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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:


Employee

v.

DISTRICT OF COLUMBIA METROPOLITAN
POLICE DEPARTMENT
Agency

Pamela Keith, Esq., Employee Representative
Katherine Kelley, Esq., Agency Representative

) OEA Matter No. 1601-0002-23

) Date of Issuance: June 28, 2023

) Lois Hochhauser, Esq.
) Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 11, 2022, Employee filed a petition with the Office of Employee Appeals ("OEA"), appealing the decision of the District of Columbia Metropolitan Police Department ("Agency") to suspend her without pay for ten days. OEA Executive Director Sheila Barfield notified Chief of Police Robert Contee III of the appeal and of the November 11, 2022 deadline for filing an answer on the same day. Agency filed its response on November 22, 2023, and this Administrative Judge ("AJ") was appointed to hear the appeal on or about December 13, 2022.

By Order dated January 3, 2023, the prehearing conference ("PHC") in the matter was scheduled for February 8, 2023. The PHC was continued until March 30, 2023 as a result of a consent motion to continue the matter. Agency moved to dismiss the appeal on March 14, 2023, representing that this Office no longer had jurisdiction of the appeal since Agency rescinded the suspension on March 9, 2023 and Employee had not served any part of the suspension. The AJ issued an Order on March 15, 2023 directing Employee to respond to the motion; and to specifically state whether she agreed with Agency's representations. She was cautioned that failure to file a timely response could be considered concurrence with Agency's representations and its motion to dismiss. The April 24, 2023 filing deadline was extended to May 10, 2023. On May 18, 2023, Employee filed a Notice of Withdrawal. The record in this matter is closed.

JURISDICTION

The Office has jurisdiction pursuant to D.C. Official Code §1-606.03 (2001).

¹ This Office does not identify the employee filing the Petition for Appeal by name in the published decision on its website.

ISSUE

Should the petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA") and then amended by the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 ("OPRAA"). Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals of adverse actions, including suspension of at least ten days. See also, OEA Rule 604.1. Agency represented that the matter should be dismissed because its rescission of the ten day suspension before Employee had served any part of it, divested this Office of jurisdiction. Employee did not dispute any of Agency's representations. If the suspension was rescinded and no part of it was served, there would no longer be an adverse action; and thus no basis for this Office to hear the appeal since it has no authority to hear matters beyond its jurisdiction. See, e.g., *Banks v. District of Columbia Public Schools*, OEA Matter 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).


Employees carry the burden of proof on issues of jurisdiction. See, OEA Rule 631.2. The burden must be met by a "preponderance of the evidence," which is defined in OEA Rule 699.1 as the "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." Employee did not respond to the motion, despite being cautioned that failure to respond could be considered as concurrence with Agency's motion and its supporting representations. Therefore, Employee failed to meet her burden of proof as to whether this Office had jurisdiction of this appeal since the suspension was rescinded and no part of it had been served. For this reason, the AJ concludes that this appeal should be dismissed.

There is an alternative basis for dismissing this appeal. In the Notice of Withdrawal, Employee stated that she was withdrawing this appeal and would instead seek relief in another forum. Employee did not provide any explanation for the decision, but one reasonable assumption would be that since the adverse action had been rescinded and this Office no longer had jurisdiction, any relief sought by Employee could not be granted by this Office. In an event, there appears no reason to deny Employee's request. The AJ concludes that this is an alternative basis for dismissing the appeal.

ORDER

Employee's request to withdraw this appeal is granted, and the appeal is therefore dismissed.²

FOR THE OFFICE:


Lois Hochhauser, Esq.
Administrative Judge

² As a result of this decision, Agency's motion to dismiss is now moot, and is dismissed.