

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. 1601-0035-22
)	
v.)	Date of Issuance: March 21, 2022
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	

Employee, *Pro Se*
Lynette Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 11, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate her from her position as a Behavior Technician, effective January 12, 2022. OEA issued a Request for Agency Answer to Petition for Appeal on January 13, 2022. Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal on January 20, 2022. Agency noted therein that Employee was a probationary Employee at the time of her termination and therefore, she cannot appeal her termination to OEA. This matter was assigned to the undersigned on February 4, 2022.

Subsequently, I issued an Order on February 7, 2022, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee’s brief on jurisdiction was due on or before February 25, 2022. Employee did not comply with the February 7, 2022, Order. Thereafter, on March 3, 2022, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the February 7, 2022, Order. Employee had until March 18, 2022 to respond to the Statement of Good Cause Order. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

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

JURISDICTION

As explained below, the jurisdiction of this Office, has not been established.

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.²

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.³ 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* (emphasis added); 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 submit required documents after being provided with a deadline for such submissions.⁴ Here,

² OEA Rule § 699.1.

³ OEA Rule 624.3.

⁴ *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).

Employee was warned in the February 7, 2022; and March 3, 2022, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her 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 her failure to prosecute.

ORDER

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

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge