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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
BARBARA HAMMETT	)	OEA Matter No. J-0037-06
Employee	)	
	)	Date of Issuance: March 16, 2006
v.	)	
	)	Daryl J. Hollis, Esq.
	)	Senior Administrative Judge
OFFICE OF UNIFIED	)	
COMMUNICATIONS	)	
Agency	)	
_____	)	

Pat Cresta-Savage, Esq., Employee Representative  
Michael Latessa, Agency Director

**INITIAL DECISION**

**INTRODUCTION AND STATEMENT OF FACTS**

On February 28, 2006, Employee, a Supervisor in the Career Service, filed a petition for appeal in which she alleged that she had been reduced in grade. The basis for Employee's claim was a July 1, 2005 Memorandum to her from Kenneth Mallory, Acting 911/Radio Manager. The memorandum is entitled "Personnel Change/Reassignment" and reads in pertinent part as follows:

Effective July 10, 2005 you will be assigned to Section "B" as a Supervisor [from your current position of Acting Watch

Commander]. Your immediate supervisor will be Mr. Robert Sutton, Watch Commander. You will remain on the twelve hour shift. You will share responsibility for time and attendance preparation as required by Watch Commander Sutton.

This matter was assigned to me on March 3, 2006. On that day, I sent to Ms. Cresta-Savage, Employee's representative, an Order Regarding Jurisdiction that reads in pertinent part as follows:

Pursuant to D.C. Official Code § 1-606.03(a) (2001), this Office has jurisdiction over final Agency decisions involving the following personnel actions only: 1) a performance rating that results in the removal of the employee; 2) an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; and 3) a reduction-in-force (RIF). According to Ms. Hammett's petition for appeal, she is claiming that she was reduced in grade, which is an action over which this Office has jurisdiction. It is well-settled that such a reduction in grade necessarily involves a reduction in salary. However, the July 1, 2005 letter from Mr. Mallory to Ms. Hammett only states that she was being reassigned "to Section B as a Supervisor." There is no mention made of any loss of salary as a result of the reassignment. Thus, at this time it appears that the action from which your client is appealing is a simple reassignment, which we view as a grievable matter and over which we lack jurisdiction.

Further, D.C. Official Code § 1-606.03(a) requires that any appeal be filed "within 30 days of the effective date of the appealed action." Here, the petition for appeal was filed almost eight months after the July 10, 2005 effective date of Ms. Hammett's reassignment, and thus was clearly untimely.

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states: "The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." Therefore, you are hereby ORDERED to submit to me, by the close of business on March 13, 2006, a brief which addresses the above-

described jurisdictional problems. Failure to submit the brief by the above deadline or failure to prove this Office's jurisdiction over Ms. Hammett's appeal will result in this matter being dismissed for lack of jurisdiction.

On March 10, 2006, Ms. Cresta-Savage submitted a brief in response to my Order. In that brief, she argues, *inter alia*, that "Ms. Hammett Suffered an Effective Reduction in Pay and Thus was Harmed When the July 1, 2005 Memorandum Demoted her from Acting Watch Commander to Supervisor." March 10, 2006 Brief at 2. In support of this claim, Ms. Cresta-Savage wrote in part as follows:

Ms. Hammett served in the capacity, and performed the duties of, an Acting Watch Commander for Section "A" since September 2, 2002. However, Ms. Hammett was never compensated with a salary commensurate with that grade position, and continued to receive remuneration at the lower pay scale of supervisor.<sup>1</sup> In the demand letter dated December 22, 2005 sent to [Agency], Ms. Hammett has sought compensation for the pay that was withheld from her since 2002. The July 1, 2005 letter from Mr. Mallory to Ms. Hammett does not merely state that she was being reassigned "to Section B as a Supervisor." In addressing her as Acting Watch Commander, the letter indicates Ms. Hammett's current position, and therefore signifies that she is now being demoted from this current position to that of the lower position of supervisor. The fact that Ms. Hammett's salary was not reduced is in no way probative of whether there was a grade reduction or not, because she was already being paid at the lower pay rate of a supervisor even though she was performing the functions of a Watch Commander. The July 1, 2005 letter does not merely reassign Ms. Hammett from Section "A" to Section "B", but notifies her of a reduction in grade from

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<sup>1</sup> The Agency's routine procedure in situations such as this, warranted that 90 days after Ms. Hammett began performing the functions of an Acting Watch Commander on September 12, 2002, she should have begun receiving a Grade-11 salary. Ms. Hammett inquired into this issue on at least two occasions since September 2002, and was informed by Ms. Gatlin that Form-1: Personnel Action Form had been forwarded to the Personnel Department. However, no responsive action was ever taken with regards to Ms. Hammett's salary levels.

Acting Watch Commander (as she is addressed in the letter by Mr. Mallory) to supervisor. . . .

*Id.* at 2-3. (footnote in original).

Because this matter could be decided on the basis of the documents of record, including Employee's March 10, 2006 brief, no proceedings were held. The record is closed.

### JURISDICTION

The Office lacks jurisdiction over this appeal.

### ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

This Office was established by the D.C. Comprehensive Merit Personnel Act (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.

Here, Employee claims that the effect of Mr. Mallory's July 1, 2005 memorandum, *supra*, was to demote or reduce her in grade from the position of Acting Watch Commander to that of Supervisor. The basis for her complaint is that since the Fall of 2002 she *should* have been compensated as an Acting Watch Commander at the DS-11 level. Be that as it may, and notwithstanding her attempts (as documented in her March 10, 2006 brief) to attain that salary, the fact is that she has *never* been compensated at the DS-11 level, but has always been paid as a Supervisor at the DS-10 level.

Although Employee may have a legitimate claim that Agency should have effected her promotion in the Fall of 2002 and that she has suffered a continuous and on-going "loss" as a result thereof, this claim, as well as that pertaining to the July 1, 2005

memorandum, are the proper subjects of a grievance.<sup>2</sup> As will now be discussed, this Office lacks jurisdiction over grievance appeals, including this appeal.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), 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 Code in pertinent part as follows:

(1) D.C. Code § 1-606.3(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 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.

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from grievances.

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." *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." *Banks v. D.C. Public Schools*,

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<sup>2</sup> In fact, in numerous places throughout her March 10, 2006 brief, Employee refers to her complaint as a "grievance".

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 grievance appeals from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving grievances are not within our jurisdiction. *See, e.g., Brown, et al. v. Metropolitan Police Department*, OEA Matter Nos. J-0030-99 *et seq.* (February 12, 1999), \_\_ D.C. Reg. \_\_ ( ); *Phillips-Gilbert v. Department of Human Services*, OEA Matter No. J-0074-99 (May 24, 1999), \_ D.C. Reg. ( ); *Farrall 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. \_\_ ( ); *Lucas v. Department of Corrections*, OEA Matter No. J-0024-02 (February 20, 2002), \_\_ D.C. Reg. \_\_ ( ); *Wells v. Department of Human Services*, OEA Matter No. J-0001-04 (October 23, 2003), \_ D.C. Reg. \_\_ ( ); *Nadybal v. Office of the Chief Financial Officer*, OEA Matter No. J-0029-04 (February 2, 2004), \_\_ D.C. Reg. \_\_ ( ); *Graham v. Department of Corrections*, OEA Matter No. J-0018-05 (January 24, 2005), \_ D.C. Reg. \_\_ ( ).

Employee argues that the effect of the July 1, 2005 memorandum was to reduce her in grade from the position of Acting Watch Commander, DS-11, to that of Supervisor, DS-10, with an “effective” reduction in pay. According to Employee, since she was reduced in grade, this Office has jurisdiction over her appeal. However, since Employee was *never* paid at the higher level (notwithstanding that perhaps she should have been), she cannot claim to have lost that which she never had. Thus, the actual nature of Employee’s appeal is not of a reduction in grade, but rather of a claim for a position and the higher salary attached to that position. In point of fact, her appeal is of a grievable matter. Since this appeal was filed on February 28, 2006, over seven years after the right to appeal such matters to this Office ended, it must be dismissed.<sup>3</sup> Given this conclusion, it is unnecessary to address the timeliness-of-filing issue.

#### ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

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<sup>3</sup> In Employee’s March 10, 2006 brief she also notes that on July 2, 2005, Agency denied her request to be placed on administrative sick leave. She argues that this Office has jurisdiction to address her claim that this denial was improper. However, as with the complaint pertaining to the July 1, 2005 letter of reassignment, the denial of administrative sick leave is the proper subject of a grievance, and thus is outside of our jurisdiction.

FOR THE OFFICE:



DARYL J. HOLLIS, Esq.  
Senior Administrative Judge