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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:)	
EMPLOYEE ¹ ,)	OEA Matter No.: 1601-0069-22
Employee)	
v.)	Date of Issuance: September 12, 2023
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	MICHELLE R. HARRIS, ESQ.
Agency)	Senior Administrative Judge
)	
)	
)	

Employee, *Pro Se*
Lynette A. Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 1, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to remove him from service as a Behavioral Technician at H.D. Woodson High School. Employee was terminated after receiving an “Ineffective” rating under the IMPACT evaluation during the 2021-2022 school year. The effective date of termination was July 30, 2022. Following a letter from OEA dated August 2, 2022, Agency filed its Answer to Employee’s Petition for Appeal on August 26, 2022. This matter was initially assigned to another Senior Administrative Judge (“AJ”) in September 2022.² However, on November 10, 2022, Employee filed a Motion requesting reassignment of his matter. As a result, this matter was reassigned to the undersigned Senior Administrative Judge on December 2, 2022. On December 8, 2022, I issued an Order Scheduling a Status/Prehearing Conference in this matter for January 25, 2023.³

Both parties appeared for the Status/Prehearing Conference on January 25, 2023. Following the Conference, I issued an Order the same day requiring the parties to complete discovery by or before February 21, 2023. Further, Supplemental Prehearing Statements were due by February 28, 2023, and a Status Conference was scheduled for March 7, 2023. On March 2, 2023, Agency filed a Motion to Continue citing to a schedule conflict for March 7, 2023. On March 7, 2023, I issued an order rescheduling the matter to March 15, 2023. Both parties appeared for the conference on March 15, 2023, as required. During that Conference, Employee noted that he was unable to access the discovery

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

² During the time in which this matter was before the previously assigned AJ, parties submitted Prehearing Statements and a Prehearing Conference was held.

³ Virtual Prehearing Conference held via WebEx.

Agency sent via email on March 2, 2023. Accordingly, the undersigned issued an Order that same day requiring Agency to send hard copies of the discovery to Employee by March 24, 2023. Employee was required to notify the undersigned once he had received the documents so that an Order for briefs could be issued. Following Employee's notice regarding the receipt of the hard copies of discovery; on April 6, 2023, I issued an Order requiring the parties submit briefs in this matter. Agency's brief was due on or before April 27, 2023, Employee's brief was due on or before May 17, 2023, and Agency had the option to submit a sur-reply brief by May 30, 2023. Agency filed its brief by the prescribed deadline.⁴

On April 27, 2023, Employee sent an email to the undersigned citing that he had been ill and needed more time to submit his brief and would not meet the May deadline. On May 9, 2023, I issued an Order extending Employee's time to file his brief to June 2, 2023. Agency had the option to submit a sur-reply by June 16, 2023. On June 5, 2023, Employee again emailed the undersigned, this time citing that he would be hospitalized through June 13, 2023.⁵ The undersigned responded to Employee's email and asked that he please provide an update when he was able to do so. On June 22, 2023, the undersigned emailed Employee to ascertain his status and to inquire as to when he would be able to respond/submit his brief. Employee did not respond. As a result, on July 6, 2023, I issued an Order requesting Employee submit a brief or provide a response regarding his status by July 18, 2023. Employee did not respond by July 18, 2023, as required. Consequently, on July 25, 2023, I issued an Order for Statement of Good Cause to Employee for his failure to respond by the July 18, 2023, deadline. Employee was required to submit a response by August 8, 2023. Following an emailed courtesy copy of the July 25, 2023 Order, Employee replied via email on July 26, 2023, noting therein that he was "still under doctor's care." The undersigned responded and asked Employee to please provide further details by August 8, 2023, pursuant to the Order that was issued. Employee did not provide any further information by the August 8th deadline.

As a result, on August 16, 2023, I issued a Second Order for Statement of Good Cause requiring Employee to respond by August 25, 2023. On August 18, 2023, Employee responded via email (following an emailed courtesy copy of the August 16th Order) and attached two documents. The first was a doctor's note, electronically signed by the doctor on June 9, 2023, which indicated that Employee was under this doctor's care from May 18, 2023, through June 8, 2023.⁶ The second document appeared to be an appointment notice for physical therapy that was dated August 18, 2023. The undersigned replied to Employee's email and again requested that more information be provided about when he might be able to submit his brief. Further, the undersigned noted in that email that the doctor's note indicated that he was under the doctor's care from May 18, 2023, through June 8, 2023; but subsequent orders requesting a response had been sent in July and August which was after that timeline. The undersigned again requested that Employee provide a response with further details by the August 25th deadline as required. As of the date of this decision, Employee has not submitted any further responses. The record is now closed.

⁴ Agency labeled its brief as a "Response for Petition for Review." However, the undersigned has noted that this is a scrivener's error, as this matter was not in a posture for a petition for review.

⁵With his email, Employee attached medical documentation that included diagnoses. In the interest of Employee's privacy, the undersigned requested and noted the need for the removal of personal identifying information. The undersigned cited that personal information would be redacted from the record.

JURISDICTION

This 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 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.

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 to⁷:

- (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.” (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.⁸ In the instant matter, Employee was provided notice in the May 9th, July 6th, July 25th and August 16th Orders that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Further, courtesy copies of the Orders were sent to the email addresses of record. Employee was advised via email by

⁷ OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

⁸ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

the undersigned that his responses were not sufficient for the purposes of this matter. Given the issues raised by Employee during the Prehearing and Status Conferences held in the course of this matter, I find that a response to each of these Orders was required to ensure an appropriate review and resolution of the matter, and also to determine whether an Evidentiary Hearing would be warranted. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and has resulted in a failure to prosecute the instant appeal. I further find that the failure to prosecute is a violation of OEA Rule 624.3, and is subject to sanctions, including dismissal of this matter. For these reasons, I have determined that this matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge