_\_\_\_\_  
JOSEPH E. LIM, Esq.  
Senior Administrative Judge

## NOTICE OF APPEAL RIGHTS

This is an initial decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a **petition for review** with the Office. A **petition for review** must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the initial decision in this case.

All petitions for review must set forth objections to the initial decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;
2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation or policy;
3. The findings of the presiding official are not based on substantial evidence; or
4. The initial decision did not address all the issues of law and fact properly raised in the appeal.

All petitions for review should be supported by references to applicable laws or regulations and make specific reference to the record. The petition for review, containing a certificate of service, must be filed with the Administrative Assistant, D.C. Office of Employee Appeals, 717- 14th Street, N.W., 3rd Floor, Washington, D.C. 20006. Four (4) copies of the petition for review must be filed.

CERTIFICATE OF SERVICE

I certify that the attached INITIAL DECISION was sent by regular mail this day to:

Phillip Coles  
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Katrina Hill  
Clerk

October 1, 2010  
Date