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

In the Matter of:)) EMPLOYEE, ¹) Employee)) v.)) DISTRICT OF COLUMBIA) PUBLIC SCHOOLS,) Agency)) OEA Matter No.: 1601-0039-21)) Date of Issuance: March 22, 2022))) MICHELLE R. HARRIS, ESQ.) Administrative Judge))))
Employee, <i>Pro Se</i> Gehrie D. Bellamy, Esq., Agency Representative Lynette A. Collins, Esq., Agency Representative	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 6, 2021, 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 her from service as an Educational Aide/Paraprofessional at Takoma Education Center. Employee was terminated after receiving an “Minimally Effective” rating under the IMPACT evaluation during the 2020-2021 school year, which followed a “Developing” rating for the 2019-2020 school year. The effective date of termination was July 31, 2021. Following a letter from OEA dated September 28, 2021, Agency filed its Answer to Employee’s Petition for Appeal on October 28, 2021. This matter was assigned to the undersigned Administrative Judge on November 1, 2021. On November 9, 2021, I issued an Order Convening a Prehearing Conference in this matter for November December 7, 2021.²

Both parties appeared for the Prehearing Conference on December 7, 2021. Following the Prehearing Conference, I issued an Order the same day requiring the parties to submit briefs addressing whether Agency’s termination of Employee through IMPACT was done in accordance with all applicable laws, rules and regulations. Accordingly, Agency’s brief was due on or before January 7, 2022, and Employee’s brief was due on or before February 7, 2022. Agency had the option to submit a sur-reply brief on or before February 22, 2022. Agency submitted its brief as required. On February 15, 2022, I issued an Order for Statement of Good Cause to Employee for her failure to submit her brief as required. Employee’s statement for good cause and brief were due on or before February 28,

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.
² Virtual Prehearing Conference held via WebEx.

2022.³ Employee did not submit the statement and brief as required. As a result, on March 8, 2022, a Second Order for Statement of Good Cause was issued to Employee. The statement and brief were due on or before March 15, 2022.⁴ As of the date of this decision, Employee has not submitted a brief as required by the December 7, 2021, February 15, 2022, and March 8, 2022 Orders. The record is now closed.

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 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 states in relevant part that the “Administrative Judge, 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. 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;

³ A courtesy copy of the Order was sent via email on February 15, 2022. Employee responded to that email and indicated that she had placed her response in the mail and it would arrive before February 22, 2022.

⁴ The undersigned sent a courtesy copy of the March 8, 2022 Order to Employee via email. Employee again replied to the undersigned’s email and asserted that she had mailed the documents; and that she didn’t know why it had not arrived at OEA because other items she has sent via that post office arrived. In several email exchanges, the undersigned repeatedly noted to Employee that it had not been received at OEA and that the receipt of these documents were required. The undersigned also advised Employee that her original brief was due on or before February 7, 2022. Further, Agency’s Representative, Ms. Collins, noted that Agency had not received a copy of Employee’s brief/response. The undersigned advised Employee to provide an electronic courtesy copy of the brief via email. Employee did not send an email with a copy of the brief /response.

- (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.”⁵ (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.⁶ In the instant matter, Employee was provided notice in the February 15, 2022 and March 8, 2022 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 her Petition for Appeal. Further, courtesy copies of all Orders were sent to the email addresses of record.⁷ A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. Accordingly, 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 failure to prosecute her appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee’s 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.
Administrative Judge

⁵ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁶ *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).

⁷ Employee responded to the undersigned’s courtesy email sent on February 15, 2022 with a copy of the Order for Statement of Good Cause, indicating that she was sending her response via mail and that it would arrive by February 22, 2022. An email was also sent on March 8, 2022 with a courtesy copy of the March 8th Order. As previously noted, Employee responded to that email citing that she could not understand why her submission was not received at OEA. However, as of the date of this decision, no submissions have been received via postal service, in-person delivery or email, nor has Employee requested an extension of time or otherwise.