

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:	)	
	)	OEA Matter No.: 1601-0065-22
EMPLOYEE <sup>1</sup> ,	)	
Employee	)	
	)	Date of Issuance: March 17, 2023
v.	)	
	)	
DISTRICT OF COLUMBIA	)	MICHELLE R. HARRIS, ESQ.
PUBLIC LIBRARY,	)	Administrative Judge
Agency	)	
	)	
	)	

Employee, *Pro Se*  
Chanel Griffith Hall, Esq., Agency Representative  
J. Kevin McIntyre, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 12, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Library’s (“Agency” or “DCPL”) decision to remove her from service. The effective date of Employee’s termination was July 30, 2022. OEA issued a letter dated July 19, 2022, requesting Agency’s Answer in this matter be filed by August 18, 2022. On August 16, 2022, Agency filed a request for an extension of time to file its Answer through September 18, 2022. Thereafter, Agency filed its Answer on September 19, 2022. Following an unsuccessful attempt at mediation, this matter was assigned to the undersigned Senior Administrative Judge on December 2, 2022. On December 8, 2022, I issued an Order Convening a Prehearing Conference for January 19, 2023. Prehearing Statements were due on or before January 9, 2023. Agency submitted its Prehearing Statement as required. Employee did not submit a Prehearing Statement. On January 19, 2023, the Prehearing Conference convened, but was cancelled due to Employee indicating she had a family emergency and needed to leave the conference. Accordingly, I issued an Order that same day rescheduling the Prehearing Conference to January 24, 2023. Both parties appeared on January 24, 2023, as required. During the Prehearing Conference, Agency raised an issue regarding OEA’s jurisdiction in this matter. These arguments were asserted in its Prehearing Statement and were renewed in a Supplemental Motion to Dismiss filed on January 23, 2023. Agency averred that OEA lacked jurisdiction in this matter because Employee voluntarily resigned pursuant to a settlement agreement. Agency also asserted that Employee’s Petition was untimely filed.

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

Accordingly, I issued a Post Prehearing Conference Order on January 24, 2023, requiring the parties to submit briefs regarding the jurisdiction issue raised by Agency. Employee's brief was due on or before February 21, 2023. Agency's response was due on March 8, 2023. Employee did not submit her brief as required. On February 28, 2023, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit her brief, along with a statement of good cause for her failure to submit her brief by the prescribed deadline. Employee's statement for good cause and brief were due on or before March 9, 2023. As of the date of this decision, Employee has not submitted a brief as required by the January 24, 2023, and February 28, 2023 Orders. On March 9, 2023, Agency filed a Notice of Withdrawal of its Motion to Dismiss. The record is now closed.

### JURISDICTION

The jurisdiction of this Office has not been established in this matter.

### ISSUE

Whether this appeal should be dismissed for failure to prosecute.

### 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.

### 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:

- (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.”<sup>2</sup> (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.<sup>3</sup> In the instant matter, Employee was provided notice in the January 24, 2023, and February 28, 2023 Orders that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in her Petition for Appeal. Further, courtesy copies of all Orders were sent to the email addresses of record. A response to each of these Orders was required to ensure an appropriate review and resolution of the 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 her appeal is a violation of OEA Rule 624.3. For these reasons, I have determined that this matter should be dismissed for Employee’s failure to prosecute.

### ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Michelle R. Harris  
MICHELLE R. HARRIS, ESQ.  
Administrative Judge

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<sup>2</sup> OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

<sup>3</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).