THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0028-24
	)	
v.	)	Date of Issuance: June 7, 2024
	)	
DEPARTMENT OF YOUTH REHABILITATION SERVICES,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee, *Pro-Se*
Connor Finch, Esq., Agency Representative

INTIAL DECISION

PROCEDURAL HISTORY

On February 9, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Department of Youth Rehabilitation Services ("Agency") action of separating him from service. By notice dated January 12, 2024, Employee was notified that he was being terminated from his last position of record as a Cook due to Agency sustained charges of Conduct Prejudicial to the District Government; Failure/Refusal to Follow Instructions; Neglect of Duty; and Safety and Health Violations. The effective date of his termination was January 12, 2024. By letter dated February 12, 2024, Agency was instructed to file an Answer to Employee's Petition for Appeal by March 13, 2024. Agency timely filed its Answer on March 6, 2024. This matter was assigned to the Undersigned Senior Administrative Judge on March 6, 2024. On March 7, 2024, the Undersigned issued an Order Convening a Prehearing Conference. The conference was initially set for April 9, 2024, and it required both parties to submit Prehearing Conference Statements by April 1, 2024. At the parties' request, the schedule was amended by Order dated April 9, 2024. The Prehearing/Status Conference was rescheduled for May 14, 2024, and the Prehearing Statements were now due by May 1, 2024. The Prehearing/Status Conference was held on May 14, 2024 but Employee did not appear for the conference and he had not submitted his Prehearing Statement. Of note, the Agency, through its representative, timely filed its Prehearing Statement and its representative was present

and ready to proceed for the conference. Consequently, on May 14, 2024, the Undersigned issued an Order for Statement of Good Cause to Employee noting that he has not actively participated in this matter by appearing for the scheduled conference and that he did not submit his Prehearing Conference Statement. Employee was required to explain his failure to appear, his failure to submit his statement, and he was required to submit his Prehearing Conference Statement. Employee's response was due by May 28, 2024. To date, the OEA has not received anything from Employee. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. 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 matter should be dismissed.

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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Failure to Prosecute

OEA Rule 621.3, *id.*, states as follows:

> 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.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to appear for scheduled proceedings or fails to submit required documents.[1] As noted above in this matter, Employee did not appear for the May 14, 2024, Prehearing/Status Conference; he did not submit his Prehearing Conference Statement as required by the Undersigned in the April 19, 2024, Order; and he did not file a response to the Undersigned's Order for Statement of Good Cause. Employee's active prosecution of this matter is integral to making an informed decision regarding the facts and circumstances surrounding his Petition for Appeal. 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 inaction presents a valid basis for dismissing the instant matter.[2] Accordingly, I conclude that I must dismiss this matter due to Employee's failure to prosecute his Petition for Appeal.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED**.

FOR THE OFFICE: /s/ *Eric T. Robinson*
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[1] *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016).
[2] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").