

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-0043-23
)	
v.)	Date of Issuance: September 15, 2023
)	
METROPOLITAN POLICE DEPARTMENT,)	MONICA DOHNJI, ESQ.
Agency)	Senior Administrative Judge
)	
Employee, <i>Pro Se</i>		
Katherine Kelley, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 22, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency” or “MPD”) decision to terminate him from his position of Senior Police Officer, effective April 30, 2023. OEA issued a Request for Agency Answer to Petition for Appeal on May 22, 2023, with Agency’s Answer due by June 21, 2023. Agency filed its Answer to Employee’s Petition for Appeal on June 16, 2023. Agency also filed a Motion to Dismiss on June 20, 2-23, noting that Employee was a term employee, therefore, OEA lacked jurisdiction over this matter.

This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on June 20, 2023. On June 23, 2023, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency in its Motion to Dismiss. Employee’s response to the June 23, 2023, Order on jurisdiction was due on or before July 10, 2023.² Employee did not respond as required by the June 23, 2023, Order. Due to Employee’s failure to submit a response on July 13, 2023, the undersigned issued an Order for Statement of Good Cause, wherein, Employee was ordered to explain his failure to respond to the June 23, 2023, Order. Employee’s response was due on or before July 28, 2023. On July 28, 2023, Employee filed a request for extension of time

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

² Agency also filed a Supplement to Motion to Dismiss for Lack of Jurisdiction

to seek counsel. The undersigned granted Employee's request in an Order dated August 4, 2023.³ The deadline for Employee to submit his brief on jurisdiction was extended to August 25, 2023. Employee did not submit his brief on jurisdiction by the requested date. Subsequently, on August 29, 2023, the undersigned issued another Order for Statement of Good Cause to Employee wherein, Employee was again ordered to explain his failure to submit his brief on jurisdiction by September 14, 2023. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to D.C. Official Code § 1-606.03 (2001), 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.⁴

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.⁵ Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

³ Agency filed an Opposition to Employee's request for extension of time on August 7, 2023. This Motion is hereby DENIED.

⁴ OEA Rule § 699.1.

⁵ OEA Rule 624.3.

- (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 submit required documents after being provided with a deadline for such submissions.⁶ Here, Employee was warned in the June 23, 2013; July 13, 2023; August 4, 2023; and August 29, 2023, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These responses were required for a proper resolution of this matter on its merits. 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

⁶ *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).