

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. 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:	)	
	)	
STEPHEN SHARP,	)	
Employee	)	OEA Matter No. 1601-0047-17
	)	
v.	)	
	)	Date of Issuance: June 5, 2018
METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Stephen Sharp (“Employee”) worked as a Police Officer with the Metropolitan Police Department (“Agency”). On April 19, 2017, Agency issued a final notice of adverse action to Employee. It charged him with “neglect of duty to which assigned, or required by rules and regulations adopted by the Department” and “failure to obey orders or directives issued by the Chief of Police.” The notice provided that Employee was suspended without pay for seven workdays to include fifteen workdays that were held in abeyance from a prior adverse action.<sup>1</sup> The notice concluded by providing that the total number of suspension days was twenty-two

<sup>1</sup> The penalty imposed in the prior adverse action was a twenty-day suspension with fifteen days held in abeyance for one year.

days. The effective date of Employee's suspension was April 18, 2017.<sup>2</sup>

On May 16, 2017, Employee challenged the adverse action and filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He asserted that Agency conducted an improper and biased investigation. Therefore, Employee requested that OEA rescind the adverse action and his suspension without pay.<sup>3</sup>

Agency filed its Answer to the Petition on June 9, 2017. It contested Employee's assertions that it did not conduct an improper and biased investigation.<sup>4</sup> Consequently, on August 14, 2017, Agency filed a Motion for Summary Disposition. It claimed that it did not issue a final decision in this matter. Additionally, Agency asserted that OEA did not have jurisdiction over the appeal because Employee received a seven-day suspension. Agency explained that the additional fifteen suspension days were initially imposed in a previous adverse action matter, and therefore, was not at issue in the instant matter. Thus, Agency requested that the matter be summarily dismissed.<sup>5</sup>

Employee filed a response to Agency's Motion for Summary Disposition on October 20, 2017. He argued that pursuant to OEA Rule 604.1, OEA had jurisdiction over the matter because his suspension was for twenty-two days, which was greater than the ten-day jurisdictional requirement. Additionally, Employee explained that the penalty could impact his promotion potential because in accordance with the Collective Bargaining Agreement, "if after the eligibility list is formed, a final disciplinary penalty of a suspension of twenty days or greater is imposed, the member need not be promoted from the list." Therefore, he requested that

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<sup>2</sup> *Petition for Appeal*, p. 1, 8, and 10 (May 16, 2017).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Metropolitan Police Department's Answer to the Petition*, p. 1-2 (June 9, 2017).

<sup>5</sup> *Metropolitan Police Department's Motion for Summary Disposition*, p. 4-6 (August 14, 2017).

Agency's Motion for Summary Disposition be denied.<sup>6</sup>

On November 29, 2017, the OEA Administrative Judge ("AJ") issued his Initial Decision. He found that Agency's argument that it did not issue a final decision lacked merit. He explained that a Notice of Proposed Adverse Action was issued on January 31, 2017, which advised Employee of the charges and specifications against him. Subsequently, Employee responded to the proposed adverse action against him, and Agency issued its Final Notice of Adverse Action on April 19, 2017. The AJ opined that Agency's April 19, 2017 Notice became Agency's Final decision. Further, the AJ held that OEA did not have jurisdiction over Employee's seven-day suspension. He explained that Agency exercised its right to impose the fifteen days held in abeyance from the previous disciplinary action. The fifteen days were tacked on to the seven-day penalty imposed in the instant appeal. Thus, the AJ determined that the fifteen suspension days are attributed to the disciplinary penalty imposed in Employee's previous adverse action. Accordingly, the AJ granted Agency's Motion for Summary Disposition and dismissed Employee's Appeal for lack of jurisdiction.<sup>7</sup>

Employee filed his Petition for Review on January 2, 2018. He asserts that the AJ failed to address all of the issues of law and fact stated in the Initial Decision. Employee argues that the AJ failed to address his arguments regarding the amount of days held in abeyance and the impact that the suspension had on his promotion potential. Finally, Employee maintains that OEA has jurisdiction over his twenty-day suspension and the current suspension. Therefore, he reasoned that Agency's Motion for Summary Disposition be denied.<sup>8</sup>

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. The Court in *Baumgartner v. Police and*

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<sup>6</sup> *Employee's Response to Agency's Motion for Summary Disposition*, p. 1-5 (October 20, 2017).

<sup>7</sup> *Initial Decision*, p. 3-4 (November 29, 2017).

<sup>8</sup> *Employee's Petition for Review*, p. 1 and 3 (January 2, 2017).

*Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. Therefore, if there is substantial evidence to support the AJ's decision that OEA lacks jurisdiction to consider the merits of this case, then this Board must accept it. After a review of the record, this Board believes that the AJ's decision was based on substantial evidence.

In accordance with D.C. Official Code § 1-606.03(a), "an employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. . . ." Because the Code requires that suspensions be for ten days or more before OEA can assume jurisdiction, Employee must prove that the penalty imposed by Agency was for at least ten days.

Agency provides in its final notice that Employee was "suspended without pay for seven (7) workdays to include the fifteen (15) workdays held in abeyance relating to DRD# 636-16. The total number of suspension days will be twenty-two (22) days." Because Agency mentioned a previous suspension in its final decision, this Board must address the matter as it relates to the penalty in this case. In its Memorandum in Support of its Motion for Summary Disposition, Agency explains that Employee appealed the previous adverse action DRD# 636.16 to OEA with an OEA matter number of 1601-0019-17. According to Agency's notice of final decision in

OEA Matter No. 1601-0019-17, Employee was suspended for twenty days. However, after considering a number of factors, the Interim Chief of Police decided to hold fifteen of the twenty days in abeyance for one year.<sup>9</sup> Employee was charged with the current adverse action before the one-year expiration of the abeyance period. Therefore, Agency added the fifteen days held in abeyance to the current suspension action.

This Board agrees with the AJ's assessment that the additional fifteen days imposed in the instant action is attributed to the penalty imposed in OEA Matter No. 1601-0019-17. The record is clear that although the fifteen additional days were served along with the seven days in the instant matter, the fifteen days were the result of the previous action. As a result, this Board supports the AJ's determination that OEA has jurisdiction over the previous adverse action. Because the AJ concluded that Employee served a twenty-day suspension in the previous matter, the result is that he only served a seven-day suspension in the current matter. It is well settled that OEA does not have jurisdiction over suspensions for less than ten days.<sup>10</sup> Accordingly, because Employee's suspension in the instant case was less than ten days, we must uphold the AJ's ruling. Thus, Employee's Petition for Review is denied.

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<sup>9</sup> *Petition for Appeal*, p. 5-7 (December 14, 2016).

<sup>10</sup> *Brian Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0006-03, *Opinion and Order on Petition for Review* (May 24, 2008); *Gerald Burton v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0156-09 (November 7, 2011); and *Joseph Thomas v. Metropolitan Police Department*, OEA Matter No. J-0149-04 (June 10, 2005).

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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Sheree L. Price, Chair

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Vera M. Abbott

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Patricia Hobson Wilson

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Jelani Freeman

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.