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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0062-12
ARNOLD TYREE,	)	
Employee	)	
	)	Date of Issuance: July 3, 2014
v.	)	
	)	
D.C. DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	
_____	)	
Tyree Arnold, Employee, <i>Pro se</i> <sup>1</sup>	)	Arien P. Cannon, Esq.
Michael F. O’Connell, Esq., Agency Representative	)	Administrative Judge

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Arnold Tyree (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on February 15, 2012, challenging the Department of Transportation’s (“Agency”) decision to remove him from his position as an Asphalt Worker. Agency filed its Answer on March 22, 2012. I was assigned this matter on August 26, 2013.

A Status Conference was convened on March 28, 2014, where both parties were present. A Post Status Conference Order was issued on March 31, 2014, which required the parties to submit legal briefs addressing the issues in this matter. Agency’s brief was due on or before April 25, 2014. Employee’s brief was due on or before May 23, 2014. Agency timely filed its brief. Employee filed for an extension to file his brief, which was granted. As such, Employee’s brief became due on or before June 12, 2014. Employee failed to file his brief in response to the Post Status Conference Order by June 12, 2014. Accordingly, a Show Cause Order was issued on June 23, 2014. Employee had until June 30, 2014, to respond to the Show Cause Order. To

<sup>1</sup> At the Status Conference, Employee was represented by his union representative, Cliff Lowery. On May 29, 2014, Employee submitted a request for a continuance to file his brief and also indicated that Mr. Lowery no longer represented him.

date, Employee has failed to respond to the Post Status Conference Order and the Show Cause Order. 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 this matter should be dismissed for failure to prosecute.

### ANALYSIS AND CONCLUSION

A Status Conference was convened on March 28, 2014, where both parties were present. A Post Status Conference Order was issued on March 31, 2014, which required the parties to submit legal briefs addressing the issues in this matter. Agency's brief was due on or before April 25, 2014. Employee's brief was due on or before May 23, 2014. Agency timely filed its brief. Employee filed for an extension to file his brief, which was granted. As such, Employee's brief became due on or before June 12, 2014. To date, Employee has failed to file his brief in response to the Post Status Conference Order. A Show Cause Order was issued on June 23, 2014. Employee had until June 30, 2014, to respond to the Show Cause Order. Employee has not responded to the Post Status Conference Order or the Show Cause Order. The Show Cause Order warned that failure to respond may result in the imposition of sanctions pursuant to OEA Rule 621, including dismissal of Employee's appeal.<sup>2</sup>

In accordance with OEA Rule 621.3, this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute his/her appeal. 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.<sup>3</sup> Failure of a party to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission and failure to appear at a scheduled proceeding. Here, Employee has failed to submit his brief addressing the issues in the matter, despite being afforded an extension of time. Employee has also failed to respond to the Show Cause Order issued on June 23, 2014. Employee was warned that failure to respond may result in the imposition of sanctions, including dismissal of his appeal. Accordingly, I find that Employee has failed to exercise due diligence and take reasonable steps in prosecuting his appeal before this Office.

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<sup>2</sup> 59 DCR 2129 (March 16, 2012).

<sup>3</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

**ORDER**

Based on the aforementioned, it is hereby **ORDERED** that Employee's Petition for Appeal in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge