

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
LINDA PAYNE, Employee)	OEA Matter No. J-0077-16
)	
v.)	Date of Issuance: September 26, 2016
)	
D.C. OFFICE OF UNIFIED COMMUNICATIONS, Agency)	MONICA DOHNJI, Esq. Senior Administrative Judge
)	
Linda Payne, Employee <i>Pro Se</i> Adrienne Day, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 12, 2016, Linda Payne (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Office of Unified Communications’ (“Agency”) decision to terminate her from her position as a Telecommunications Equipment Operator, effective June 8, 2016. This matter was assigned to the undersigned Administrative Judge (“AJ”) on August 18, 2016. On August 26, 2016, Agency filed a Motion to Dismiss for Lack of Jurisdiction.

Thereafter, on August 31, 2016, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency in its August 26, 2016, Motion to Dismiss. Employee’s jurisdiction brief was due on or before September 14, 2016. On September 12, 2016, Employee’s copy of the August 31, 2016, Order which was mailed to her address on record was returned to this Office marked “RETURN TO SENDER; ATTEMPTED – NOT KNOWN; UNABLE TO FORWARD.”¹ The record is now closed.

¹ Employee’s copy of the August 15, 2016, letter mailed from OEA, notifying Agency of Employee’s Petition for Appeal pending with OEA was returned to this Office on August 25, 2016.

JURISDICTION

The Office 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 grants an 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 fails to take reasonable steps to prosecute or defend an appeal.² 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* (emphasis added).

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to inform this Office of a change of address which results in correspondence being returned. In the instant matter, both the August 15, and August 31, 2016, Orders from OEA were mailed to the address listed on Employee’s Petition for Appeal, however, they were

² *Id.* at 621.3.

returned to OEA. Employee's failure to inform this Office of a change in her address resulted in the correspondence being returned to OEA. I conclude that Employee's failure to prosecute her appeal is consistent with the language of OEA Rule 621.3(c). Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and 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 her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge