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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
ALAN LANCASTER)
Employee)
)
v.)
)
D.C. FIRE & EMERGENCY)
MEDICAL SERVICES)
DEPARTMENT)
Agency)

OEA Matter No. J-0052-06

Date of Issuance: April 14, 2006

Daryl J. Hollis, Esq.
Senior Administrative Judge

Alan Lancaster, *Pro se*
Theresa Cusick, Esq., Agency General Counsel

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On April 10, 2006, Employee, a Fire Investigator, filed a petition for appeal from Agency's final decision suspending him for 48 duty hours.¹

This matter was assigned to me on April 14, 2006. Because the case could be decided based on the documents of record, no proceedings were held. The record is closed.

¹ From the documents contained in the case file, it appears that Employee works 12-hour tours of duty. Thus, the suspension is the equivalent of four days. Even assuming that Employee works an eight-hour day, the suspension is the equivalent of six days.

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. Code Ann. § 1-606.03. Here, Employee is attempting to appeal a 48-hour suspension, the equivalent of no more than six days. *See* n.1, *supra*. As will now be discussed, this Office lacks jurisdiction over this appeal.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA) 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 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.

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from suspensions of less than ten days.

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).

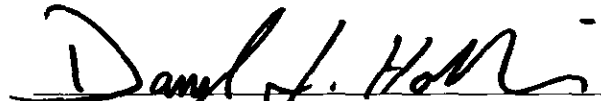
Here, as of October 21, 1998, § 101(d) of OPRAA “clearly and unambiguously” removed appeals of suspensions of less than ten days from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving suspensions of less than ten days are not within our jurisdiction. *See, e.g., 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. ___ (); *Lumpkin v. Department of Parks and Recreation*, OEA Matter No. J-0046-04 (March 26, 2004), _ D.C. Reg. ___ ().

Employee’s appeal of a 48 hour suspension was filed on April 10, 2006, over 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:


DARYL J. HOLLIS, Esq.
Senior Administrative Judge