THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ALLEN MARONEY,	)	
Employee	)	OEA Matter No. 1601-0257-10
	)	
v.	)	Date of Issuance: June 6, 2012
	)	
DEPARTMENT OF PUBLIC WORKS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Allen Maroney, Employee *Pro Se*
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 17, 2009, Allen Maroney ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Department of Public Works' ("Agency") decision to terminate him from his position as a Motor Vehicle Operator. On January 7, 2010, Agency filed a Request for Extension to Submit [its] Answer. Subsequently on January 28, 2010, Agency submitted its Answer to Employee's petition for appeal, along with other supporting documents. On November 23, 2010, Employee submitted a handwritten brief, along with a letter of recommendation from a Mr. Thaddeus McRae, of Samaritan Inns.

I was assigned this matter on or around April 3, 2012. On April 4, 2012, I issued an Order directing the parties to attend a Status Conference on May 1, 2012. Agency complied, but Employee did not. Thereafter, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on his failure to attend the May 1, 2012 Status Conference. Employee had until May 18, 2012 to respond. As of the date of this decision, Employee has not responded to the May 1, 2012, Order. The Order specifically noted that if either party did not appear at the Status Conference, sanctions may be imposed pursuant to OEA Rule 621, 59 DCR 2129 (March 16, 2012). 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 appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.[1] 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.

This Office has consistently 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.[2] Employee did not appear at the Status 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. I conclude that, Employee's failure to prosecute his appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to establish good cause for his failure to attend a scheduled proceeding. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for his failure to prosecute.

---

[1] *Id.* at 621.3.
[2] *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010), ___ D.C. Reg. ___ ( ); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ( ).

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

_____

MONICA DOHNJI, Esq.
Administrative Judge