

Notice: This decision is subject to formal revision before publication in the *District of Columbia Register*. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. 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:)	
CHRISTOPHER SULLIVAN)	OEA Matter No. 1601-0023-10
Employee)	
v.)	Date of Issuance: January 11, 2012
DISTRICT OF COLUMBIA FIRE AND)	Lois Hochhauser, Esq.
EMERGENCY SERVICES DEPARTMENT)	Administrative Judge
Agency)	

Andrea Comentale, Esq., Agency Representative
Christopher Sullivan, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Christopher Sullivan, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on October 6, 2009, appealing the decision of the District of Columbia Fire and Emergency Services Department, Agency herein, to remove him from his position as Firefighter, effective September 18, 2009. The matter was assigned to me on or about July 21, 2011.

A prehearing conference was scheduled for December 7, 2011. Ms. Comentale, Agency Representative, appeared in a timely manner. Mr. Sullivan did not appear and did not contact OEA to explain his absence. Ms. Comentale represented that it was her understanding that the matter had been resolved and that Employee was going to file a request for the petition to be withdrawn or dismissed. She stated, and I confirmed, that Agency had filed a motion to dismiss for these reasons on December 6, 2011. I excused Ms. Comentale after about 30 minutes.

On December 7, 2011, I issued an Order confirming that Employee had not appeared at the scheduled prehearing conference the day before and summarizing the information provided by Ms. Comentale. I directed Employee to request that the matter be withdrawn or dismissed if it had been settled, and if it had not been settled to provide good cause for his absence at the prehearing conference. Employee was notified that his submission was due by 4:00 p.m. on December 19, 2011 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 closed on December 19, 2011.

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 622.3, 46 D.C. Reg. 9313 (1999), 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., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

It may well be that the parties have successfully resolved this matter and for that reason, Employee does not feel obligated to respond to the two Orders issued by the undersigned. However, first, for the protection of the Employee, this Office would want to be certain that if this Office was advised the matter was settled, that it was done with Employee's knowing and informed consent. Second, while this matter is before this Office, parties remain obligated to adhere to its rules and Orders. This petition is not being dismissed based on the possible resolution of all outstanding issues, although the Administrative Judge does not question the representations by Agency counsel. It is being dismissed based on Employee's failure to prosecute his appeal and to comply with properly issued Orders from the undersigned.

ORDER

Based on these findings and conclusions, and consistent with this analysis, it is hereby ordered that the petition for appeal be dismissed for failure to prosecute.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge