

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
James Banks)	OEA Matter No. J-0014-13
Employee)	
)	Date of Issuance: January 18, 2013
v.)	
)	Joseph E. Lim, Esq.
District of Columbia Public Schools)	Senior Administrative Judge
Agency)	

James Banks, Employee *pro se*
Sara White, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On October 23, 2012, Employee filed a petition for appeal with this Office from Agency's final decision terminating him effective August 10, 2012, due to a negative Impact score. The matter was assigned to the undersigned judge on November 5, 2012. I ordered Employee to respond to Agency's request for dismissal due to untimeliness by November 16, 2012. When Employee failed to do so, I issued a Show Cause Order for Employee to respond by December 14, 2012. Again, Employee failed to respond.

Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to submit any response. I issued a Show Cause Order to Employee asking him to explain his non-compliance. To date, Employee has failed to respond. The record is 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.

ANALYSIS AND CONCLUSION

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 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 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., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge