THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0080-24
	)	
v.	)	Date of Issuance: September 24, 2024
	)	
D.C. FIRE AND EMERGENCY MEDICAL SERVICES,	)	MONICA DOHNJI, ESQ.
Agency	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee, *Pro Se*
Madeline Terlap, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 14, 2024, 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 eighty-four (84) duty hours effective August 12, 2024, to August 26, 2024, from his position of Firefighter/Emergency Medical Technician. OEA issued a Request for Agency Answer to Petition for Appeal on August 16, 2024. On August 27, 2024, Agency filed its Motion to Dismiss Employee's Petition for Appeal, wherein, it stated that the eighty-four (84) duty hours was equivalent to three and a half (3.5) workdays which does not meet the statutory requirement for appealable actions to OEA.[2] Agency asserted that Employee was suspended for less than ten (10) calendar days and, as such, this Office lacks subject matter jurisdiction over his appeal.

This matter was assigned to the undersigned Senior Administrative Judge on August 27, 2024. Thereafter, the undersigned issued an Order on August 28, 2024, requiring Employee to address the jurisdiction issue raised by Agency in its August 27, 2024, submission. Employee's brief on jurisdiction was due on or before September 11, 2024, and Agency had the option to file a reply brief on or before September 23, 2024. Both parties submitted their respective briefs as

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency's Motion to Dismiss Employee's Petition for Appeal (August 27, 2024).

required. 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. Official 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.[3]

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 CONCLUSIONS OF LAW[4]

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 ("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") § 604.1[5], this Office has

[3] OEA Rule § 699.1.
[4] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[5] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

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.[6] Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.[7] Here, following a Trial Board Panel Hearing, Agency issued a Final Agency Decision on July 22, 2024, suspending Employee for eighty-four (84) duty hours.[8] Employee was a Firefighter/Emergency Medical Technician at the time of his suspension. Employee argued that the eighty-four (84) duty hours suspension equates to ten and a half (10.5) days off from his current assignment where he worked eight (8) hours a day, five (5) days a week, as opposed to the standard twenty-four (24) hours firefighter shift.[9] Employee explained that at the time of the imposed suspension, he "was working on restrictive duty following his assignment to administrative duties."[10] Employee averred that there's no evidence that his restrictive duty was labeled 'temporary' or that he would return to the twenty-four (24) hour shift prior to the suspension.[11] Employee distinguished his case from *Lehan v. DCFEMS*,[12] *Ryan v. DCFEMS*,[13] *Harvell v. DCFEMS*,[14] by stating that these employees were working standard firefighter shifts while he, Employee was on restrictive duty at the time of the suspension.[15]

Citing to case law, Agency asserted that OEA does not have jurisdiction over this matter because Employee is attempting to appeal a three and a half (3.5–day) or 84-hour suspension that does not meet the statutory requirement for appealable actions. Agency averred that because Employee has not been subjected to an appealable adverse action for which OEA has jurisdiction, his Petition for Appeal must be dismissed. Agency explained that the *Harvell*, *Lehan*, *Ryan*, *Morant v. DCFEMS*,[16] and *Potts v. DCFEMS*,[17] holdings apply squarely to Employee's case. Agency contended that "Employee's misguided argument conveniently fails to

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[6] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[7] *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).
[8] *See* Employee's Petition for Appeal.
[9] *Id*. *See also* Petitioner's Opposition to Respondent's Motion to Dismiss (September 11, 2024).
[10] *Id*.
[11] *Id*.
[12] OEA Matter No. J–0166–12 (October 18, 2012).
[13] OEA Matter No. 1601–0010–16 (January 06, 2016).
[14] OEA Matter No. 1601–0133–14 (January 09, 2015).
[15] Petitioner's Opposition to Respondent's Motion to Dismiss, *supra*.
[16] OEA Matter No. 1601–0031–21 (December 08, 2021).
[17] OEA Matter No. 1601–0059–23 (October 16, 2023).

distinguish between his regularly assigned tour of duty and his temporary detail to administrative duties. Even though he has been temporarily assigned to administrative duties pending an ongoing misconduct investigation, Employee is regularly assigned to work in the Fire Fighting Division at Engine 29, Platoon 3."[18] 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. Thus, Employee's "84–duty hour suspension (divided by his 24–hour shift) equates to a 3.5–day suspension."[19] Agency also argued that the current case is similar to *Potts* in that, both Employee and Potts were on administrative duty, working eight (8) hours shift because of an ongoing investigation.

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 of less than ten days.[20] Based on the record, Employee was suspended for eighty-four (84) *duty* hours effective August 12, 2024, to August 26, 2024. (Emphasis added). While Agency specified a start and end date for the adverse action which spans over a fourteen (14) day period, according to Employee's twenty-four (24) hours duty schedule, the eighty-four (84) duty hours constitutes approximately three and a half (3.5) calendar days.

Moreover, pursuant to Article 44, Section B of the CBA between Agency and Employee's Union:[21]

> (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 twenty-four (24) 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 the 'restrictive' administrative duties pending the outcome of the investigation into his alleged misconduct, Employee's regular tour of duty was a twenty-four (24) duty hour as provided in the CBA and documented in Agency's submissions to this Office. Consequently, I find that although the eighty-four (84) duty hours suspension resulted from an adverse action, the suspension was for less than ten (10) calendar days. Hence, I further find that Employee's eighty-four (84) duty hours, (which resulted in three and a half (3.5) days) suspension does not fall under the appeals over which OEA has jurisdiction to consider.

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[18] *See* Agency's Motion to Dismiss, *supra*.
[19] *Id*. *See also*. Agency's Response to Employee's Opposition (September 23, 2024).
[20] *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*, OEA Matter No. 1601-0003-06, Opinion and Order on Petition for Review (July 24, 2008), (OEA lacked jurisdiction over an eight-day suspension with two days held in abeyance).
[21] *See* Agency's Motion to Dismiss, *supra*, at Exhibit B. *See also*. Agency's Response to Employee's Opposition, *supra*, at Exhibit C.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *id*, as 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." Based on the foregoing, I conclude that Employee has not met the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

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

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge