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

In the Matter of:)	
)	OEA Matter No. 1601-0061-16
KIONA BATTLE,)	
Employee)	
)	Date of Issuance: April 6, 2017
v.)	
)	Michelle R. Harris, Esq.
D.C. CHILD AND FAMILY)	Administrative Judge
SERVICES AGENCY,)	
Agency)	
Kiona Battle, Employee, <i>Pro Se</i>)	
Jhumur Razzaque, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 8, 2016, Kiona Battle (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Child and Family Services Agency’s (“Agency” or “CFSA”) decision to terminate her. On August 26, 2016, Agency filed its Answer to Employee’s Petition for Appeal. Following an unsuccessful attempt to resolve this matter through mediation, this matter was assigned to the undersigned administrative judge (“AJ”) on November 8, 2016. On November 16, 2016, I issued an Order Convening a Prehearing Conference in this matter. Due to scheduling conflicts, Orders were issued on December 7, 2016, and December 28, 2016, to reschedule the Prehearing Conference. In the Order dated December 28, 2016, the undersigned rescheduled the Prehearing Conference for February 6, 2017.

On February 6, 2017, Employee emailed the undersigned and Agency’s representative initially requesting an extension of time in order to retain counsel, and later indicating that she was currently seeking medical treatment at a hospital.¹ Given Employee’s claim indicating that she was in the hospital seeking treatment, the undersigned cancelled the conference, and issued an Order for Statement of Good Cause to Employee.² Employee was ordered to submit a statement of good cause based on her failure to appear at the February 6, 2017, Prehearing Conference. Employee had until February 21, 2017, to respond. Employee did not respond to that Order. On February 28, 2017, I

¹ See Record - Emails dated February 6, 2017.

² Employee appeared at OEA following the email exchange, but was told that due to her claim regarding her seeking medical treatment that the conference was cancelled and that she should respond to the Order for Statement of Good Cause.

issued an Order scheduling a Status/Prehearing Conference for March 17, 2017. Agency's representative was present for the March 17, 2017 conference, however Employee failed to appear. Consequently, on that same day I issued an Order for Statement of Good Cause to Employee. Employee had until March 27, 2017, to respond.³ As of the date of this decision, Employee has not responded to either Order. 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 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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 621.3 states in relevant part that the "Administrative Judge, 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. 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."⁴

³ On March 22, 2017, Employee's copy of the March 17, 2017 Order was returned to OEA as undeliverable. An email was sent to both parties advising them of this issue and reminding Employee that any change in address must be updated with the Office. Employee did not respond to the email.

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and submit required documents after being provided with a deadline to comply with such orders.⁵ Further, OEA Rule 621.3 (c) requires Employees to inform this Office of any change in address. In the instant matter, Employee was provided notice in all of the 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 her Petition for Appeal.⁶ Employee's appearance for the scheduled proceeding, and a response to the Orders was required to ensure an appropriate review and resolution of the matter. 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 her appeal is a violation of OEA Rule 621. 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:

MICHELLE R. HARRIS, Esq.
Administrative Judge

⁵ *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).

⁶ Employee submitted a change of address on October 22, 2016, and all correspondence was sent there. Employee has not notified OEA of any subsequent changes in address.