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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____	)	
In the Matter of:	)	
	)	
PAUL HOWERTON	)	OEA Matter No. 2401-0100-05
Employee	)	
	)	Date of Issuance: October 5, 2005
v.	)	
	)	Lois Hochhauser, Esq.
D.C. PUBLIC SCHOOLS (DOT)	)	Administrative Judge
Agency	)	

Paul Howerton, Employee  
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on June 15, 2005. At the time he filed the petition, he was a full-time permanent employee with Agency. In his petition, he contended that the Agency had initiated a reduction-in-force (RIF), and that he had received a notice that he would be terminated as a result of the RIF on June 22, 2005. On June 17, 2005, Agency notified OEA that it was canceling the RIF. Shortly thereafter Employee advised this Office that he had not been separated and wished to withdraw the petition for appeal.

This matter was assigned to the undersigned Administrative Judge on or about August 8, 2005, and on August 22, 2005 she issued an *Order* directing Employee to notify her by September 2, 2005 if he wished to pursue the appeal given the rescission of the RIF and his request that the petition be withdrawn. He was advised that her failure to respond would be interpreted as consent to the dismissal of the petition. The parties were advised that unless they

were notified to the contrary, the record would close on September 2, 2005. Employee did not respond to the *Order* and the record closed on that date.

### JURISDICTION

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

### ISSUE

Should this matter be dismissed?

### ANALYSIS AND CONCLUSION


It is undisputed that since the RIF has been rescinded, the petition for appeal is now moot. This Office is not required to hear a matter that is moot. *See, e.g. Culver v. D.C. Fire Department*, OEA Matter No. 1601-0121-90, *Opinion and Order on Petition for Review* (January 16, 1991), \_\_ D.C. Reg. \_\_\_\_ ( ).

In addition, a petition for appeal may be dismissed with prejudice when an employee fails to prosecute his or her appeal pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999). According to this Rule, failure to prosecute includes the failure to “[s]ubmit required documents after being provided with a deadline for such submission.” Failure to respond to the August 22, 2005 *Order* constitutes a failure to prosecute. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee did not respond to the *Order* despite being advised that his failure to respond would be interpreted as consent to the dismissal of the petition. This Administrative Judge concludes that Employee has failed to prosecute this appeal and that this provides an additional ground for the dismissal of this petition.

### ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

  
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LOIS HOCHHAUSER, Esq.  
Administrative Judge