THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
	)	OEA Matter No. 1601-0036-21
	)	
v.	)	Date of Issuance: March 27, 2023
	)	
DISTRICT DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee, *Pro-Se*
Shawn A. Brown, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 19, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals contesting the District Department of Transportation ("DDOT" or the "Agency") adverse action of removing her from service. The effective date of her termination was June 11, 2021. Employee was removed from service due to three Agency sustained charges of Conduct Prejudicial to the District of Columbia Government. On September 28, 2021, a letter from the OEA's Executive Director was sent to DDOT requiring it to submit an Answer to Employee's Petition for Appeal. Agency submitted its response on December 17, 2021.[1] After a failed OEA supervised attempt at Mediation, this matter was assigned to the Undersigned on February 4, 2022. Thereafter, the parties appeared for multiple Status Conferences. Multiple continuances were granted to Employee while she attempted to obtain counsel and to DDOT as it wanted to conduct multiple avenues of discovery. Initially, an Evidentiary Hearing was set for December 7, 2022. However, Employee requested another continuance in order to accommodate a relevant witness. By Order dated January 3, 2023, the Evidentiary Hearing was rescheduled for March 13, 2023. This date was provided by the parties as a mutually agreeable date for the Evidentiary hearing. On March 3, 2023, Employee sent the following email message to the Undersigned and Agency counsel:

[1] The noticeable delay in processing the instant Petition for Appeal is directly attributable to the Covid-19 Pandemic and the associated emergency measures duly enacted by the District of Columbia Government.

> Good morning Judge Robinson,
>
> I will not be attending the hearing on March 13th, 2023 and requested that it be rescheduled so that I can get proper counsel to represent me in this case. I feel that representing myself and all the twists/turns of events in this case is best that I get the correct representation. (*sic*)
>
> Thank you,
>
> [Employee]

Thereafter, the Undersigned immediately reached out to the parties to schedule a Status Conference to discuss this change of direction. After some consideration, both parties agreed to convene virtually for a Status Conference on March 9, 2023, at 10am. This Status Conference was being conducted using the WebEx video conferencing tool. The Undersigned opted to utilize WebEx in order to facilitate ease of attendance for both parties. On March 9, 2023, the Agency Representative and I were present and ready to proceed for the Status Conference, regrettably, Employee did not attend. Later that day, the Undersigned issued an Order for Statement of Good Cause to Employee that tasked her with explaining her absence for the March 9, 2023, Status Conference. This order also admonished Employee that failure to respond or failure to establish Good Cause for her absence would result in sanctions, including dismissal of this matter.[2] To date, the OEA has not received Employee's response to the Order for Statement of Good Cause. After review, I find that no further proceedings are warranted. 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 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:

[2] Due to Employee's assertion in her March 3, 2023, email, this Order also served as official notice that the Evidentiary Hearing that was scheduled to occur on March 13, 2023, was being cancelled. The Order further noted that Employee was warned that the rescheduling of the Evidentiary Hearing was dependent on her ability to establish good cause for her absence.

> 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 FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Failure to Prosecute

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. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). In this matter, Employee did not appear for the Status Conference that was scheduled for March 9, 2023. Also, Employee did not file a response to the Undersigned's Order for Statement of Good Cause that would ostensibly explain her absence. Employee's active prosecution of this matter is integral to making an informed decision regarding the facts and circumstances surrounding Employee's Petition for Appeal. 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 a valid basis for dismissing the instant matter.[3] Accordingly, I conclude that I must dismiss this matter due to Employee's failure to prosecute her Petition for Appeal.

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[3] 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").

ORDER

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

FOR THE OFFICE:

/s/ *Eric T. Robinson*
ERIC T. ROBINSON, Esq.
Senior Administrative Judge