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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
Employee)	OEA Matter No. 1601-0025-21
)	
v.)	Date of Issuance: January 7, 2022
)	
D.C. DEPARTMENT OF CORRECTIONS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Employee, <i>Pro Se</i>)	
Bradford Seamon, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 28, 2021, 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 suspend her from her position as a Correctional Officer for thirty (30) days without pay, effective from May 3 – June 2, 2021. Agency filed its Answer to Employee’s Petition for Appeal on July 9, 2021.

Following a failed Mediation attempt, this matter was assigned to the undersigned on October 1, 2021. Subsequently, I issued an Order requiring the parties to attend a telephonic Status/Prehearing Conference on October 28, 2021. Both parties were present for the scheduled conference. Thereafter, on November 1, 2021, I issued an Order scheduling a telephonic Prehearing Conference for November 24, 2021. While Agency was present for the telephonic Prehearing Conference, Employee did not dial into the Prehearing Conference. On November 30, 2021, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to attend the November 24, 2021, Prehearing Conference, on or before December 14, 2021. As

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

of the date of this decision, Employee has not responded to the November 30, 2021, Order. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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 621.3, 59 DCR 2129 (March 16, 2012) 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.² 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 appear at a scheduled proceeding after receiving notice; and a failure to submit required

² OEA Rule 621.3.

documents after being provided with a deadline for such submissions.³ Here, Employee was warned in the November 1, 2021; and November 30, 2021, Orders that failure to comply could result in sanctions, including dismissal. Employee did not attend the November 24, 2021, Prehearing Conference or provide a written response to the Show Cause Order via mail or hand-delivery as required. 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 621. 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

³ *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).