

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. J-0004-24
v.)	Date of Issuance: January 8, 2024
D.C. DEPARTMENT OF BUILDINGS,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
Employee, <i>Pro Se</i>)	
Chris Haresign, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 23, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Buildings’ (“Agency” or “DOB”) decision to terminate him from his position as a Vacant Building Inspector, effective September 25, 2023. OEA issued a Request for Agency Answer to Petition for Appeal on October 24, 2023. Agency filed its Answer and Motion to Dismiss for Lack of Jurisdiction on November 22, 2023. Agency noted therein that Employee was a probationary Employee at the time of his termination and therefore, he cannot appeal this termination to OEA.

This matter was assigned to the undersigned on November 27, 2023. Thereafter, I issued an Order on November 28, 2023, requiring Employee to address the jurisdictional issue raised by Agency in its Answer and Motion to Dismiss for Lack of Jurisdiction.² Employee’s brief on jurisdiction was due by December 13, 2023. Employee did not comply with the November 28, 2023, Order. Thereafter, on December 14, 2023, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the November 28, 2023, Order.³ Employee had until December 29, 2023,

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

² A courtesy copy of this Order was emailed to the parties on the same day.

³ A courtesy copy of this Order was emailed to the parties on December 19, 2023.

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.

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.⁴

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.⁵ 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.

⁴ OEA Rule § 699.1.

⁵ OEA Rule 624.3.

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.⁶ Here, Employee was provided notice in both the November 28, 2023, and December 14, 2023, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These responses were required for a proper resolution of this matter. I find that Employee's failure to prosecute his 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 his failure to prosecute.

ORDER

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

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

⁶ *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).