

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Ronald Morton)	OEA Matter No. 1601-0008-17
Employee)	
)	Date of Issuance: September 11, 2017
v.)	
)	Joseph E. Lim, Esq.
Department of Public Works)	Senior Administrative Judge
Agency)	
_____)	
Ronald Morton, Employee <i>pro se</i> ¹		
Nada Paisant, Esq., Agency Representative		

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On November 7, 2016, Ronald Morton (Employee) filed a petition for appeal with this Office (“OEA”) from Agency's final decision terminating him from his position as Motor Vehicle Operator for failing a drug test. A mediation conference was scheduled for March 22, 2017, but was unsuccessful. The matter was assigned to the undersigned judge on or around April 5, 2017.

I first scheduled a Prehearing Conference for June 2, 2017, and then for August 30, 2017. I had ordered the parties to submit a prehearing statement and to attend a prehearing conference. Although Agency complied, Employee failed to submit a statement or attend the conference. On August 30, 2017, I ordered Employee to show good cause² for his failure to respond to the order by September 6, 2017. Again, Employee failed to respond. Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee has 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

1 Employee submitted a Designation of Representative form designating Rochita Jackson as his representative. However, Employee did not sign the form and thus it cannot be accepted. Nonetheless, all Orders were mailed to their common address and thus presumed received by both.

2 Rochita Jackson sent an email indicating that she did not know OEA had moved to a different address. I emailed back indicating that Employee had to respond with a hard copy to the Show Cause Order by the stated deadline as an email is insufficient as per OEA policy.

Whether this appeal should be dismissed for failure to prosecute.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

In accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a petition for appeal may be dismissed when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to all Orders that I issued. All had specific time frames and both contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Orders were sent to Employee at the address he listed as his home address in his petition and in his submissions. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

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, this matter should be dismissed for failure to prosecute.

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