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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
EMPLOYEE,)	
Employee)	OEA Matter No. 1601-0052-24
))	
v.)	Date of Issuance: August 13, 2024
))	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, ESQ.
_____)	SENIOR ADMINISTRATIVE JUDGE
Employee, <i>Pro-Se</i>	
Lynette Collins, Esq., Agency Representative	

INITIAL DECISION

PROCEDURAL HISTORY

On May 14, 2024, 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 her from service. By notice dated March 28, 2024, Employee was notified that she was being terminated from her last position of record as a Teacher stationed at MacFarland Middle School (“MacFarland”) due to an Agency sustained charge of “other conduct during and outside of duty hours that would affect adversely the employee’s or the agency’s ability to perform effectively.”¹ More specifically, on January 22, 2024, Employee was involved in a verbal and physical altercation with one of the students at MacFarland. During this incident, it was alleged that Employee threatened physical violence towards said student, used a racial epithet (multiple times) when referring to the student, and physically grabbed the student before other staff intervened.

Agency sustained its removal action and notified Employee in writing that the effective date of her termination was April 22, 2024. By letter dated May 17, 2024, Agency was instructed to file an Answer to Employee’s Petition for Appeal by June 16, 2024. Agency timely filed its

¹ 5-E DCMR § 1401.2 (v).

Answer on June 13, 2024.² This matter was assigned to the Undersigned Senior Administrative Judge on June 13, 2024. On June 20, 2024, the Undersigned issued an Order Convening a Prehearing/Status Conference. This conference was set for July 23, 2024. The Prehearing/Status Conference was held on July 23, 2024, but Employee did not appear for the conference. Of note, the Agency, through its representative, timely filed its Prehearing Statement and its representative was present and ready to proceed for the conference. Consequently, on July 23, 2024, the Undersigned issued an Order for Statement of Good Cause to Employee noting that she has not actively participated in this matter by appearing for the scheduled conference. Employee was required to explain her failure to appear. Employee's response was due by August 7, 2024. 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:

² The Agency filed a second Answer on July 22, 2024.

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.³ As noted above in this matter, Employee did not appear for the July 23, 2024, Prehearing/Status Conference; and she 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 her 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.⁴ 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

³ See *David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016).

⁴ 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").