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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
)	OEA Matter No. 1601-0002-21
)	
v.)	Date of Issuance: November 1, 2021
)	
OFFICE OF THE STATE)	Monica Dohnji, Esq.
SUPERINTENDENT OF EDUCATION,)	SENIOR ADMINISTRATIVE JUDGE
Agency)	
)	

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

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 26, 2020, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her from her position as an Executive Assistant, effective September 25, 2020. Agency filed its Answer to Employee’s Petition for Appeal on February 8, 2021.

Following a failed attempt at mediation, I was assigned this matter on July 1, 2021. Subsequently, I issued an Order scheduling a Status/Prehearing Conference for August 3, 2021. Both parties were present for the scheduled conference. Thereafter, on August 5, 2021, I issued an Order for the parties to submit written briefs in support of the arguments raised during the August 3, 2021, conference. On August 24, 2021, Agency’s representative requested via email that the brief submission deadline be extended because he was involved in a car accident. Accordingly, the undersigned issued an Order granting Agency’s extension request. Subsequently, on September 7, 2021, Agency’s representative requested a second extension of time via email, noting that he needed additional time to recover from surgery. The undersigned

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

granted Agency's second extension request in an Order dated September 13, 2021.² This Order revised the briefing schedule as follows: Agency's brief was due on or before September 17, 2021; Employee's brief was due on or before October 8, 2021; and Agency had the option to file a reply brief on or before October 22, 2021. While Agency timely filed its brief, Employee did not comply with the September 13, 2021 Order.³ Therefore, on October 13, 2021, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the September 13, 2021, Order, on or before October 27, 2021. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

OEA 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 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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 621.3, 59 DCR 2129 (March 16, 2012) grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party

² The undersigned was out of the Office when Agency's representative emailed his second request for extension on September 7, 2021. Therefore, OEA's Executive Director granted Agency's extension request in an email dated September 8, 2021.

³ The September 13, 2021, Order required the parties to submit their briefs via mail or hand delivered to OEA on or before the prescribed deadline. The parties were further Ordered to submit a courtesy brief to the undersigned via email. Employee did not comply with any of these submission requirements.

fails to take reasonable steps to prosecute or defend an appeal.⁴ 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* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, Employee was warned in the August 5, 2021; August 24, 2021; September 13, 2021; and October 13, 2021, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders via mail, hand-delivery or electronic mail as required. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for her failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁴ OEA Rule 621.3.

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