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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

|   |   |                                    |
|---|---|------------------------------------|
| _____                                       | ) |                                    |
| In the Matter of:                           | ) |                                    |
|   | ) |                                    |
| ALLEN JAMES,                                | ) |                                    |
| Employee                                    | ) | OEA Matter No. 2401-0004-10        |
|   | ) |                                    |
| v.  | ) | Date of Issuance: December 5, 2011 |
|   | ) |                                    |
| DEPARTMENT OF CONSUMER                      | ) |                                    |
| & REGULATORY AFFAIRS,                       | ) |                                    |
| Agency                                      | ) | ERIC T. ROBINSON, Esq.             |
|   | ) | Administrative Judge               |
| _____                                       | ) |                                    |
| Allen James, Employee <i>Pro-Se</i>         |   |                                    |
| Charles Thomas, Esq., Agency Representative |   |                                    |

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On October 2, 2009, Allen James (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA” or “the Agency”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was September 4, 2009. I was assigned this matter on or around October 17, 2011. Thereafter, I scheduled a Prehearing Conference in order to assess the parties’ arguments. Employee did not appear for this conference. I then issued an Order for Statement of Good Cause dated November 15, 2011, wherein I required Employee to provide good cause for his failure to appear for the above mentioned Prehearing Conference. Employee was required to respond to this order on or before November 28, 2011. To date, I have not received a response from Employee. Due to Employee’s failure to actively prosecute his appeal, I have decided that no further proceedings are required. The record is now closed.

**JURISDICTION**

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether this matter should be dismissed.

### BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

### FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part 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...

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, Employee did not appear at the Prehearing Conference and did not provide a written response to my Order for Statement of Good Cause. Both were required for a proper resolution of this matter on its merits. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, I find that this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED due to Employee's failure to prosecute his petition for appeal.

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Administrative Judge