

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-0016-24
)	
v.)	Date of Issuance: February 26, 2024
)	
OFFICE OF NEIGHBORHOOD SAFETY)	Monica Dohnji, Esq.
AND ENGAGEMENT,)	Senior Administrative Judge
Agency)	

Employee, *Pro Se*
Michele McGee, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 19, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Office of Neighborhood Safety and Engagement's ("Agency" or "ONSE") decision to terminate him from his position as an Outreach Specialist, effective November 17, 2023. OEA issued a Request for Agency Answer to Petition for Appeal on December 20, 2023. Agency filed its Answer to Employee's Petition for Appeal on January 19, 2024.

This matter was assigned to the undersigned on January 22, 2024. Thereafter, on January 24, 2024, I issued an Order scheduling a Status/Prehearing Conference in this matter for February 8, 2024. While Agency's representative was present for the scheduled conference, Employee did not appear. On February 8, 2024, I issued an Order for a Statement of Good Cause, wherein, Employee was ordered to explain his failure to attend the scheduled conference. Employee had until February 23, 2024, to respond to the Statement of Good Cause Order. Because OEA does not have jurisdiction over Term appointments, the Order also required

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

Employee to file a brief addressing the jurisdiction issue in this matter by February 23, 2024.² As of the date of this decision, Employee has not responded to this 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.³

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.⁴ 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*

² Employee noted in his Petition for Appeal that he had a TERM employment with Agency. Additionally, Agency’s Answer to Petition for Appeal, Tab 2, highlights that Employee’s appointment with Agency was a TERM appointment Not-To-Exceed (“NTE”) December 6, 2023. Employee was terminated effective November 13, 2023, and prior to the NTE date of December 6, 2023

³ OEA Rule § 699.1.

⁴ OEA Rule 624.3.

- (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 or failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, Employee was notified of the February 8, 2024, Status/Prehearing Conference in the Order dated January 24, 2024. However, Employee failed to appear as required by that Order. Additionally, Employee was provided notice in the February 8, 2024, Order that failure to comply with the Order could result in sanctions, including dismissal. Employee did not provide a written response to this Order. This was required for a proper resolution of this matter on its merits. 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

⁵ *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).