

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0042-22
	)	
v.	)	Date of Issuance: March 3, 2023
	)	
OFFICE OF THE CHIEF	)	
TECHNOLOGY OFFICER,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
_____	)	
Employee, <i>Pro-Se</i> <sup>1</sup>	)	
Folashade Bamikole, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

By letter dated January 11, 2022, Agency notified Employee of its Final Decision to remove her from service due to a sustained allegation of Absence Without Official Leave (“AWOL”). On March 2, 2022, Employee filed a Petition for Appeal contesting the Office of the Chief Technology Officer action of removing her from service. Employee’s last position of record was IT Specialist, Grade 11, Step 6. This matter was assigned to the Undersigned on June 2, 2022. Thereafter, a Prehearing/Status Conference was held on July 14, 2022. As this conference unfolded, Employee asserted that she was a member of the Union and had assumed that Union representation would appear on her behalf. Upon noting this, the conference was ended, and Employee was provided an inordinate amount of time to procure legal assistance. To date, no other person or entity has entered an appearance on behalf of Employee. On January 31, 2023, the parties were Ordered to appear for a Status Conference on February 8, 2023. The purpose of this conference was so that this matter could proceed towards adjudication. Employee did not appear for this conference. Of note, the Agency Representative and I were present and ready to proceed. On February 9, 2023, the Undersigned issued an Order for Statement of Good Cause to Employee.

<sup>1</sup> Employee alleged that she should be represented by Union Counsel during the first Prehearing/Status Conference; however, I find no record of an entry of appearance on Employee’s behalf. I note that Employee was provided more than ample time and opportunity to procure legal counsel. Accordingly, this Initial Decision is being sent solely to Employee and OCTO’s designated representative.

That Order required Employee to explain her failure to appear for the February 8, 2023, Status Conference. Employee's response was due no later than February 21, 2023. To date, the OEA has not received a response from Employee to the Order for Statement of Good Cause. After review, I find that no further proceedings are warranted in this matter. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether this matter should be dismissed.

### 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.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

#### Failure to Prosecute

OEA Rule 621.3, *id.*, states as follows:

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.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). In this matter, Employee did not appear for the Status Conference that was scheduled for February 8, 2023. Also, Employee did not file a response to the Undersigned's Order for Statement of Good Cause. Employee's active prosecution of this matter is integral to making an informed decision regarding the facts and circumstances surrounding Employee's Petition for Appeal. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's inaction presents a valid basis for dismissing the instant matter.<sup>2</sup> Accordingly, I conclude that I must dismiss this matter due to Employee's failure to prosecute her Petition for Appeal.

#### ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED**.

FOR THE OFFICE:

/s/ Eric T. Robinson  
ERIC T. ROBINSON, Esq.  
Senior Administrative Judge

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<sup>2</sup> Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").