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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROBERT CALLIGARO,)	
Employee)	OEA Matter No. 1601-0019-14
)	
v.)	Date of Issuance: May 8, 2015
)	
METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Lee Calligaro, Esq., Employee Representative)	
Ronald Harris, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 8, 2013, Officer Robert Calligaro (“Employee”) was assigned to work for the Metropolitan Police Department’s (“MPD” or the “Agency”) Harbor Unit. According to Employee, he placed his Sam Brown Belt, which held his department issued portable radio, in his locker at the Harbor Unit. Employee then took his assigned two days off and when he returned to work he discovered that his radio was missing. Employee reported his radio missing and an investigation ensued. MPD’s investigation determined that Employee was negligent in the safekeeping of the radio. Accordingly, MPD imposed a ten day suspension with an additional two days that were held in abeyance from a prior case for a total suspension of twelve days. On appeal to the Chief of Police, Employee alleged that an officer broke into his locker because he is not well liked at Harbor Unit. The Chief of Police rejected his assertions and imposed a suspension of ten days, five days of which were held in abeyance plus the two days from a prior case for a total of seven days of suspension.

On November 13, 2013, Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting MPD’s action of suspending him from service. This matter was assigned to undersigned on or about June 6, 2014. Thereafter, a Pre-hearing Conference was initially set for October 2, 2014. However, both parties requested

continuances for various reasons. Eventually, the Pre-hearing conference was held on December 9, 2014. During this conference, it became evident to the undersigned that the OEA may lack jurisdiction to consider Employee's appeal. Accordingly, on December 16, 2014, I issued an order requiring the parties to file legal briefs addressing the jurisdictional issue raised during the Pre-hearing Conference. Both parties have complied. After considering the parties submission along with other relevant documents of record, I have determined that no further proceedings 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 has jurisdiction over this matter.

ANALYSIS AND CONCLUSIONS

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") states in pertinent part that:

(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. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career service rights conferred by the CMPA may be exercised by aggrieved career and educational service employees of the District of Columbia government. It is well-settled that OEA lacks jurisdiction over suspensions less than ten days. *Burton v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0156-09 (November 7, 2011) __ DCR __ (), (OEA lacked jurisdiction over employee's six-day suspension); *Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06, *Opinion and Order on Petition for Review* (July 24, 2008) __ DCR __ (), (OEA lacked jurisdiction over an eight day suspension with two days held in abeyance).

Employee through counsel argues that *Jordan*, when read closely, confers jurisdiction for matters such as this where MPD routinely suspends employees for one period of time but will hold a number of days in abeyance for one year. If said employee commits another offense during that one year time period, then the days of suspension held in abeyance will be imposed.

If, however, said employee does not commit another offense during the time period, then the days in abeyance are void. Employee explains that the undersigned need only consider the original number of days initially proposed by MPD and that I should disregard the days in abeyance when calculating how many days of suspension were imposed for purposes of establishing OEA jurisdiction. Unsurprisingly, MPD disagrees with Employee's contention and counters that more than a year has passed since Employee was subjected to his suspension and that he was not required to serve the days of abeyance in question. Of note, Employee herein admits that he only served seven days of suspension.

I disagree with Employee's reading of *Jordan*. I note that in *Jordan*, the OEA Board found that "as outlined in the D.C. Official Code and OEA Rules, only those actions **resulting** in suspensions of ten days or more may be appealed."¹ Relative to the instant matter, I find that the OEA lacks the authority to adjudicate an appeal of a suspension that is less than 10 days. Here, Agency argues and Employee admits that he only served seven days of his suspension. Consistent with *Jordan*, I find that Employee's suspension has only resulted in seven days of suspension. Moreover, the period of time wherein the days of suspension were held in abeyance has passed. Given the instant circumstances, I find that seven days of suspension served does not meet the threshold for conveying OEA's jurisdiction over this matter. Therefore, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.²

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

¹ *Id.* at 5. Emphasis added.

² Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that he noted in his petition for appeal.