

emailed Notice of Withdrawal could not be added to the record in this matter.³ Employee noted that his response was only a courtesy copy. This Office did not receive a written withdrawal from Employee.

Accordingly, on October 22, 2024, I held the Prehearing Conference, as scheduled. Employee failed to attend. On October 22, 2024, I issued an Order for Statement of Good Cause, requiring Employee to explain why he did not appear for the Status Conference held on October 22, 2024.⁴ Employee's Statement of Good Cause was due by November 5, 2024. As of the date of this decision, Employee has not responded to this Order. 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

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, DCMR Ch. 600, et seq (December 27, 2021) grants an Administrative Judge the authority to "...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:

³ All filings made to this Office, Except for the Petition for Appeal, Petition for Review and Agency Answer, must be made in accordance with OEA Rule 608.8 which provides, in part, that "a party must submit two (2) hard copies of any pleading, motion, exhibit or witness list, discovery response, or any written submission, either by mail or hand-delivery to the Office. The copies must be received by the Office on or before the prescribed deadline."

⁴ Agency's Representative appeared as required; however, the Status Conference could not proceed without Employee.

- (a) *Appear at a scheduled proceeding after receiving notice* (emphasis added);
- (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 a matter may be dismissed for failure to prosecute when a party fails to appear for scheduled proceedings or fails to submit required documents.⁵ Here, Employee was warned in the Order for Statement of Good Cause issued on October 22, 2024, that failure to comply with the Order could result in sanctions, including dismissal. As of the date of this decision, Employee has not responded or provided a written response to the October 22, 2024, Order. Employee's response was required to make an informed decision regarding the resolution of this matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and Employee's inaction presents a valid basis for dismissing this matter. Consequently, I further find that this matter should be dismissed for 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/ Natiya Curtis
Natiya Curtis Esq.
Administrative Judge

⁵ See. *David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016).