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

In the Matter of:	)	
	)	
FRANK HARLEY	)	OEA Matter No.1601-0120-11
Employee	)	
	)	Date of Issuance: December 20, 2012
v.	)	
	)	Lois Hochhauser, Esq.
D.C. DEPARTMENT OF PUBLIC WORKS	)	Administrative Judge
Agency	)	
	)	
Frank Harley, Employee, <i>Pro Se</i>		
Eric Huang, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Frank Harley, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on June 22, 2011, appealing the decision of the D.C. Department of Public Works, Agency herein, to terminate his employment as a Motor Vehicle Operator

The matter was assigned to me on September 14, 2012. I issued an Order scheduling the prehearing conference for December 14, 2012. The Order stated, in pertinent part, that failure to appear in a timely manner could result in the imposition of sanctions, including the dismissal of the petition. The Order was mailed to Employee by first class mail, postage prepaid to the address listed on his petition for appeal. The Order was returned to OEA on or about November 29, 2012, with the notation: "Attempted, Not Known, Unable to Forward". There is nothing in the file to indicate that Employee notified this Office that his address had changed. Employee did not attend the prehearing conference. The record closed on December 14, 2012.

JURISDICTION

This Office has jurisdiction pursuant to D.C. Office Code Section 1-606.03 (2001).

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 621.3 states:

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 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.

Employee failed to attend a scheduled proceeding. His failure to attend must be attributed, at least in part, to his failure to comply with OEA Rule 621.3 (c) which required him to keep this Office informed of his current address. This requirement is essential because unless an employee can be contacted, there is no way for an appeal to proceed or for an employee to prosecute an appeal. Employee's failure to inform this Office of his current address resulted in the correspondence notifying him of the prehearing conference being returned to this Office as undeliverable. This constitutes a failure on Employee's part to take "reasonable steps to prosecute" this appeal. The return of the November 27, 2012 Order, which was mailed to Employee by first class mail, postage prepaid, to the address listed by Employee as his current address, is evidence of Employee's failure to prosecute his appeal. It resulted in his failure to appear at a scheduled proceeding, because he was unable to receive notice of the proceeding. For these reasons, the Administrative Judge, in an exercise of "sound discretion" concludes that this matter should be dismissed.

ORDER

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

FOR THE OFFICE:

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LOIS HOCHHAUSER, Esq.  
Administrative Judge