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

_____	)	
In the Matter of:	)	
	)	
BERNEDIA J. DRAYTON	)	OEA Matter No. J-0046-06
Employee	)	
	)	Date of Issuance: March 27, 2006
v.	)	
	)	Rohulamin Quander, Esq.
	)	Senior Administrative Judge
D.C. FIRE AND EMERGENCY	)	
MEDICAL SERVICES	)	
Agency	)	
_____	)	

Bernedia J. Drayton, *pro se*  
Adrian H. Thompson, Agency Representative

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

On March 15, 2006, Employee, an Emergency Medical Technician, DS-07, with the District of Columbia Fire and Emergency Medical Services Department (the "Agency"), filed a Petition for Appeal from Agency's declining to hire her for the entry level position of Firefighter (EMT)/Firefighter (Paramedic) with the Agency. According to the notification letter issued to Employee, dated January 23, 2006, her non selection for the position was due to her being deemed unsuitable, based upon her past criminal record and her current disciplinary record. The letter also advised the Employee that, if she was not pleased with the outcome of her application for the new position, she could request a final review of her application by Adrian H. Thompson, Chief of the Agency. She was also invited to supplement the current record with any additional documents that she might wish to file.

This matter was assigned to me on March 24, 2006. Since the case could be decided based on the documents of record, no further proceedings, including an evidentiary hearing, were held. The record is closed.

### JURISDICTION

The jurisdiction of this Office has not been established.

### ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

This Office was established by the D.C. Comprehensive Merit Personnel Act (the "CMPA"), D.C. Official Code § 1-601.01 *et seq.* (2001), and has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Official Code § 1-606.03.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 ("OPPRAA"), D.C. Law 12-124, amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Official Code in pertinent part as follows:

(1) D.C. Official Code § 1-606.03(a) is amended as follows:

- (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force . . . .

Thus, § 101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

- a performance rating that results in removal;
- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or
- a reduction in force.

The components of Employee's appeal do not fit into the confines of what constitutes a complaint with this Office. Rather, they are in the nature of a grievance, which needs to be addressed at the Agency level and before Agency personnel. Employee asserted that she should have been selected for the position of Firefighter-Emergency Medical Technician with the Agency, and that she believed that her non selection was an error. She explained in detail why she feels an error was committed. However, nothing in her explanation concerning the personnel decision that was made at the Agency level touched upon any of the above-noted elements that would cause her case to fall within the current jurisdiction of this Office.

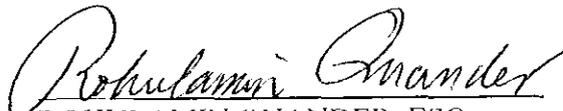
Therefore, the plain language of OPRAA compels the dismissal of this appeal for lack of jurisdiction. The starting point in every case involving construction of a statute is the language itself. See *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language. See *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), \_\_\_ D.C. Reg. \_\_\_ ( ); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).

Here, as of October 21, 1998, § 101(d) of OPRAA clearly and unambiguously removed appeals of grievances from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that grievances are not within our jurisdiction. See, e.g., *Young-Wester v. D.C. Public Schools*, OEA Matter No. J-0002-02 (July 17, 2002), \_\_\_ D.C. Reg. \_\_\_ ( ); *Scott v. D.C. Public Schools*, OEA Matter No. J-0005-02 (July 17, 2002), \_\_\_ D.C. Reg. \_\_\_ ( ); *Logan v. D.C. Public Schools*, OEA Matter No. J-0006-02 (July 17, 2002), \_\_\_ D.C. Reg. \_\_\_ ( ); *Meyers v. Department of Consumer and Regulatory Affairs*, OEA Matter No. J-0033-00 (April 27, 2000), D.C. Reg. \_\_\_ ( ); *Shields et al. v. Department of Human Services*, OEA Matter Nos. J-0082-00 *et al.* (March 7, 2000), \_\_\_ D.C. Reg. \_\_\_ ( ); *Farrell v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), \_\_\_ D.C. Reg. \_\_\_ ( ); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999), \_\_\_ D.C. Reg. \_\_\_ ( ); *Phillips-Gilbert v. Department of Human Services*, OEA Matter No. J-0074-99 (May 24, 1999), \_\_\_ D.C. Reg. \_\_\_ ( ); *Brown et al. v. Metropolitan Police Department*, OEA Matter Nos. J-0030-99 *et seq.* (February 12, 1999), \_\_\_ D.C. Reg. \_\_\_ ( ).

ORDER

Based upon the foregoing, and my conclusion that this Office does not have jurisdiction to hear and decide the matter, it is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:

  
ROHULAMIN QUANDER, ESQ.  
Senior Administrative Judge