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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE,)	
Employee)	OEA Matter No. 1601-0075-22
)	
v.)	Date of Issuance: December 8, 2022
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
_____)	
Employee, <i>Pro-Se</i>)	
Gehrie D. Bellamy, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 9, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “the Agency”) action of removing him from service. Employee’s last position of record was Secondary Teacher. In its Final Agency Decision dated July 1, 2022, Agency asserted that Employee had received two consecutive Minimally effective IMPACT ratings; therefore, he was subject to termination per their policy. On August 10, 2022, the OEA sent a notice to DCPS requiring it to submit its Answer to Employee’s Petition for Appeal. On August 9, 2022, Agency timely submitted its Answer.

This matter was assigned to the Undersigned on October 4, 2022. On October 11, 2022, the Undersigned issued an Order Convening a Prehearing Conference. In adherence to this Order, both parties were required to submit a Prehearing Conference Statement by November 9, 2022, AND both parties were required to appear (virtually using the WebEx video conferencing tool) for a Prehearing Conference which was scheduled for the morning of November 16, 2022. Employee did neither. On November 17, 2022, the Undersigned issued an Order for Statement of Good Cause to Employee. He was required to explain his absence and he was required to submit his Prehearing Statement. To date, the Undersigned has not received a Good Cause statement that

explains his absence or Employee's Prehearing Statement. After reviewing the documents of record, I have 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 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.

FINDINGS OF FACT, 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.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents and when they fail to appear for scheduled proceedings after receiving notice. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). Here, Employee did not appear for the Prehearing/Status Conference on November 16, 2022; he did not file his Prehearing Statement; and he did not file a response to the Undersigned's Order for Statement of Good Cause. He was required to do all of the above pursuant to the various orders that were issued in this matter. I find that Employee has not

exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, I conclude that this matter should be dismissed due to Employee's failure to prosecute his 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