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

_____)	
In the Matter of:)	
)	
ERIC LEVENBERRY,)	
Employee)	
)	OEA Matter No. J-0061-17
v.)	
)	Date of Issuance: October 11, 2017
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	Michelle R. Harris, Esq.
_____)	Administrative Judge
Eric Levenberry, Employee, <i>Pro Se</i>		
Ronald Harris, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 21, 2017, Eric Levenberry (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Metropolitan Police Department’s (“Agency” or “MPD”) final decision to suspend him for eight (8) days from his position as a Police Officer. The effective date of the suspension was May 26, 2017. This matter was assigned to the undersigned Administrative Judge (“AJ”) on July 7, 2017. On July 26, 2017, Agency filed its Answer to Employee’s Petition. On August 3, 2017, I issued an Order Scheduling a Prehearing Conference for August 22, 2017. On August 14, 2017, Agency filed a Motion to Dismiss citing OEA lacked jurisdiction over this appeal, and subsequently filed another Motion to Dismiss on August 22, 2017.¹

On August 22, 2017, both parties were present for the Prehearing Conference. Agency asserted during the Prehearing Conference that OEA lacks jurisdiction over this matter because Employee’s suspension was not ten (10) days or more. As a result, I issued a Post Prehearing Conference Order requiring the parties to address whether OEA has jurisdiction over the instant appeal. Employee’s brief was due on or before September 15, 2017, and Agency’s was due on or before October 6, 2017. Both parties submitted their briefs in accordance with the prescribed deadlines. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

¹ Agency’s representative indicated that a page had been inadvertently left out of its August 14, 2017 filing.

ISSUE

Whether OEA has jurisdiction to adjudicate this appeal.

JURISDICTION

The jurisdiction of this Office has not been established.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1², this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or *suspension for 10 days or more*; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more. (Emphasis Added)

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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." This Office has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴

In the instant matter, Agency asserts that OEA lacks jurisdiction over this matter because the suspension levied against Employee did not result in a suspension of ten (10) days or more since Employee was only suspended for eight (8) days.⁵ As a result, Agency argues that because that Employee cannot meet his jurisdictional burden.⁶ Employee argues that while the ten (10) day rule is a "written policy of OEA", Section 602.3 of OEA's rules indicate that the "Administrative Judge may waive a rule in an individual case for good cause shown, if the application of the rule is not

² See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM").

³ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁵ Agency's Motion to Dismiss (August 22, 2017).

⁶ *Id.*

required by statute.”⁷ Employee argues that given the “egregious violations of law and due process” that have occurred, it warrants jurisdiction in this matter.⁸

The undersigned disagrees with Employee’s analysis. The jurisdiction of this Office is promulgated by the D.C. Code §1-606.03(a), which explicitly sets the limits of the jurisdiction of this Office to adverse actions that result in a suspension of ten (10) days or more. Accordingly, the undersigned may not waive the requirements of this statute. This Office has consistently held that it lacks jurisdiction over suspensions that result in less than ten (10) days.⁹ In *Jordan v. D.C. Metropolitan Police Department*¹⁰, the OEA Board concluded that suspensions which fall short of the ten (10) day requirement found in the D.C. Official Code and OEA Rules are not appealable to this Office for adjudication. In the instant matter, Employee was suspended for only eight (8) days. Consequently, I find that Employee has not been subject to a suspension that resulted in ten (10) days or more. Accordingly, I find that OEA lacks the jurisdictional authority to adjudicate this appeal.

ORDER

It is hereby **ORDERED** that Agency’s Motion to Dismiss is **GRANTED** and Employee’s Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Michelle R. Harris, Esq.
Administrative Judge

⁷ Employee’s Response (September 14, 2017).

⁸ *Id.*

⁹ *Keith Slaughter v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0001-14 (September 11, 2015). *See also Calligaro v. Metropolitan Police Department*, OEA Matter No. 1601-0019-14 (May 8, 2015); *Brian Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06 *Opinion and Order on Petition for Review* (July 23, 2008).

¹⁰ *Brian Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06 *Opinion and Order on Petition for Review* (July 23, 2008).