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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0059-23
)	
v.)	Date of Issuance: October 16, 2023
)	
D.C. FIRE AND EMERGENCY)	
MEDICAL SERVICES,)	MONICA DOHNJI, ESQ.
Agency)	SENIOR ADMINISTRATIVE JUDGE
)	

Employee, *Pro Se*
Jeremy Greenberg, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 17, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Fire and Emergency Medical Services Department’s (“FEMS” or “Agency”) decision to suspend him for one hundred (100) duty hours effective September 11, 2023, to September 27, 2023, from his position of Firefighter/Emergency Medical Technician.² OEA issued a Request for Agency Answer to Petition for Appeal on August 18,

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Employee was also suspended for 360-duty hours, effective January 15, 2024, to March 15, 2024 (Trial Board Case No. U-22-347). This action was prematurely filed before OEA. Pursuant to OEA Rule § 610, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021),

§ 610.1 “[a] Petition for Appeal filed with the Office *shall be considered a premature filing if it is filed before the effective date of the adverse action*, or before the agency issues a final agency decision.” (Emphasis added).

§ 610.2 “[a]n Administrative Judge (or designee) will review a Petition for Appeal to determine if it is a premature filing. If the appeal is premature by ten (10) days or less, the Office shall docket the case as a new appeal. *If an appeal is more than ten (10) days premature, an Administrative Judge (or designee) shall reject the appeal.*” (Emphasis added).

Because the 360-duty hours suspension is effective on January 15, 2024, which is more than ten (10) days premature, the Undersigned cannot review this adverse action. **Accordingly, Employee must refile a Petition for Appeal for the 360-duty hours suspension within thirty (30) days from the effective date of the adverse action.**

2023. On September 12, 2023, Agency filed its Answer to Employee's Petition for Appeal, wherein, it stated that the 100 duty hours was equivalent to four (4) workdays and OEA lacked jurisdiction over suspensions of less than ten (10) days.³ This matter was assigned to the undersigned Senior Administrative Judge on September 13, 2023. Thereafter, the undersigned ordered the parties to submit additional documentation via email, in support of their respective position. Both parties complied.⁴ After considering the parties' arguments as presented in their submissions to this Office, I have decided that there are no factual issues in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The jurisdiction of this Office pursuant to *D.C. Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, *et seq* (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.⁵

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of jurisdiction. 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

³ Agency's Answer to Employee's Petition for Appeal at Exhibit 5- Agency's Motion to Dismiss, pgs. 742-746 of 781 (September 12, 2023).

⁴ These documents are admitted into the record as filed.

⁵ OEA Rule § 699.1.

(“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 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1⁶, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) **A suspension for ten (10) days or more** (Emphasis added);
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction.⁷ Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.⁸ Here, following a Trial Board hearing, Agency issued a Final Agency Decision on July 19, 2023, suspending Employee for one hundred (100) duty hours.⁹ Employee was a Firefighter/Emergency Medical Technician at the time of his suspension. Employee argued that he has worked an eight (8) hour shift since August of 2022. He provided screenshots of his PeopleSoft timesheet, which indicated an eight (8) hour shift.¹⁰ Agency asserted that based on Employee’s twenty-four (24) hours shift, the 100 duty hours suspension levied against Employee is equivalent to Employee’s four (4) tours of duty, and this is less than a ten (10) days suspension. Agency averred that Employee’s documentary evidence does not reflect his regular tour of duty. Agency explained that Employee’s regular tour of duty was changed from twenty-four (24) hours shift in August of 2022 to an eight-hour shift due to an ongoing investigation. Agency cited that Employee’s duty status was temporarily changed to ‘Administrative duty’ with eight (8) hours shift, pending the outcome of the investigation. Agency also noted that pursuant to the Collective Bargaining Agreement (“CBA”) between Agency and Employee’s Union, all firefighters work twenty-four (24) hours shift.¹¹

I agree with Agency’s assertion that OEA does not have jurisdiction over this matter. It is well-settled that OEA lacks jurisdiction over suspensions less than ten days.¹² Based on the

⁶ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

⁷ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁸ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁹ Employee’s Petition for Appeal – Case No. U-23-066. See also. Agency’s Answer to Employee’s Petition for Appeal, *supra*, at Exhibit 2, pgs. 764 - 766 of 781.

¹⁰ See Employee’s Emails and attachments dated September 26, 2023; September 27, 2023; and October 2, 2023.

¹¹ Agency’s Supplement to Partial Motion to Dismiss (September 27, 2023). See also. Agency’s Second Supplement to Partial Motion to Dismiss at Exhibit B (September 28, 2023); and Agency’s Third Supplement to Partial Motion to Dismiss at Exhibits E and F (October 5, 2023).

¹² *Burton v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0156-09 (November 7, 2011), (OEA lacked jurisdiction over employee’s six-day suspension); *Jordan v. D.C. Metropolitan Police Department*,

record, Employee was suspended for one hundred (100) *duty* hours effective September 11, 2023, to September 27, 2023 (Emphasis added). While Agency specified a start and end date for the adverse action which spans over a sixteen (16) day period, according to Employee's twenty-four (24) hours work schedule, the one hundred (100) duty hours constitutes approximately four (4) calendar days.

Moreover, pursuant to Article 43, Section B of the CBA between Agency and Employee's Union:

(1) "[t]he basic workweek for members working in the Fire Fighting Division shall be 42 hours averaged over a 4-week period.

(2) *[t]he work schedule for members working in the Fire Fighting Division shall be 24 hours on duty and 72 hours off duty.* (Emphasis added).

As a Firefighter, Employee's regular tour of duty was twenty-four (24) hours shift. Employee does not dispute Agency's assertion that his regular tour of duty was a twenty-four hours shift prior to being placed on administrative duties pending the outcome of an ongoing investigation. Therefore, I conclude that prior to his assignment to administrative duties pending the outcome of the investigation into his alleged misconduct, Employee's regular tour of duty was a twenty-four (24) hour shift as provided in the CBA and documented in Agency's submissions to this Office. Consequently, I find that although the one hundred (100) duty hours suspension resulted from an adverse action for cause, the suspension was for less than ten (10) calendar days. Hence, Employee's one hundred (100) duty hours suspension does not fall under the appeals over which OEA has jurisdiction to consider. For this reason, the Petition for Appeal must be dismissed.

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge