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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
EMPLOYEE,	)	Matter No. 1601-0045-21
	)	
	)	Date of Issuance:
v.	)	March 15, 2022
	)	
	)	Joseph E. Lim, Esq.
DEPARTMENT OF CORRECTIONS,	)	Senior Administrative Judge
Agency	)	
_____	)	
Andrea Comentale, Esq., Agency Representative	)	
Employee <i>pro se</i>	)	

**INITIAL DECISION**

PROCEDURAL HISTORY

On September 9, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the Department of Corrections’ (“DOC” or the “Agency”) action of suspending her for nine days from service for Conduct Prejudicial to the District Government and Failure/Refusal to Follow Instructions. In response to OEA’s October 19, 2021, request, Agency submitted its Answer with a Motion to Dismiss on November 16, 2021. This matter was assigned to the undersigned on January 6, 2022. Thereafter, on January 12, 2022, I issued an order requiring Employee to respond to Agency’s motion to dismiss for lack of jurisdiction by close of business January 18, 2022. After being granted an extension, Employee has responded. After considering the parties’ submissions 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

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), (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).

In her responses to Agency’s assertion that Employee’s penalty was a nine (9) day suspension, Employee completely ignored the question of jurisdiction. Instead, she bemoaned that she had been a good employee for decades and how management had ignored her complaints of harassment, unfair treatment, abuse of power, and non-promotion by her supervisor. Employee also complained that she received less than twenty-four (24) hour notice for her suspension. Employee attributed her initial non-compliance with Agency’s orders to its poor communication. Among other things, Agency alleged that Employee was unprofessional in her dealings with fellow employees. Employee did not dispute the fact that her penalty was a nine-day suspension.

Based on these facts, I find that OEA lacks the authority to adjudicate an appeal of a suspension that is less than ten days. Here, Employee does not deny that she only served a nine (9) day suspension. I find that the 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.

FOR THE OFFICE:

s/Joseph Lim

Joseph E. Lim, Esq.  
Senior Administration Judge