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

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup> ,	)	OEA Matter No. 1601-0050-23R25
	)	
v.	)	Date of Issuance: April 30, 2025
	)	
D.C. FIRE AND EMERGENCY MEDICAL	)	
SERVICES DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	
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Employee, <i>Pro Se</i>		
Jeremy Greenberg, Esq., Agency's Representative		

## INITIAL DECISION

## INTRODUCTION AND PROCEDURAL HISTORY

On July 13, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department’s (“Agency” or “FEMS”) decision to terminate him from his position as a Firefighter/EMT effective June 24, 2023. OEA issued a Request for Agency Answer to Petition for Appeal on July 13, 2023. Agency submitted its Answer to Employee’s Petition for Appeal on August 11, 2023. This matter was assigned to the undersigned on August 14, 2023.

On August 22, 2023, the undersigned issued an Order Convening a Status/Prehearing Conference in this matter for September 12, 2023. During the Status/Prehearing Conference, the undersigned was informed that an Adverse Action Panel Hearing was convened in this matter on December 1, 2022. As such, OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). Thereafter, on March 15, 2024, I issued an Initial Decision ("ID") in this matter reversing Agency's decision to terminate Employee. Agency appealed the ID to OEA's Board on April 18, 2024, and on January 16, 2025, the OEA Board issued an Opinion and Order ("O&O")

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

remanding this matter to the undersigned.<sup>2</sup> The OEA Board remanded this matter “to be adjudicated based on analysis of the 2012 regulations and Agency’s Order Book.” The OEA Board also noted that the undersigned “did not make findings related to how, or if, Employee’s conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee’s duties.”<sup>3</sup>

Subsequently, on February 19, 2025, I issued an Order requiring the parties to submit written briefs addressing whether Employee’s conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee’s duties. Agency’s brief was due by March 12, 2025; Employee’s brief was due by April 2, 2025; and Agency had the option to file a sur-reply by April 18, 2025. While Agency timely filed its brief, Employee did not comply with the February 19, 2025, Order.<sup>4</sup> Accordingly, on April 4, 2025, the undersigned issued an Order for Statement of Good Cause wherein, Employee was ordered to explain his failure to respond to the February 19, 2025, Order. Employee had until April 18, 2025, to respond to the Statement of Good Cause Order.<sup>5</sup> On April 11, 2025, Employee emailed a courtesy copy of his response to the February 19, 2025, Order noting that “I will be turning the physical copy in shortly.”<sup>6</sup> On April 15, 2025, Agency filed a Motion to Strike Employee’s “Rebuttal” or alternatively, Agency’s Reply Brief. As of the date of this decision, Employee has not mailed or hand-delivered his brief in compliance with OEA rules, or the February 19, 2025, and April 4, 2025, Orders. The record is now closed.

### JURISDICTION

The Office 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

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<sup>2</sup>*Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0050-23, Opinion and Order on Petition for Review (January 16, 2025),

<sup>3</sup> *Id.*

<sup>4</sup> The February 19, 2025, Order mailed to Employee’s address on file was returned to OEA on March 3, 2025. Accordingly, a courtesy copy of the February 19, 2025, Order and a Change of Address form was emailed to Employee by OEA’s administrative staff on March 4, 2025. Employee did not acknowledge receipt of the email, and he failed to provide this Office with an updated address as requested in the email. Employee was also reminded in that email that “OEA’s official communication methods are by mail or hand delivery to the office. For ease of reference, see the link to the OEA rules 6B DCMR Chapter 6.pdf. Hence, the email above is a courtesy copy in light of the returned mail by USPS.”

<sup>5</sup> The April 4, 2025, Order was returned to OEA by the USPS on April 28, 2025, as “Return to Sender. Not Deliverable as addressed. Unable to Forward.”

<sup>6</sup> The courtesy April 11, 2025, email filing by Employee is not accepted as filed and not included as part of the record.

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.<sup>7</sup>

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.<sup>8</sup> 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* (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 for such submissions.<sup>9</sup> Here, Employee was warned in both the February 19, 2025, and April 4, 2025, Orders that failure to comply could result in sanctions, including dismissal. In addition, Employee was notified in both Orders, and in the March 4, 2025, email that OEA's official communication methods for filing required submissions are by mail or in-person delivery to the office. Employee was provided with a link to OEA's rules on document submission. Employee asserted in his April 11, 2025, email to the undersigned that “I will be turning the physical copy in shortly.” To date, Employee has not provided a written response to these Orders as required. These responses were required for a proper resolution of this matter on its merits.

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<sup>7</sup> OEA Rule § 699.1.

<sup>8</sup> OEA Rule 624.3.

<sup>9</sup> *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).

Additionally, this Office has also held that a matter may be dismissed for failure to prosecute when a party fails to inform this Office of a change of address which results in correspondence being returned. Employee was provided with a Change of Address form on March 4, 2025, but he failed to provide this Office with a change in his address. Employee's failure to inform this Office of a change in address resulted in the correspondence being returned to OEA. Wherefore, 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