

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, ¹)	OEA Matter No. 1601-0057-22
)	
v.)	Date of Issuance: November 16, 2022
)	
D.C. DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
)	

Employee, *Pro Se*
Bradford Seamon, Jr. Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 16, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to suspend him without pay for thirty (30) days, from his position of Youth Development Representative (“YDR”). OEA issued a Request for Agency Answer to Petition for Appeal on June 17, 2022, with Agency’s Answer due by July 16, 2022. I was assigned this matter on August 2, 2022. Following Agency’s failure to timely submit its Answer, on August 8, 2022, the undersigned issued a Statement of Good Cause, wherein, Agency was ordered to explain its failure to timely submit its Answer. Agency had until August 22, 2022, to respond to the Statement of Good Cause Order. Agency timely responded to this Order and submitted its Answer on August 15, 2022.

Thereafter, on August 23, 2022, the undersigned issued an Order scheduling a Status/Prehearing Conference for September 19, 2022. However, due to a family emergency, the undersigned had to continue the Status/Prehearing Conference to October 12, 2022. While Agency was present for the October 12, 2022, scheduled conference, Employee did not appear as required. Subsequently, on October 14, 2022, the undersigned issued a Statement of Good Cause

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

to Employee, wherein, Employee was ordered to explain his failure to attend the scheduled October 12, 2022, conference.² On October 27, 2022, the undersigned issued an Amended Statement of Good Cause Order to Employee, adjusting the submission deadline to November 10, 2022. As of the date of this decision, Employee has not responded to either Order. 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 appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (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:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.³

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, DCMR Ch. 600, et seq (December 27, 2021) grants an Administrative Judge (“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.⁴ 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* (emphasis added);
- (b) *Submit required documents after being provided with a deadline for such submission* (emphasis added); or

² The Certificate of Service for this Order had an incorrect address for Employee.

³ OEA Rule § 699.1.

⁴ OEA Rule 624.3.

- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, Employee was notified of the October 12, 2022, Status/Prehearing Conference in the Order dated September 21, 2022. However, Employee failed to appear as required by that Order. Additionally, Employee was provided notice in the October 27, 2022, Order that failure to comply with the Order could result in sanctions, including dismissal. Employee did not provide a written response to this Order. This was required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute his appeal is a violation of OEA Rule 624. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁵ *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).