

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
BRYANT PRATER	)	OEA Matter No. 1601-0135-03
Employee	)	
	)	Date of Issuance: November 28, 2006
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
METROPOLITAN POLICE	)	
DEPARTMENT	)	
Agency	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Bryant Prater (“Employee”) was a lieutenant with the D.C. Metropolitan Police Department (“Agency”). On May 29, 2003, Employee received a notice of proposed adverse action. Agency charged him with neglect of duty for his failure to submit a completed investigation complaint within the requisite time allotted. As a result of the violation, Employee was suspended for 10 days without pay.<sup>1</sup>

On August 18, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He challenged Agency’s decision and argued that he was

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<sup>1</sup> *Petition for Appeal*, p. 6 (August 18, 2003).

not trained on how to complete and submit timely administrative correspondence. He also provided that the late submission of the investigation complaint was the direct result of a subordinate who also lacked the requisite training on submissions.<sup>2</sup>

The Administrative Judge (“AJ”) for this matter was assigned on July 26, 2004. On July 27, 2004, he issued an Order Convening a Pre-hearing Conference. He set the pre-hearing conference for September 9, 2004, and he requested that Employee and Agency along with their representatives attend.<sup>3</sup> The Order outlined the purpose of the hearing as well as the deadlines for submissions. More importantly, the order provided that if either party or representative failed to appear sanctions would be imposed in accordance with OEA Rule 622.<sup>4</sup> The Agency’s representative appeared at the scheduled pre-hearing conference with the requested documentation. Employee, however, did not appear and failed to submit his pre-hearing statement.

On September 9, 2004, the AJ issued an Initial Decision. It provided that Employee did not supply a Pre-hearing Statement and failed to attend the Pre-hearing Conference. Pursuant to OEA Rule 622.3, the AJ dismissed Employee’s Petition for Appeal for failure to prosecute.<sup>5</sup>

On October 14, 2004, Employee filed a Petition for Review with OEA. His petition alleged that his Petition for Appeal should not have been dismissed because he was not notified of the pre-hearing conference or statement. He also provided that he could prove that Agency failed to review pertinent facts in reaching its decision to

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> The order also specified that if the September 9<sup>th</sup> date did not work for either party, that party should contact the other and decide on three alternative dates before contacting the AJ.

<sup>4</sup> *Order Convening a Pre-hearing Conference* (July 27, 2004).

<sup>5</sup> *Initial Decision*, p. 2 (September 9, 2004).

suspend him. Finally, Employee contended that unless OEA could prove that he was notified, then his pre-hearing conference should be rescheduled to allow him the opportunity to respond to Agency's allegations.<sup>6</sup>

OEA has several safeguards in place to ensure that all documents are mailed to parties. The Office understands what is at stake for employees trying to get their jobs back, and it would never impede the service of justice. One way that OEA offers as proof that correspondence was mailed out is to attach a certificate of service to the document. The certificate of service attached to the Order Convening a Pre-hearing Conference listed Employee's address as 5119 South Dakota Avenue, NE, Washington, DC 20017.<sup>7</sup> Employee provided in his Petition for Appeal that this was the correct address.<sup>8</sup> The Order was mailed to Employee and Agency on the same day. Agency received it and filed a timely response; Employee claims that he did not receive it. According to USCS Fed Rules Civil Procedure Rule 5 and D.C. Superior Court Rules of Civil Procedure Rule 5(b)(2)(B), service by mail is complete upon mailing a copy of the document to a party's last known address. Furthermore, because the record does not include any returned mail it is highly unlikely that it was sent to the wrong address.

Additionally, OEA takes one other step to document the correspondence mailed from our office. The Office's Administrative Assistant keeps a log of all the mail sent out. The log contains a description of the document mailed, the date, and the party to

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<sup>6</sup> *Petition for Review* (October 14, 2004).

<sup>7</sup> *Order Convening a Pre-hearing Conference*, p. 4 (July 27, 2004).

<sup>8</sup> *Petition for Appeal*, p. 1 (August 18, 2003). It should also be noted that the Initial Decision was mailed to the same address.

whom the document was sent. According to the Office log, on July 27, 2004, the Order Convening Pre-hearing Conference was mailed to Employee. Because OEA can prove that the order was mailed to Employee's correct address, Employee's arguments must fail.

As the AJ provided in his Initial Decision, OEA Rule 622.3 provides the following:

“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 adhere to subsections (a) and (b) of this regulation, and subsection (c) does not apply in this matter. Therefore, the Board upholds the AJ's decision to dismiss this case for failure to prosecute. Accordingly, Employee's Petition for Review is **DENIED.**

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

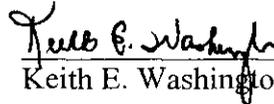
FOR THE BOARD:



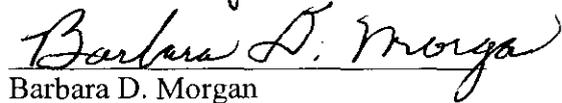
Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington



Barbara D. Morgan

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.