

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT**  
**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter Nos.: 1601-0047-17
STEPHEN SHARP,	)	
Employee	)	
	)	Date of Issuance: November 29, 2017
v.	)	
	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

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Stephen Sharp, Employee, *Pro se*  
Brenda S. Wilmore, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Stephen Sharp (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 16, 2017, challenging the Metropolitan Police Department’s (“Agency” or “MPD”) decision to suspend him for seven (7) days.<sup>1</sup> Agency filed its Answer on June 9, 2017. Agency also filed a Motion for Summary Disposition on August 14, 2017.

Employee filed a Motion for Consolidation and Joinder on September 7, 2017, seeking to have the instant case, along with another OEA case of his, OEA Matter No. 1601-0019-17, joined and consolidated with two other cases filed by another member of MPD.<sup>2</sup> A telephonic Status Conference was convened on October 6, 2017, to address Agency’s Motion for Summary Disposition and Employee’s Motion for Consolidation and Joinder. A Post Status Conference Order was issued on October 6, 2017, which denied Employee’s Motion for Consolidation, and

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<sup>1</sup> Fifteen (15) days which were held in abeyance from a previous matter were also implemented, resulting in a total of twenty-two (22) days of suspension in this matter.

<sup>2</sup> The two other cases that Employee sought to have his cases consolidated with are: *Kristopher Smith v. MPD*, OEA Matter Nos. 1601-0020-17 and 1601-0051-17.

further ordered Employee to submit a response to Agency's Motion for Summary Disposition. Employee submitted his response on October 20, 2017. I have determined that an evidentiary hearing is not warranted. The record is now closed.

### JURISDICTION

As discussed below, the jurisdiction of this Office has not been established pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether Agency is entitled to Summary Disposition; specifically, whether this Office may exercise jurisdiction over Employee's appeal of a seven (7) day suspension, although fifteen (15) additional days that were held in abeyance from a previous matter were also imposed in this case, which brought the suspension to a total number of twenty-two (22) days.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

D.C. Code § 1-606.03(a) sets forth the jurisdictional limits of OEA. It provides that:

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.

OEA Rule 604, 59 DCR 2129 (March 16, 2012) further sets forth the jurisdictional limits of this Office. It provides that 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*;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that an employee has the burden of proof for establishing jurisdiction.

Here, Agency took an adverse action against Employee for: (1) “Neglect of duty to which assigned, or required by rules and regulations adopted by the Department” pursuant to General Order Series 120.21, Attachment A, Part A-14; and (2) “Failure to obey orders or directives issued by the Chief of Police” pursuant to General Order Series 120.21, Attachment A, Part A-16.<sup>3</sup> Based on these charges, Agency elected to impose a seven (7) day suspension. Additionally, Employee was also involved in a previous disciplinary matter where fifteen (15) days of suspension were held in abeyance. The fifteen (15) days held in abeyance in the previous matter were imposed in the instant case, thereby bringing the total number of days for Employee’s suspension to twenty-two (22) days.

In Agency’s Motion for Summary disposition, it argues that an employee may only appeal a final agency decision. It asserts that there was no final Agency decision prior to Employee filing his appeal in the instant case with this Office. However, the record contradicts this assertion. A Notice of Proposed Adverse Action was issued on January 31, 2017, which advised Employee of the charges and specifications against him.<sup>4</sup> Employee was then afforded the opportunity to respond to the proposed adverse action against him. Employee responded on February 22, 2017. Upon consideration of Employee’s response, Agency issued its Final Notice of Adverse Action on April 19, 2017.<sup>5</sup> The Final Notice of Adverse Action states that, “[u]nless you appeal to the Chief of Police, your suspension will occur within thirty days of this notice and continue without interruption until completed.” This language clearly indicated that unless Employee elected to make an appeal to the Chief of Police, that the Final Notice of Adverse Action, issued on April 19, 2017, was intended to serve as Agency’s final notice. Employee did not appeal the Final Notice of Adverse Action to the Chief of Police. Thus, I find that Agency’s April 19, 2017 Notice became Agency’s Final decision.

Agency further argues that because a seven (7) day suspension was imposed, OEA does not have jurisdiction because it falls short of the ten (10) day threshold set forth in D.C. Code § 1-606.03(a). Employee, however, seems to argue that his twenty-two (22) day suspension is a result of the instant case only. It is evident that as a result of the charges set forth in both the instant Notice of Proposed Adverse Action and Final Notice of Adverse Action, Agency imposed a seven (7) day suspension for the instant appeal. However, because Employee was disciplined in a previous matter on December 1, 2016, which resulted in a twenty (20) day suspension, with fifteen (15) days held in abeyance, the fifteen (15) days held in abeyance were tacked on to the penalty imposed in the instant matter.<sup>6</sup>

The fifteen (15) days in the previous matter were held in abeyance for one year. Subsequent to the issuance of the twenty (20) day suspension in the previous matter (with fifteen days held in abeyance) Employee was subjected to further discipline which resulted in the filing of the instant appeal.<sup>7</sup> Because Employee was subjected to further discipline within one year of

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<sup>3</sup> Agency Answer, Attachments: Notice of Proposed Adverse Action (Tab 2) and Final Notice of Adverse Action (Tab 4) (June 9, 2017).

<sup>4</sup> Agency Answer, Tab 2 (June 9, 2017).

<sup>5</sup> Agency Answer, Tab 4 (June 9, 2017).

<sup>6</sup> See *Sharp v. Metropolitan Police Department*, OEA Matter No. 1601-0019-17, Agency Answer, Tab 6 (January 17, 2017).

<sup>7</sup> *Sharp v. Metropolitan Police Department*, OEA Matter No. 1601-0047-17.

Agency's December 1, 2016, Final Decision, it exercised its right to impose the fifteen (15) days held in abeyance from the previous disciplinary action. The fifteen (15) days held in abeyance in the previous action were tacked on to the seven (7) day penalty imposed in the instant appeal. Thus, it is determined that the fifteen (15) additional days imposed in the instant action shall be attributed to the disciplinary penalty imposed in Agency's December 1, 2016, Final Decision. To hold otherwise, would lead one to conclude that Employee was penalized and suspended for a total of forty-two (42) days for both the previous disciplinary action and the instant disciplinary action. In reality, a suspension totaling twenty-seven (27) days was imposed against Employee for both cases.

It should be noted that the undersigned has determined that OEA has jurisdiction over Employee's previous disciplinary matter<sup>8</sup>, where a twenty-day (20) suspension, with fifteen (15) days held in abeyance, was imposed. This previous matter is still pending before the undersigned to address the issues on the merits. As such, I find that this Office does not have jurisdiction over the instant appeal of Employee's seven (7) day suspension.

### **ORDER**

It is hereby **ORDERED** that Agency's Motion for Summary Disposition is **GRANTED**; it is further **ORDERED** that Employee's appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge

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<sup>8</sup> *Sharp v. Metropolitan Police Department*, OEA Matter No. 1601-0019-17.