

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Alan Noznesky)	OEA Matter No. 1601-0011-13
Employee)	
)	Date of Issuance: June 2, 2014
v.)	
)	Joseph E. Lim, Esq.
D.C. Fire & Emergency Medical Services)	
Department)	Senior Administrative Judge
Agency)	
_____)	
Sonia Weil, Esq., Agency Representative)	
Alan Noznesky, Employee <i>pro se</i>)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Alan Noznesky, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on October 12, 2012, appealing the decision of the District of Columbia Fire & Emergency Medical Services Department, Agency herein, to suspend him from his position as counselor for 360 duty hours, effective November 24, 2012. The matter was assigned to me on or about January 21, 2014.

A prehearing conference was scheduled for April 24, 2014. Although the Agency Representative appeared, Employee failed to do so and did not contact OEA to explain his absence. On the same day, I issued an Order asking Employee to show cause for his absence as well as his failure to submit a prehearing statement as earlier ordered. Employee was notified that his submission was due by 4:00 p.m. on May 5, 2014, and that the record would close on that date unless the parties were notified to the contrary. He was further advised that his failure to respond would result in the dismissal of this matter. The Order was sent to the address listed on Employee's petition by first class mail, postage prepaid. It was not returned and is presumed delivered. Employee did not respond to the Order and did not contact the undersigned. The record is closed.

JURISDICTION

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

ISSUE

Should the petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to two Orders that I issued. Both had specific time frames and both contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Orders were sent to Employee at the address he listed as his home address in his petition and in his subsequent submissions. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner. *See, e.g., Prater v. MPD*, OEA Matter No. 1601-0135-03, *Opinion and Order on Petition for Review* (November 28, 2006), and *Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

This petition is being dismissed based on Employee's failure to prosecute his appeal and to comply with properly issued Orders from the undersigned.

ORDER

It is hereby ORDERED that this matter be DISMISSED for failure to prosecute.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge