

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0311-10
FRANK MICKEY,)	
Employee)	
)	Date of Issuance: September 26, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
OFFICE OF PUBLIC EDUCATION FACILITIES)	
MODERNIZATION,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Frank Mickey, Employee, <i>Pro Se</i>		
C. Vaughn Adams, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 18, 2010, Frank Mickey (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Office of Public Modernization Education Facilities Modernization’s (“Agency”) action of terminating his employment as a result of a Reduction-in-Force (“RIF”). The effective date of the RIF was June 13, 2010.

I was assigned this matter in July of 2012. On July 27, 2012, I issued an Order convening a Status Conference to be held at this Office on August 22, 2012 at 12:00 p.m. Counsel for Agency appeared for the conference; however, Employee did not. On August 22, 2012, I issued an Order for Statement of Good Cause to Employee because he had failed to appear for the Status Conference. Employee was required to submit a statement to establish good cause on or before August 29, 2012. Employee failed to submit a statement of cause as of the date of this decision. The record is now closed.

JURISDICTION

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

ISSUE

Whether Employee’s appeal should be dismissed for failure to prosecute.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “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 the 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 621.3 further provides 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 an appeal includes, but is not limited 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.

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Because Employee failed to update his address of record in writing with this Office, he did not submit a written brief in response to the Order issued on July 27, 2012.¹ Employee also failed to provide a Statement of Good Cause on or before August 29, 2012 to explain his failure to submit a brief. Based on the foregoing, I find that Employee’s lack of diligence in pursuing his appeal before OEA constitutes a failure to prosecute and serves grounds for the dismissal of this matter.

ORDER

It is hereby ORDERED that Employee’s petition for appeal is DISMISSED for failure to prosecute.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

¹ The July 27, 2012 and August 22, 2012 orders were returned to this Office by the US Postal Service and stamped as “Return to Sender, Not Deliverable as Addressed, Unable to Forward.”