

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. 1601-0055-23
	)	
v.	)	Date of Issuance: November 15, 2023
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Employee, <i>Pro-Se</i>	)	
Angel Cox, Esq., Agency Representative	)	

**INITIAL DECISION**

**PROCEDURAL HISTORY**

On August 4, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools’ (“Agency”) action of separating him from service. By notice dated July 1, 2023, Employee was notified that he was being terminated from his last position of record as a Physical Education teacher due to an alleged Ineffective IMPACT rating. The effective date of his termination was August 4, 2023. By letter dated August 4, 2023, Agency was instructed to file an Answer to Employee’s Petition for Appeal by September 3, 2023. Agency timely filed its Answer on August 31, 2023. This matter was assigned to the Undersigned Senior Administrative Judge on August 31, 2023. On September 5, 2023, the Undersigned issued an Order Convening a Prehearing Conference. The conference was set for October 5, 2023, and it required both parties to submit Prehearing Conference Statements by September 25, 2023. Employee did not appear for the conference but sent an email on October 6, 2023, stating in pertinent part as follows: ... I had to find other employment opportunities. My interest for still wanting to work for DCPS has diminished.” The Undersigned responded by detailing the appropriate procedure for voluntarily withdrawing a Petition for Appeal in a follow-up email. Employee did not submit anything in response. Consequently, on October 12, 2023, the Undersigned issued an Order for Statement of Good Cause to Employee noting that he has not actively participated in this matter by appearing for scheduled conferences and failing

to submit his Prehearing Conference Statement. Employee was required to explain his failure to appear, his failure to submit his statement, and he was required to submit his Prehearing Conference Statement. Employee's response was due by October 26, 2023. To date, the OEA has not received anything from Employee. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. 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 FACT, 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 appear for scheduled proceedings or fails to submit required documents.<sup>1</sup> As noted above in this matter, Employee did not appear for the September 25, 2023, Prehearing/Status Conference; he did not submit his Prehearing Conference Statement as required by the Undersigned in the September 5, 2023, Order; he did not submit a written notice voluntarily withdrawing his Petition for Appeal as he indicated he would during the aforementioned email exchange; and he 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 his 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 his 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>1</sup> See *David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016).

<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").