

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. 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:)	
)	
ANDRE EASLEY,)	
Employee)	OEA Matter No. J-0011-20 ¹
)	
v.)	Date of Issuance: February 21, 2020
)	
DISTRICT OF COLUMBIA DEPARTMENT)	MONICA DOHNJI, Esq.
OF EMPLOYMENT SERVICES)	
Agency)	Senior Administrative Judge
)	
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Andre Easley, Employee, <i>Pro Se</i>		
Tonya Robinson, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 21, 2019, Andre Easley (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) stating that the District of Columbia Department of Employment Services (“Agency”) terminated him from his position as a Program Analyst, effective September 29, 2019.

I was assigned this matter on December 3, 2019. On December 24, 2019, Agency filed its Answer noting that as of December 24, 2019, Employee remained employed with Agency, as a Program Analyst. Agency concluded that because Employee failed to allege any final agency action that would bring his claim within this Office’s jurisdiction, OEA lacked jurisdiction over this matter. Thereafter, I issued an Order on January 10, 2020, requiring Employee to address the jurisdictional issue raised by Agency in its Answer. Employee’s brief on jurisdiction was due on or before January 27, 2020. Employee did not comply with the January 10, 2020, Order. Subsequently, on January 31, 2020, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the January 10, 2020, Order, on or before

¹ This Initial Decision was originally issued on February 19, 2020. However, it listed an incorrect OEA case number on the first page. This February 21, 2020, Initial Decision is issued for the sole purpose of correcting the case number.

February 14, 2020. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

As explained below, the jurisdiction of this Office, has not been established.

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 621.3, 59 DCR 2129 (March 16, 2012) 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.² 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* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

² OEA Rule 621.3.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.³ Here, Employee was warned in the January 10, 2020, and January 31, 2020, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

³ *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).