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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
RICHARD LEHAN,	)	
Employee	)	OEA Matter No.: J-0103-12
	)	
v.	)	Date of Issuance: July 30, 2012
	)	
DISTRICT OF COLUMBIA FIRE &	)	
EMERGENCY MEDICAL SERVICES &	)	
HUMAN RESOURCES,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge
Michelle P. Bell, Esq., Employee Representative		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 22, 2012, Richard Lehan (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Fire and Emergency Medical Services and Human Resources’ (“Agency” or “DCFEMS”) finding that it was “unable to pinpoint any individual who may have been responsible” for the unauthorized disclosure of his payroll records.”

I was assigned this matter on May 29, 2012. After reviewing the case file and the documents of record, I issued an Order dated June 8, 2012, wherein I questioned whether OEA may exercise jurisdiction over the instant matter. Employee was ordered to submit a written brief, together with copies of cited statutes, regulations, and cases to address whether this matter should be dismissed for lack of jurisdiction. Employee timely filed a response on June 19, 2012. Agency timely filed its jurisdictional brief and Answer to Employee’s Petition for Appeal by the prescribed deadline of June 29, 2012. After reviewing the record, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

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]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to OEA Rule 628.1, *id.*, 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.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.²

¹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² 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*

Here, Employee requests that OEA “determine the person(s) responsible for the unauthorized access, release and dissemination of payroll records obtained from DC Fire & EMS’ payroll system, PeopleSoft, to Roby Chavez, a reporter for Fox 5 News, or any other unauthorized individual.” Employee further requests that this Office take disciplinary measures against the individuals responsible for the unauthorized release of his personal and confidential payroll records, in accordance with the PeopleSoft Computer Security and Confidentiality Agreement.³ Additionally, despite being given an opportunity to specifically address the jurisdiction issue in this matter, Employee declared that he “did not intend to submit copies of any statutes or regulations in support of his appeal.”⁴

Agency contends that OEA lacks jurisdiction to entertain Employee’s appeal pursuant to D.C. Official Code § 1-606.03 and OEA Rule 604.1. Agency explains that Employee has not been subjected to any action initiated by DCFEMS or the D.C. Department of Human Resources, noting that Employee remains employed in good standing with Agency. Moreover, Agency asserts that Employee has not presented any legal claim upon which OEA may grant relief.⁵

Although Employee has not characterized it as such, I find that Employee’s claims as listed in his Petition for Appeal is an appeal of a grievance.⁶ Further, the undersigned agrees with Agency’s position that Employee has not presented any legal claim upon which OEA may grant relief. The jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade; suspensions or enforced leave; or reductions in force.⁷ Employee has not alleged that he has suffered any of these actions based upon a final agency decision. Therefore, based on the preceding statute, OEA rule, and related case law, I find that OEA does not have jurisdiction to adjudicate grievances and that this matter falls outside of the scope of this Office’s jurisdiction. Consequently, I conclude that this matter must be dismissed for lack of jurisdiction.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

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).

³ See Petition for Appeal (May 22, 2012).

⁴ See Employee Brief June 19, 2012).

⁵ See Agency Brief (June 28, 2012); Agency Answer (June 29, 2012)

⁶ It is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals.

⁷ OEA Rule 604.1, 59 DCR 2129 (March 16, 2012).