Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0075-24
	)	
v.	)	Date of Issuance: November 1, 2024
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE

Employee, *Pro-Se*
Angel Cox, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 6, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Public Schools' ("Agency") adverse action of removing her from service. Employee's last position of record was Special Education Teacher stationed at Roosevelt Senior High School. According to a letter dated July 1, 2024, the effective date of Employee's removal was August 2, 2024. This letter informed Employee that she was being removed from service due to an Ineffective IMPACT rating. By letter dated August 8, 2024, the Executive Director of the OEA required Agency to submit an Answer to Employee's Petition for Appeal no later than September 7, 2024. Agency timely submitted its Answer and its Motion to Dismiss on September 9, 2024.[1] This matter was assigned to the Undersigned on or around September 12, 2024. Agency, in its Answer, asserted that Employee's tenure began on September 23, 2023. Given that, Agency further asserted that Employee was serving in a probationary status and is therefore precluded from contesting her removal with the OEA. In her Petition for Appeal, Employee admitted to having worked for the Agency for less than one year prior to her removal from service.[2] Upon initial review of the documents of record, the Undersigned noted that there was a valid question as to whether the OEA may exercise

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[1] I take official notice that September 7, 2024, was a Saturday. Therefore, Agency's submission is deemed timely since it was received on the next following business day.
[2] *See*, Petition for Appeal § B *et al*.

jurisdiction over this matter due to Employee's removal being effectuated during her probationary period. Accordingly, on September 12, 2024, an Order was issued whereby Employee was required to provide factual and legal justification for the OEA to exercise jurisdiction over this matter. This Order required Employee to submit her response by September 30, 2024. To date, Employee has not filed a response with the OEA. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

As will be explained below, the OEA lacks authority to adjudicate this matter.

ISSUE

Whether this matter should be dismissed.

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

Probationary Employee

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") states in pertinent part that:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to

> subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career/education service rights conferred by the CMPA may be exercised by aggrieved employees. The District Personnel Manual ("DPM") § 227.4, provides in relevant part that "separation from government service during a probationary period is neither appealable nor grievable." Thus, according to the preceding sections of the DPM and the CMPA, Career Service employees who are serving in their probationary period are precluded from appealing a removal action to this Office until their probationary period is finished. As was noted previously, Employee has the burden of proof regarding the jurisdiction of this Office. In her Petition for Appeal, Employee admits that she had worked for Agency for less than one year prior to her termination. The OEA Board has previously held that an employee's admission is sufficient to meet Agency's burden of proof.[3] I find that Employee was removed from service while she was still within her one-year probationary period. Because Employee was in a probationary status when she was removed from service, I conclude that she is not allowed to appeal her removal to this Office.

<u>Failure to Prosecute</u>

OEA Rule 621.3, *id.*, states as follows:

> 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.[4] Here, Employee did not file her response to my Order dated September 12, 2024. Her response is integral to making an informed decision regarding the OEA's ability to exercise jurisdiction over this matter. 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 inaction presents another valid basis for dismissing the instant matter.

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[3] *See Employee v. Agency*, OEA Matter No 1601-0047-84, 34 D.C. Reg. 804, 806 (1987).
[4] *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016).

Conclusion

Taking into account the discussion above, I find that Employee has failed to meet her burden of proof regarding the OEA's ability to exercise jurisdiction over the instant matter.[5] Accordingly, I conclude that I must dismiss this matter for lack of jurisdiction. [6]

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE: /s/ Eric T. Robinson
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[5] Since I have found that he OEA lacks jurisdiction over this matter, I am unable to address the factual merits, if any, contained within Employee's Petition for Appeal.

[6] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").