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

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 2401-0061-24
Employee	)	
	)	Date of Issuance: January 22, 2025
v.	)	
	)	JOSEPH E. LIM, ESQ.
DC PUBLIC SCHOOLS,	)	SENIOR ADMINISTRATIVE JUDGE
Agency	)	
Employee <i>pro se</i>		
Angel Cox, Esq. Agency Representative		

**INITIAL DECISION**

PROCEDURAL HISTORY

On June 28, 2024, Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) from Agency's final decision terminating him effective June 28, 2024, due to a Reduction in Force. In response to OEA’s June 28, 2024, letter, Agency filed its July 29, 2024, Answer disputing Employee's claims and asserting that its action is proper. The matter was assigned to the undersigned judge on July 30, 2024. On September 3, 2024, I scheduled a Telephonic Prehearing Conference for September 16, 2024.

At the September 16, 2024, Prehearing Conference, Agency informed this Office that it had reversed its adverse action against Employee by giving him the same position in a different school and that the appeal should be dismissed as moot. Employee affirmed that he had been reinstated to his position at a different school. However, he felt that Agency should pay for the stress that he suffered due to Agency’s action. When informed that OEA has no jurisdiction or authority to levy damages due to pain and suffering, Employee indicated that while he does not contest Agency’s Motion to Dismiss, he still intends to file legal action at a different forum.

On October 4, 2024, I denied Agency’s Motion to Dismiss and ordered Agency to provide documentary evidence showing that Employee did not suffer a break in service in that Employee continued to be paid his salary and benefits from June 28, 2024, to the August 12, 2024, date of his reemployment. On October 17, 2024, Agency conceded that there was a break in service but reiterated that its Reduction in Force of Employee should be upheld.

On November 25, 2024, I thereby scheduled and held a prehearing conference on December 11, 2024. Although Agency appeared, Employee failed to do so. I issued a Show Cause Order for Employee to reply by December 26, 2024, on his reason or reasons for his non-appearance.

Despite prior warnings that failure to comply could result in sanctions, including dismissal, Employee failed to submit any response. To date, Employee has failed to respond. The record is 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.

### FINDINGS OF FACT, 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 to:<sup>1</sup>

- (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 consistently held that failure to prosecute an appeal includes a failure to appear and/or a failure to submit required documents after being provided with a deadline for such a submission.<sup>2</sup> In this matter, Employee failed to submit a Prehearing Statement or appear at the scheduled Prehearing Conference. Employee also failed to respond to a Show Cause Order issued in this 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 his appeal

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<sup>1</sup> 68 DCR 012473 (December 27, 2021).

<sup>2</sup> *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).

is a violation of OEA Rule 624. For these reasons, 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/ Joseph Lim*

JOSEPH E. LIM, ESQ.

Senior Administrative Judge