

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
Alfreda Judd	)	Matter No. J-0083-11
Employee	)	
	)	Date of Issuance:
v.	)	January 12, 2012
	)	
D.C. Public Schools	)	Senior Administrative Judge
Agency	)	Joseph E. Lim, Esq.

Bobbie L. Hoye, Esq., Agency Representative  
Alfreda Judd, Employee *pro se*

**INITIAL DECISION**

INTRODUCTION

On March 9, 2011, Employee, a Paraprofessional, filed a petition for appeal from Agency's final decision suspending her for 5 days for grave misconduct and lack of dependability. I issued a Order to Employee to respond to Agency's contention that this Office lacks jurisdiction over this appeal. Employee has responded. Since a decision could be rendered based on the documents contained in the case file, no proceedings were held. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUES

Whether Employee's appeal should be dismissed for lack of jurisdiction.

STATEMENT OF FACTS

The following facts are not in dispute:

1. Employee was a Paraprofessional pay grade 4/8 at MacFarland Middle School.
2. On February 9, 2011, Employee received Agency's notice placing her on paid administrative leave for allegations of grave misconduct.

3. After an investigation, Agency issued to Employee its notice of a five-day suspension for said misconduct.
4. Employee's suspension ran from May 2, 2011, through May 6, 2011.
5. Employee filed a petition for appeal with this Office on March 9, 2011.
6. In her response to Agency's motion to dismiss, Employee failed to state any grounds for this Office's jurisdiction.

### ANALYSIS AND CONCLUSIONS

Based on a review of the Petition for Appeal, a question arose as to whether this Office has jurisdiction over this matter. An employee has the burden of proof as to issues of jurisdiction. *See* OEA Rule 629.2, 46 D.C. Reg. 9317 (1999).

The D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.01 et seq. (2001), established this Office, which 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.

#### Whether Employee's appeal should be dismissed for lack of jurisdiction.

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 (10) days and from grievances.

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 (10) days and grievance appeals 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 and grievances are not within our jurisdiction. *See, e.g., Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), \_\_ D.C. Reg. ( ); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999), \_\_ D.C. Reg. \_\_ ( ); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999), D.C. Reg. \_\_ ( ).

Here, Employee is attempting to appeal a five-day suspension. Based on the above statute, all suspensions of less than ten days are grievable matters and therefore not within the jurisdiction of this Office. Hence, her petition for appeal must be dismissed.

#### ORDER

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

FOR THE OFFICE:

Joseph Lim, Esq.  
Senior Administrative Judge