

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

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|---|---|------------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| Roger Hamilton |) | OEA Matter No. 1601-0322-10 |
| Employee |) | |
| |) | |
| v. |) | Date of Issuance: December 4, 2012 |
| |) | |
| Office of the State Superintendent of Education |) | Joseph E. Lim, Esq. |
| Agency |) | Senior Administrative Judge |
| _____ |) | |

Roger Hamilton, Employee *pro se*
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On June 14, 2010, Employee filed a petition for appeal with this Office from Agency's final decision terminating him due to a positive illegal drugs test. The matter was assigned to the undersigned judge on July 10, 2012. I scheduled a prehearing conference for August 13, 2012 and ordered the parties to submit a prehearing statement beforehand. While Agency complied, Employee failed to do so.

Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to attend the conference nor did he submit a prehearing statement. 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 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 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