

¹ OEA Rule 631.2, 68 D.C. Reg. 12473 (2021).

made a Motion to Strike Employee's Reply Brief for untimeliness. Since there were no material facts in dispute, no proceedings were held. The record is closed.

JURISDICTION

For the reasons that will be explained below, the Office lacks jurisdiction over this appeal.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The following facts are uncontroverted:

On November 30, 2023, Employee accepted Agency's November 6, 2023, offer of the position of Acting Director of Career Services at the yearly salary of \$88,384 with a term appointment from November 16, 2023, to September 30, 2024.² On October 10, 2024, Employee signed his acceptance of the extension of his appointment to December 31, 2024, at the same salary.³ On April 15, 2025, Agency issued to Employee a Notice of Summary Disciplinary Action-Termination of Employment for various performance deficiencies. On May 14, 2025, Employee filed a Petition for Appeal with OEA alleging that he should have been paid \$95,000 annually instead of the \$88,384 that he was paid. Employee seeks backpay for the difference.

Effective October 22, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 ("OPRAA") amended certain sections of the D.C. Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, D.C. CODE § 1-601.1 *et seq.* ("CMPA"). Of specific relevance to this Office, § 101(d) of OPRAA amended §§ 1-606 of the Code of the CMPA in pertinent part as follows:

(1) D.C. Code § 1-606.3(a) is amended as follows:

(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.

Thus, the law restricted the Office's jurisdiction to Employee appeals from the following personnel actions only:

1. a performance rating that results in removal;

² Agency Answer to Employee's Appeal for Petition, Exhibit A.

³ *Id.*, Exhibit B.

2. a final agency decision affecting an adverse action for cause that results in removal, reduction in grade, placement on enforced leave, or suspension of 10 days or more;
3. a reduction in force.

Therefore, as of October 22, 1998, this Office no longer has jurisdiction over, *inter alia*, appeals from denials of grievances. Employee's discontent with the pay that he received during his prior term appointment is a grievance and is not covered under § 101(d).

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). "[A] statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language." *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

As of October 22, 1998, § 101(d) of OPRAA "clearly and unambiguously" removed appeals from grievance denials from the jurisdiction of the Office. The change was statutory, and thus, not subject to waiver or negotiation. The law clearly states that this Office lacks jurisdiction over Employee's appeal. In summation, Employee has proffered no argument that would erase the bright-line rule of § 101(d). Thus, the matter must be dismissed for lack of jurisdiction.

ORDER

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

s/Joseph Lim

JOSEPH E. LIM, ESQ.

Senior Administrative Judge