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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
EARL BROWN,	)	
Employee	)	OEA Matter No. J-0011-21
	)	
v.	)	Date of Issuance: April 29, 2021
	)	
METROPOLITAN POLICE DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	
Earl Brown, Employee, <i>Pro Se</i>		
Anna Kent, Esq., Agency Representative		

**INITIAL DECISION<sup>1</sup>**

**INTRODUCTION AND PROCEDURAL HISTORY**

On January 4, 2021, Earl Brown (“Employee”)<sup>2</sup> filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency”) decision to deny his application for a concealed handgun under HR 218 - the Law Enforcement Officers Safety Act 2004 (“LEOSA”), 18 U.S.C. § 926C.<sup>3</sup> In his Petition for Appeal, Employee requested a Mediation Hearing to discuss why his HR218 LEOSA application was denied. This matter was assigned to the undersigned on March 29, 2021. Thereafter, on April 8, 2021, Agency filed an Extension of time to file a Motion for Summary Disposition. Agency requested that it be allowed to file a Motion for Summary Disposition in lieu of an Answer on May 10, 2021. Agency also noted that this Office lacked jurisdiction over this matter because Employee is a former member of Agency, who is challenging the denial of his application for a concealed handgun, which is outside of OEA’s jurisdiction, as its decision did not result in any of the adverse actions subject to OEA’s review.<sup>4</sup> After considering the parties’ arguments as presented in their submissions to this Office, I have decided that there are

<sup>1</sup> This decision was issued during the District of Columbia's COVID-19 State of Emergency.

<sup>2</sup> Mr. Brown no longer works for MDP. He resigned in 2014.

<sup>3</sup> HR218 LEOSA of 2004 allows for the carrying of concealed firearms by qualified retired law enforcement officers in the United States, the District of Columbia and U.S. Territories.

<sup>4</sup> See Agency’s Motion for Extension of Time to File a Summary Disposition (April 8, 2021).

no material issues in dispute. Consequently, I find that an Evidentiary Hearing is not required. The record is now closed.

### JURISDICTION

As will be discussed below, the jurisdiction of this office has not been established.

### ISSUE<sup>5</sup>

Whether this appeal should be dismissed for lack of jurisdiction.

### 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:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

### ANALYSIS AND CONCLUSIONS OF LAW

In its April 8, 2021 Motion for an Extension of Time to File a Summary Disposition, Agency asserts that OEA lacks jurisdiction in this matter because Employee is a former member of Agency, who is challenging the denial of his application for a concealed handgun, which is outside of OEA's jurisdiction, as its decision did not result in any of the adverse actions subject to OEA's review.<sup>6</sup> Employee included a copy of his Standard Form 50 ("SF-50") - Personnel Action, with his Petition for Appeal which highlights that, Employee resigned from Agency on June 13, 2014.<sup>7</sup> In his Petition for Appeal, Employee also requested a Mediation Hearing to discuss why his HR218 LEOSA application was denied.

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<sup>5</sup> Because the jurisdiction of the Office has not been established, Agency's Motion for an Extension for time to file a Motion for Summary Disposition is DENIED.

<sup>6</sup> *Id.*

<sup>7</sup> *See* Petition for Appeal (January 4, 2021). The Personnel Action, which is dated April 21, 2015, provides that, the resignation action was taken in lieu of termination, in accordance with OEA Matter No. 1601-0085-14.

### *Analysis*

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to Title 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1<sup>8</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) Placement on enforced leave for 10 days or more.

In the instant matter, Employee is appealing Agency's decision denying his application for a concealed handgun under HR 218 - the Law Enforcement Officers Safety Act 2004 ("LEOSA"), 18 U.S.C. § 926C. This action by Agency does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Employee is simply appealing Agency's denial of his application for a concealed handgun, which falls outside of OEA's purview. Further, Employee did not include any evidence to show that his complaint is within OEA's jurisdiction. Therefore, I conclude that this Office does not have jurisdiction over this matter.

Agency also asserts that Employee is a retired MPD employee. Employee corroborates Agency's assertion with the Personnel Action attached to his Petition for Appeal which provides that Employee resigned from Agency effective June 13, 2014. The issue of an employee's voluntary or involuntary resignation has been adjudicated on numerous occasions by this Office, and the law is well settled with this Office that, there is a legal presumption that retirements/resignations are voluntary.<sup>9</sup> In the current case, Employee does not assert that his 2014 resignation was involuntary. Moreover, the Personnel Action submitted with Employee's Petition for Appeal highlights that Employee was allowed to resign in lieu of termination, in accordance with a prior OEA matter – OEA Matter Number 1601- 0085-14.

Based on the record, I find that Agency's decision to deny Employee's application for a concealed handgun, and Employee's request for a Mediation Hearing to discuss why his HR218 LEOSA application was denied, are outside of OEA's jurisdiction. Accordingly, I conclude that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

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<sup>8</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>9</sup> See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Bagenstose v. District of Columbia Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).

ORDER

It is hereby **ORDERED** that the Petition for Appeal in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.  
Senior Administrative Judge