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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE,)	
Employee)	OEA Matter No. 1601-0017-23
)	
v.)	Date of Issuance: April 11, 2023
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	ERIC T. ROBINSON, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
_____)	
Employee, <i>Pro-Se</i>)	
Daniel Thaler, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee's position of record is Youth Development Representative, Grade 8, Step 10. By letter dated December 2, 2022, Agency notified Employee of its Final Decision to suspend her from service for 14 (fourteen) days due to two Agency sustained allegations of Conduct Prejudicial to the District of Columbia Government and one Agency sustained allegation of Failure/Refusal to Follow Instructions. On December 22, 2022, Employee filed a Petition for Appeal contesting the Department of Youth Rehabilitation Services ("Agency") adverse action of suspending her from service. Thereafter, by letter dated December 23, 2022, the Agency was instructed by the OEA Executive Director to provide an Answer to Employee's Petition for Appeal by January 22, 2023. Agency timely complied with this directive on January 19, 2023. On January 24, 2023, the Undersigned issued an Order Convening a Prehearing/Status Conference. The conference was scheduled for February 23, 2023. For ease of attendance, the conference was held virtually using the WebEx video conferencing tool. Pursuant to this Order, Employee was also required to submit a written Prehearing Statement by February 16, 2023. Employee did not submit her Prehearing Statement and she did not appear for the Prehearing/Status Conference. Agency timely submitted its Prehearing Statement, and its Representative was present and ready to proceed for the conference. On February 23, 2023, the Undersigned issued an Order for Statement of Good Cause

to the Employee. That Order required the Employee to explain her failure to appear for the Prehearing/Status Conference and it required her to submit her missing Prehearing Statement. Due to a clerical error with Employee's address, this Order was reissued on March 27, 2023. Employee's response was due by April 7, 2023. To date, the OEA has not received a response from the Employee to the Order for Statement of Good Cause. After review, I find that no further proceedings are warranted in this matter. 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:

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 appear for scheduled proceedings or fails to submit required documents. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). As noted above in this matter, Employee did not appear for the Prehearing/Status Conference; she did not submit her Prehearing statement; and, she did not file a response to the Undersigned's Order for Statement of Good Cause. 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.¹ Accordingly, I conclude that I must dismiss this matter due to Employee's failure to prosecute her Petition for Appeal.

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

¹ 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").