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

In the Matter of:)	
EMPLOYEE ¹ ,)	OEA Matter No.: 1601-0011-24
Employee)	
v.)	Date of Issuance: February 22, 2024
DISTRICT OF COLUMBIA DEPARTMENT OF)	
FIRE AND EMERGENCY MEDICAL SERVICES,)	MICHELLE R. HARRIS, ESQ.
Agency)	Senior Administrative Judge
)	
)	
)	

Employee, *Pro Se*
Stephen Milak, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 21, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Fire and Emergency Medical Services’ (“Agency” or “DCFEMS”) decision to remove him from service. Employee was terminated following a positive drug test. Following a letter from OEA dated November 22, 2023, requesting an Answer in this matter, Agency filed its Answer on December 22, 2023. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on December 26, 2023.

On December 28, 2023, I issued an Order scheduling a Prehearing Conference in this matter for January 31, 2024.² Prehearing Statements were due on or before January 24, 2024. Agency filed its Prehearing Statement as required, however, Employee did not. On January 31, 2024, Agency appeared for the Prehearing Conference as required. Employee failed to appear as required.³ As a result of Employee’s failure to appear, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause for his failure to appear for the Prehearing Conference as required. That Order also required Employee to submit his Prehearing Statement. Employee’s statement for good cause and Prehearing Statement were due on or before February 14, 2024. As of the date of this decision, Employee has not submitted a response as required. The record is now closed.

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Virtual hearing via WebEx.

³ WebEx access information was sent to Employee’s email address provided in the record on January 24, 2024.

JURISDICTION

This 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 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 *id.* states:

For appeals filed under §604.1, 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 624.3 states in relevant part that “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.”*⁴
(Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and failing to submit required documents after being provided with a deadline to comply with such orders.⁵ In the instant matter, Employee was provided notice in the January 31, 2024, Order that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Employee’s appearance at the Prehearing Conference and a response to each of these orders was required to ensure an appropriate review and resolution of the matter. Accordingly, I

⁴ OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

⁵ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 624.3. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge