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

In the Matter of:)	
)	OEA Matter No. J-0048-17
AALIYAH WAY,)	
Employee)	
)	Date of Issuance: August 14, 2017
v.)	
)	Michelle R. Harris, Esq.
D.C. DEPARTMENT OF)	Administrative Judge
CORRECTIONS,)	
Agency)	
)	

Aaliyah Way, Employee, *Pro Se*
Jacqueline Johnson, Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 16, 2017, Aaliyah Way (“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 terminate her. On May 22, 2017, Agency filed a response to Employee’s Petition for Appeal indicating that OEA lacked jurisdiction over this appeal, because Employee was in probationary status at the time of termination. This matter was assigned to the undersigned administrative judge (“AJ”) on June 5, 2017.

On June 27, 2017, I issued an Order requiring Employee to address the jurisdiction issue in this matter. Employee had until July 11, 2017, to respond. However, Employee failed to respond. Consequently, on July 18, 2017, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit her brief, along with a statement of good cause based on her failure to respond to the June 27, 2017 Order. Employee had until July 31, 2017 to respond. Both the June 27, 2017, and the July 18, 2017, Orders were returned to this Office by the postal service as undeliverable.¹ To date, Employee has not responded to either Order. The record is now closed.

¹ Employee’s copies of both Orders were returned as undeliverable on August 3, 2017. Consequently, on August 4, 2017, the undersigned sent an email to both parties and notified Employee of the failed service to the address in the record. Further, Employee was told that it was her responsibility to notify this Office of any changes or updates to her address. As of the date of this Order, Employee has not responded to that email.

JURISDICTION

The jurisdiction of this Office has not been established.

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 (Emphasis Added).*"²

This Office has consistently held that failure to prosecute an appeal includes a failure to inform this office of a change of address.³ Further, OEA Rule 621.3 (c) requires Employees to inform this Office of any change in address. In the instant matter, all Orders were sent to Employee via postal mail service to the address provided by Employee in her Petition for Appeal. Employee's responsibility for providing this Office with a current address for correspondence was necessary to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not exercised the due diligence expected of an appellant pursuing an appeal before this Office. I further

² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

³ *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).

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