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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
MAURICE BURDEN	)	OEA Matter No. 1601-0230-12
Employee	)	
	)	Date of Issuance: August 27, 2014
v.	)	
	)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA DEPARTMENT OF	)	Administrative Judge
GENERAL SERVICES	)	
Agency	)	
	)	
Maurice Burden, Employee, <i>Pro Se</i>	)	
C. Vaughn Adams, Esq., Agency Representative	)	

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Maurice Burden, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on August 31, 2012, appealing the decision of the District of Columbia Department of General Services, Agency herein, to remove him from his position as a Maintenance Worker, effective August 13, 2012. At the time of the removal, Employee was in career service and permanent status. The matter was assigned to me on December 11, 2013.

On December 16, 2013, I issued an Order scheduling a prehearing conference for January 8, 2014. At the prehearing conference, Employee stated that he had engaged in the charged misconduct and regretted his actions. He stated that there was no need for an evidentiary hearing. He initially said that he objected to the penalty and had some challenges to this Office's jurisdiction. However, before the end of the prehearing conference, Employee stated that he did not seek reinstatement or back pay, but only sought to have his personnel record revised to reflect that he had resigned and was not terminated from his employment with Agency. Mr. Adams agreed to advise the undersigned if Agency was amenable to this resolution by January 29, 2014. An Order summarizing the prehearing conference was issued on January 9, 2014. Agency responded that it was amenable to resolving the appeal in this manner. On February 5, 2014, Agency filed a status report stating that the parties had reached an agreement, and that Agency counsel was drafting a settlement agreement. After several months, having received no such document, the Administrative Judge issued an Order on April 17, 2014 directing the parties to notify her of the status of the matter. On May 14, 2014, Agency responded that it had drafted a

settlement agreement and sent it to Employee by regular mail and by email on April 1, 2014 and May 5, 2014, but that Employee had not responded to either communication. Agency noted that it could not take any further action without a signed agreement. Employee did not respond to the Order.

On May 20, 2014, I issued another Order directing Employee to either file a document requesting dismissal of the appeal if the matter was resolved or file a statement that he no longer sought to settle the matter. His response was due by June 2, 2014 and he was notified that if he failed to respond in a timely manner, sanctions could be imposed, including the dismissal of the appeal for failure to prosecute. Employee failed to respond to this Order.

Finally, on June 25, 2014, I issued an Order directing Employee to file a request for the dismissal of the appeal, notify the undersigned of the reasons for the delay in signing the settlement agreement, or notify the undersigned that he no longer sought to settle the matter. The Order stated that if Employee did not comply with the Order, which had a stated deadline of July 10, 2014, sanctions could be imposed, including the dismissal of the appeal for failure to prosecute, without further notice. The parties were advised that unless they were notified to the contrary, the record would close on July 10, 2014. Employee did not file a response. The record in this matter closed on July 10, 2014.

All of the Orders issued in this matter were sent to Employee by first class mail, postage prepaid, at the address he listed in his petition for appeal and at the prehearing conference. None of the Orders was returned to OEA by the U.S. Postal Service as undelivered, and it is presumed that Employee received all of the Orders in a timely manner.

#### JURISDICTION

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

#### ISSUE

Should this appeal be dismissed?

#### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) states in pertinent part that:

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:

- (b) Submit required documents after being provided with a deadline for such submission

This Office has consistently held that a petition for appeal may be dismissed for failure to prosecute when a party fails to submit required documents for which a deadline has been imposed. *See, e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010). In this matter, Orders were issued on March 31, 2014, May 20, 2014 and June 25, 2014. Each Order directed Employee to file a response by a stated deadline. Employee did not respond to any of the Orders. Two of the Orders notified Employee that his failure to comply in a timely manner could result in the imposition of sanctions including the dismissal of the petition based on failure to prosecute the matter. The final Order also notified Employee that failure to comply by the stated deadline could result in the sanction of dismissal without further notice and that unless notified to the contrary, the record would close on that date. Each Order was sent to Employee by first class mail, postage prepaid, to the address listed by Employee in his petition and at the status conference. None was returned to OEA and it is presumed that all were received by Employee in a timely manner.

Based on these findings of fact, the Administrative Judge concludes that Employee's failure to comply with multiple Orders with stated deadlines constitutes a failure to prosecute his appeal. The Administrative Judge further concludes, pursuant to OEA Rule 621.3, that in an "exercise of sound discretion," this appeal should therefore be dismissed.

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

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LOIS HOCHHAUSER, Esq.  
Administrative Judge