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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0035-23
)	
v.)	Date of Issuance: October 4, 2023
)	
DEPARTMENT OF CORRECTIONS,)	Joseph E. Lim, Esq.
<u>Agency</u>)	Senior Administrative Judge
Employee, <i>Pro se</i>		
Timothy McGarry, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on March 20, 2023, challenging the Department of Correction’s (“Agency”) decision to terminate her from her position as Correctional Officer effective February 17, 2023. In response to OEA’s March 21, 2023, request for Agency’s Answer, Agency filed its Answer and a Motion to Dismiss on April 20, 2023. I was assigned this matter on April 21, 2023.

After the parties’ consent motion, I rescheduled the May 18, 2023, conference and held a Prehearing Conference on June 7, 2023. I ordered the parties to submit briefs on the issues identified at the conference by close of business July 21, 2023. While Agency complied, Employee failed to do so. I issued a Show Cause Order with a deadline of September 14, 2023. To date, Employee has not responded. The record is closed.

JURISDICTION

This Office has jurisdiction over Employee’s appeal pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee’s appeal should be dismissed for failure to prosecute.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

On June 7, 2023, I ordered the parties to submit briefs on the issues identified at the Prehearing Conference. While Agency complied, Employee failed to do so. Employee was then ordered on September 8, 2023, to show cause for her non-compliance regarding the failure to submit a brief. To date, Employee has not responded.

As Agency had noted in its brief, Employee has never denied the underlying conduct that resulted in discipline. In accordance with OEA Rule 624.3, 6-B DCMR Ch. 600, et seq. (2021), this Office has long maintained that a Petition for Appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee has exhibited a consistent pattern of failing to comply with Orders issued by the undersigned. These Orders had specific deadlines and contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Orders were sent to Employee at the address she listed as her home address in her Petition for Appeal. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner.¹ Thus, this Petition for Appeal is being dismissed based on Employee's failure to prosecute his appeal and to comply with properly issued Orders from the undersigned.

ORDER

It is hereby ORDERED that this matter is DISMISSED with prejudice.

FOR THE OFFICE:

s/Joseph Lim, Esq.

Joseph Lim, Esq.

Senior Administrative Judge

¹ See, e.g., *Prater v. MPD*, OEA Matter No. 1601-0135-03, *Opinion and Order on Petition for Review* (November 28, 2006), and *Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).