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

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 2401-0017-14
MARC BELL,	)	
Employee	)	
	)	Date of Issuance: September 22, 2014
v.	)	
	)	
DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	
Agency	)	Monica Dohnji, Esq.
_____	)	Administrative Judge
Marc Bell, Employee <i>Pro Se</i>		
Dionne Hayes, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On November 8, 2013, Marc Bell (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Youth Rehabilitation Services’ (“Agency”) action of abolishing his position through a Reduction-in-Force (“RIF”). The effective date of the RIF was October 11, 2013. Employee’s position of record at the time his position was abolished was a Placement Expeditor in Agency’s Detained Service Division. On December 30, 2013, Agency submitted its Answer to the Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on June 16, 2014. On June 16, 2014, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Agency complied, but Employee did not. Subsequently, on September 10, 2014, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to provide a response to my June 16, 2014, Order. Employee had until September 17, 2014, to respond. As of the date of this decision, Employee has not responded to this Order. The record is now closed.

### JURISDICTION

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

### 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.

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,

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<sup>1</sup> *Id.* at 621.3.

<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).

Employee was warned in the June 16, 2014, and September 10, 2014, 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, 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:

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MONICA DOHNJI, Esq.  
Administrative Judge