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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

\_\_\_\_\_  
In the Matter of: )  
)  
KEVIN PROCTOR )  
Employee )  
)  
v. )  
)  
DEPARTMENT OF CORRECTIONS )  
Agency )  
\_\_\_\_\_

OEA Matter No. J-0119-05  
Date of Issuance: October 4, 2005  
Daryl J. Hollis, Esq.  
Senior Administrative Judge

Kevin Proctor, *Pro se*  
Fred Staten, Jr., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On August 18, 2005, Employee, a Legal Instruments Examiner, DS-8 in the Career Service, filed a petition for appeal from Agency's final decision suspending him for five days for "Negligence."<sup>1</sup> In addition to appealing the suspension, Employee also wrote as follows: "I was selected on the Sergeant's Promotion List, therefore I would like to be placed back on the Sergeant's list so that I can be paid and promoted retroactively to when the other Sergeants were promoted."

<sup>1</sup> Agency initially proposed to suspend Employee for ten days for the infraction. However, in Agency's final decision, Larry Corbett, the Deciding Official, reduced the suspension to five days.

This matter was assigned to me on August 23, 2005. Because the case could be decided based on the documents of record, 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 is attempting to appeal a five-day suspension and apparently Agency's action removing him from the Sergeant's Promotion List. The latter portion of Employee's appeal is the proper subject of a grievance. As will now be discussed, this Office lacks jurisdiction over both aspects of 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 suspensions of less than ten days and 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*, 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).

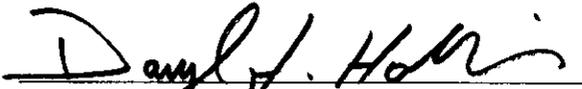
Here, as of October 21, 1998, § 101(d) of OPRAA "clearly and unambiguously" removed grievance appeals and appeals from suspensions of less than ten days from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving grievances and suspensions of less than ten days 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. \_\_ ( ); *Osekre v. Department of Human Services*, OEA Matter No. J-0080-00 (February 13, 2002), \_\_ D.C. Reg. \_\_ ( ); *Ali v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0099-02 (January 10, 2003), \_\_ D.C. Reg. \_\_ ( ); *Hall v. Metropolitan Police Department*, OEA Matter No. J-0008-02 (January 28, 2003), \_\_ D.C. Reg. \_\_ ( ); *Weingard v. Metropolitan Police Department*, OEA Matter No. J-0070-02 (January 28, 2003), \_\_ D.C. Reg. \_\_ ( ).

Employee's appeal of a five-day suspension and a grievable matter was filed on August 18, 2005, almost seven years after the right to appeal such matters to this Office ended. Thus, his petition for appeal must be dismissed.

ORDER

It is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:

  
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DARYL J. HOILNIS, Esq.  
Senior Administrative Judge