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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|----------------------------|---|------------------------------------|
| In the Matter of: |) | |
| |) | OEA Matter No.: J-0004-23 |
| EMPLOYEE ¹ , |) | |
| Employee |) | |
| |) | Date of Issuance: January 19, 2023 |
| v. |) | |
| |) | |
| DISTRICT OF COLUMBIA |) | MICHELLE R. HARRIS, ESQ. |
| DEPARTMENT OF CORRECTIONS, |) | Senior Administrative Judge |
| Agency |) | |
| |) | |
| |) | |

Employee, *Pro Se*
Timothy McGarry, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 12, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Corrections (“Agency” or “DOC”) decision to remove her from service. Following a letter from OEA dated October 12, 2022, requesting an Answer in this matter, Agency filed its Motion to Dismiss on October 28, 2022. Agency cited therein that Employee was in Management Supervisory Service (MSS) at the time of separation, and that OEA lacked jurisdiction to adjudicate this matter. This matter was assigned to the undersigned Senior Administrative Judge on December 2, 2022.

On December 8, 2022, I issued an Order requiring the parties to submit briefs regarding the jurisdiction issue raised by Agency. Employee’s brief was due on or before December 28, 2022. Agency’s response was due on January 10, 2023. Employee did not submit her brief as required. On January 3, 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 January 13, 2023. As of the date of this decision, Employee has not submitted a brief as required by the December 8, 2022, and January 3, 2023, Orders. The record is now closed.

JURISDICTION

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

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

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 the “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.”² (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.³ In the instant matter, Employee was provided notice in the December 8, 2022, and January 3, 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, a courtesy copy of the January 3, 2023, Order was 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

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

³ *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).

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.
Senior Administrative Judge