

Notice: This opinion is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
BRIAN JORDAN,)	
Employee)	OEA Matter No. 1601-0003-06
)	
v.)	Date of Issuance: February 17, 2006
)	
METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
)	

Brian Jordan, Employee
Mark Viehmeyer, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 12, 2005, Brian Jordan (hereinafter, "the Employee") filed a petition for appeal with the Office of Employee Appeals (hereinafter, "OEA" or "the Office") contesting the Metropolitan Police Department's (hereinafter, "the Agency" or "MPD") decision to suspend him for ten days. I was assigned this matter on December 16, 2005. On that same date, I issued an Order Convening a Prehearing Conference set to occur on February 2, 2006. Before the scheduled date of the Prehearing Conference, I placed a telephone call with both parties alerting them that based on my review of the matter, the jurisdiction of this Office was in question, and that both parties should be prepared to address said issue at the Prehearing Conference. The Prehearing Conference was held as scheduled. Based on both parties' positions during the Prehearing Conference, I decided that an Evidentiary Hearing was unnecessary. Consequently, I Ordered both parties to submit final legal briefs focusing on the whether this Office has jurisdiction

over this matter. The Record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.2, *id.*, states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

STATEMENT OF FACTS

The Employee was suspended for ten days¹ because it was determined, by the Agency, that he violated MPD General Order 303.1 and MPD Special Order 00-11. The final agency decision in this matter was codified in a memorandum dated October 7, 2005, which was addressed to the Employee, and signed by Chief of Police Charles Ramsey, it states in pertinent part:

After a careful review of the record developed in this matter, I have determined that you did in fact violate General Order 303.1, Part I, A, 2, a (4) as amended in Special Order 00-11... Accordingly, I have decided to reduce your suspension to ten (10) workdays, two (2) in which leave may be forfeited in lieu of suspension, and eight (8) which will be held on abeyance for one year. This constitutes final agency action in this matter.

The Employee has not (as of yet) been subjected to a ten day suspension. The Employee opted to utilize his annual leave in order to satisfy two days of his suspension. To date, the Employee has not served the remaining eight days of his suspension either actively or through a deduction of his annual leave.

¹ Initially, the Employee was suspended for twenty (20) days; however, Chief of Police Charles Ramsey reduced the assessed penalty to ten (10) days.

ANALYSIS AND CONCLUSIONS

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

(a) An employee may appeal [to this Office] 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 [RIF]. . . .

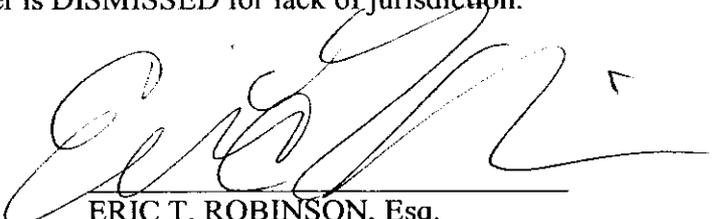
This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ (); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ().

The jurisdiction of this Office is limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade or suspensions of ten days or more; or reductions in force. OEA Rule 604.1, 46 D.C. Reg. 9299 (1999). I find that the October 7, 2005, Memorandum effectively amended Employee’s suspension to two (2) days served. This Office has consistently held that suspensions of less than ten days served are not within our jurisdiction. *See, Thomas v. Metropolitan Police Department*, OEA Matter No. J-0149-04 (June 10, 2005), __ D.C. Reg. __ (). Consequently, I find that this Office lacks jurisdiction over this matter².

ORDER

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

FOR THE OFFICE:


ERIC T. ROBINSON, Esq.
Administrative Judge

² Employee’s argument that I should find that jurisdiction exists because the issue was initially raised by me *sua sponte* is without merit and will not be considered any further.