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

_____	)	
In the Matter of:	)	
	)	
KENNETH BROWN,	)	
Employee	)	OEA Matter No.: 1601-0114-13
	)	
v.	)	Date of Issuance: September 25, 2014
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF GENERAL SERVICES,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
_____	)	
Richard Evans, Employee Representative	)	
C. Vaughn Adams, Esq., Agency Representative	)	
Charles J. Brown, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 5, 2013, Kenneth Brown (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of General Services’ (“DGS”) decision to terminate him from his position as a Maintenance Worker effective June 25, 2013. On August 28, 2013, Agency submitted its Answer to Employee’s Petition for Appeal.

After a failed mediation attempt, I was assigned this matter in May 2014. Thereafter, the undersigned issued an Order dated May 20, 2014, requiring the parties to attend a Prehearing Status Conference on July 17, 2014. Both parties were in attendance at the Prehearing Status Conference. On July 21, 2014, the undersigned issued a Post Status Conference Order (“July 21<sup>st</sup> Post PHSC Order”) wherein, the parties were required to submit briefs to address pending issues in this matter. Agency submitted its brief on August 11, 2014. However, Employee failed to submit his brief, which was due on or before September 2, 2014. On September 10, 2014, the undersigned issued an Order for Statement of Good Cause (“September 10<sup>th</sup> Show Cause Order”) requiring Employee to explain his failure to submit a response to the July 21<sup>st</sup> Post PHSC Order

on or before September 19, 2014. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

### JURISDICTION

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

### 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.<sup>1</sup> 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.

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<sup>1</sup> *Id.* at 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.<sup>2</sup> Here, Employee was warned in the July 21<sup>st</sup> and September 10<sup>th</sup> Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both 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, the undersigned further finds that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, the matter should be dismissed for his failure to prosecute.

ORDER

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

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge

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<sup>2</sup> *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); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).