THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0067-23
EMPLOYEE[1],	)	
Employee	)	
	)	Date of Issuance: March 26, 2025
v.	)	
	)	
D.C. DEPARTMENT OF CORRECTIONS,	)	MICHELLE R. HARRIS, ESQ.
Agency	)	Senior Administrative Judge
	)	

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

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 7, 2023, 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 remove him from service, effective August 8, 2023. Following a letter from OEA dated September 8, 2023, requesting an Answer to Employee's Petition for Appeal, Agency filed its Answer on October 6, 2023. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on October 10, 2023. On October 11, 2023, the undersigned issued an initial Order Convening a Prehearing Conference in this matter for November 14, 2023.

On November 2, 2023, Agency filed a Consent Motion to Extend the Time for Discovery. Agency cited therein that the parties had conferred and agreed that they needed an additional sixty (60) days for the completion of discovery. On November 6, 2023, Employee also filed a Consent Motion to Extend the time citing more time was needed for adequate preparation. On November 7, 2023, I issued an Order granting both of the Motions. Discovery was to be completed by January 3, 2024, Prehearing Statements were due by January 10, 2024, and a Prehearing Conference was scheduled for January 17, 2024. On January 3, 2024, Employee filed a Motion to Extend Discovery, citing that he needed more time to retain counsel in this matter to complete discovery and requested the Prehearing Conference be rescheduled.[2] Further, Employee cited that this request was for an extension of an additional 60 days. On January 4, 2024, I issued an Order scheduling a Status Conference for January 17, 2024, to discuss the status of the matter and Employee's request for additional time. On January 17, 2024, both parties appeared for the Status Conference as required. During this Status Conference,

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Employee was previously represented in this matter. However, on October 23, 2023, his counsel submitted a Notice to Withdraw her appearance.

the parties informed the undersigned that discovery in this matter had not commenced, as Employee conveyed to Agency that he wanted to wait until he retained representation. Employee asserted that he was actively searching for and speaking to attorneys to represent him. I issued a Post Status Conference Order on January 17, 2024, requiring Employee to provide a status update regarding his ability to retain counsel by January 31, 2024. That Order also noted that upon receipt of Employee's status update, next steps would be determined.

On January 31, 2024, Employee filed a Consent Motion to Extend Time for Discovery.[3] Employee asserted that he had been in "contact with an attorney who will be [his] representative." Further, Employee noted that the attorney's name was Jay Crump, and that the attorney cited that he would be contacting this Office within one (1) week. On January 31, 2024, I issued an Order requiring Employee or his representative to file a designation of representation by February 9, 2024, and scheduled a Status Conference for February 14, 2024.

On February 13, 2024, Employee filed a Motion for an Extension citing that he still had not retained representation. The undersigned advised that the Status Conference would still be convened for February 14, 2024, so that Employee's request could be discussed. During the Status Conference on February 14, 2024, Employee reiterated his request for an extension. The undersigned advised that multiple extensions had already been granted and that the case needed to move forward. I issued a Post Status Conference Order on February 14, 2024, which required Employee to provide an update by March 1, 2024, regarding his representation. Further, the parties were to commence discovery on or before March 1, 2024. Employee did not submit a response by March 1, 2024, as required. On March 7, 2024, I issued an Order for a Status Conference requiring Employee to file a response by March 15, 2024, and scheduled a Status Conference for March 19, 2024. On March 8, 2024, Employee filed a Motion to Continue. Both parties appeared for the Status Conference on March 19, 2024, as required. During the conference, the parties conveyed that they still had not started discovery in this matter. Further, Employee noted that he filed the March 8th Motion to provide notice that he was representing himself in this matter. Additionally, Agency asserted that 60 days were needed to complete discovery in this matter to allow both parties time to submit and respond to requests, and also noting its intention to depose Employee.

On March 19, 2024, I issued a Post Status Conference Order which required the parties to complete discovery by May 17, 2024. Prehearing Statements were due by May 24, 2024, and a Prehearing Conference was scheduled for May 30, 2024. That Order also noted that Employee's March 8, 2024 Motion was moot since he had indicated he was representing himself in this matter. On May 9, 2024, Agency filed an updated Designation of Agency Representative form with OEA[4]. On May 30, 2024, both parties appeared for the Status Conference as required. It was conveyed during this conference that depositions were scheduled, and that discovery should be completed by the end of June. I issued a Post Status Conference Order on May 30, 2024, requiring the depositions and discovery to be complete by July 1, 2024. Further, a Prehearing Conference was scheduled for July 17, 2024, and Prehearing Statements were due by July 10, 2024.

[3] Employee did not provide any assertions regarding whether Agency consented to this Motion. Additionally, there were no substantive assertions regarding the extension of time for discovery.
[4] Agency had a change in representation. Initially, Bradford Seamon, Esq., was the representative and now, Michele McGee, Esq., assumed representation.

On July 15, 2024, Agency filed a Motion to Extend Deadlines and Continue the Prehearing Conference.[5] Additionally, Agency cited therein a request for the undersigned to order Employee to appear for an in-person deposition. Agency noted that a virtual deposition was previously initiated, but Employee refused to answer questions and left the deposition without warning. On July 17, 2024, both parties appeared for the previously scheduled Prehearing Conference. During that time, Agency renewed its request for an extension of time and to have Employee sit for a deposition. Employee asserted that he was again seeking legal representation and that he was not comfortable with the questions that were asked during the deposition. Further, Employee inquired as to whether a deposition was mandatory for the "hearing" and the undersigned advised that the deposition is a part of discovery and is not the same as the Evidentiary Hearing. Further, I noted that pursuant to OEA rules, a determination to hold an Evidentiary Hearing is in the discretion of the administrative judge and the undersigned had not yet been able to make that determination given the current posture of this matter. The undersigned advised that Agency would need to file a Motion to Compel Discovery regarding its request for Employee's deposition. As a result, a Post Status Conference Order was issued on July 17, 2024, which required Agency to submit its Motion to Compel by July 26, 2024, and Employee's response was due on or before August 9, 2024.

Agency filed its Motion as required. On August 11, 2024, Employee contacted the undersigned via email citing that he had enlisted in the United States Army and was at "Military Basic Training" for approximately seven (7) to eight (8) months. Employee requested a postponement or deferment[6] of his matter until he completed this training. The undersigned responded via email and advised Employee that this information and request would need to be submitted pursuant to service rules (via mail) for the record. The undersigned also advised Employee that return mail was recently received and an updated address/contact information was needed. The undersigned advised that all correspondence would be sent to the address of record until an updated address is received. As a result of Employee's communication, an Order was issued on August 13, 2024, which required Employee to provide a response providing details regarding his military enlistment and any other information by August 30, 2024.

On August 15, 2024, Employee filed a response.[7] Upon review of Employee's response, the undersigned determined that supplemental information was required from Employee regarding his request to hold his matter in abeyance due to his military enlistment. As a result, on August 22, 2024, I issued an Order requiring Employee to submit information which provided specific information regarding his enlistment, and training schedule. Further, Employee was required to provide specific dates regarding any training and/or deployment timelines and was advised that this information must be legible.[8] That Order also required Employee to include relevant contact information should this Office need to contact to verify the information Employee provided. The August 22, 2024, Order required that Employee provide this supplemental information on or before September 13, 2024. That Order also required Agency to submit a response by September 27, 2024.

On September 3, 2024, Employee provided a response to the August 22, 2024, Order. Upon review, the undersigned advised Employee through email, that the response did not provide the

[5] Agency's Motion was granted in part by and through the August 13th Order.
[6] For the purposes of this matter, this request will be referred to as a request for an abeyance.
[7] Employee filed a hard copy of the email correspondence that was previously sent on August 11, 2024. The Employee also noted an address in Texas.
[8] The information provided by Employee was an "Enlistment/Reenlistment" Document. The font proved to be very small and hard to ascertain any dates or timelines.

requisite information as noted in the Order. Thus, the undersigned advised Employe that there was more time before the September 13, 2024, deadline for which to respond. On September 18, 2024, Employee emailed the undersigned citing that he had limited access to email and other forms of communication and asked whether it would be acceptable for his Army Recruiter to send an email in response. The undersigned made an exception and permitted Employee to have his recruiter email both the undersigned and Agency's representative with the information regarding his training timeline etc. Email correspondence received between September 23, 2024, through September 24, 2024, was provided by Employee's Army Staff Sergeant recruiter. The recruiter provided information regarding Employee's enlistment and potential timeline availability to actively pursue his matter before this Office. Agency received all the email correspondence, and the emails were added to the official record for this matter. The recruiter noted in the correspondence that Employee should have more communication access by December 1, 2024. Following the receipt of the aforementioned submissions, I issued an Order requiring Agency to file its response to Employee's request for an abeyance by October 15, 2024. Agency submitted its response as required.

On October 23, 2024, the undersigned issued an Order("October 23rd Order") regarding Employee's request for abeyance. That Order 23rd Order granted Employee's request for an abeyance of this matter due to his military service, specifically basic training. The abeyance was granted up to December 2, 2024, pursuant to the SCRA (50 U.S.C.A. §3932).[9] Further, the October 23rd Order also required Employee provide a response by December 9, 2024, regarding his status/availability to participate in his appeal before this Office. It was also noted that an email would be accepted given the circumstances regarding limited communication accessibility. Further, that Order scheduled a virtual Status Conference for December 17, 2024, at 11:00am via Webex.[10] Employee did not provide a response by December 9, 2024, as required and failed to appear on December 17, 2024, for the Status Conference. Agency appeared for the Status Conference on December 17, 2024, as required. As a result of Employee's failure to respond and appear, On December 17, 2024, I issued an Order for Statement of Good Cause which required Employee to respond by January 3, 2025.

On January 9, 2025, Employee sent an email citing that he was still in basic training and would not complete it until March 2025. Further, Employee advised that he was unable to mail correspondence via postal service because "his drill sergeant would not allow him off the base" at this time. Upon review of Employee's email, I determined that more information was required from Employee. Specifically, Employee needed to provide specific dates in March for which he would be able to appear for a virtual Status Conference via WebEx. As a result, on January 13, 2025, I issued an Order for Employee to submit a response to provide this supplemental information. Employee's response was due on or before January 30, 2025. That Order also noted again that email correspondence would be accepted. Employee did not respond as required. Accordingly, on February 7, 2025, the undersigned issued an Order for Statement to of Good Cause for Employee's failure to respond by

[9] In the October 23, 2024, Order Regarding Employee's Request for an Abeyance, I found that the Servicemembers Civil Relief Act (SCRA), 50 U.S.C.A. §3932, is applicable in this matter. That provision cites that that "upon request of a servicemember, a court shall stay a civil action for a period of no less than 90 days once the servicemember provides appropriate documentation." As a result, pursuant to this provision, Employee's request for an Abeyance was granted. Employee's report date was August 6, 2024, and his initial request was submitted on August 11, 2024, via email and received at OEA on August 15, 2024. The SCRA cites to a period of not less than 90 days to stay the proceeding. Ninety days (90) from August 11, 2024, would be November 9, 2024. However, the undersigned noted that Employee's recruiter cited that Employee would be available to respond or know his schedule in and around December 1, 2024, so the undersigned included up to December 2, 2024, for the abeyance.

[10] Email courtesy copies of the October 23rd Order were provided to both parties.

January 30, 2025. Employee's response was due by February 18, 2025. Employee did not respond as required. Because Employee has previously conveyed that he would be available to respond by March 2025, on March 5, 2025, I issued a Second Order for Statement of Good Cause. Employee had until March 14, 2025, to submit his response and statement regarding his failure to respond and appear as required. As of the date of this decision, Employee has not submitted a response as required. The record is now closed.

JURISDICTION

This 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

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.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 624.3 states in relevant part that "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."[11] (Emphasis Added)

[11] OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and failing to submit required documents after being provided with a deadline to comply with such orders.[12] In the instant matter, Employee was provided notice in the January 2025, February 2025 and March 2025 Orders (and in previous orders) that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal and via email to Employee's email address of record. Further, the undersigned made exceptions for Employee to submit his responses via email given his military training and his limited capacity to access mail or otherwise. Additionally, all Status Conferences were scheduled to be held virtually to also allow for Employee's appearance. Employee's responses to each of these orders and appearance at conferences were required to ensure an appropriate review and resolution of the matter. This is of particular note, as this matter still had not moved forward past the posture of discovery stage between the parties. Moreover, Employee's response was needed in order to determine whether the abeyance granted in the October 23, 2024, Order needed to be extended again and for what period of time an extension might be warranted. Accordingly, 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 failure to prosecute his appeal is a violation of OEA Rule 624.3. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge

[12] *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).