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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

\_\_\_\_\_  
In the Matter of: )  
)  
STANLEY MURPHY, )  
Employee )  
)  
v. )  
)  
D.C. DEPARTMENT OF, )  
MOTOR VEHICLES, )  
Agency )  
\_\_\_\_\_  
Cheryl Mitchell Gains, Esq., Employee Representative  
Andrea Comentale, Esq., Agency Representative

OEA Matter No.: J-0013-11

Date of Issuance: September 28, 2011

SOMMER J. MURPHY, Esq.  
Administrative Judge

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 21, 2010, Stanley Murphy (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”). Employee worked as a Motor Vehicle Inspector with the Department of Motor Vehicles (“Agency”). Employee was involved in a physical altercation with another Agency employee on May 15, 2010. As a result, Employee was charged with “[a]ny on-duty or employment-related act or omission that an employee knew or should have reasonably known is a violation of law.

This matter was assigned to me on or around January of 2011. Because there was an issue regarding whether this Office has jurisdiction over Employee’s appeal, I ordered both parties to submit briefs on the issue of jurisdiction. Both parties submitted timely briefs. After reviewing the record, I find that no material issues of fact existed; therefore, I did not require an evidentiary hearing. The record is now closed.

**JURISDICTION**

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether OEA has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

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

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.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

According to Agency, Employee was involved in a physical altercation with another employee on May 15, 2010. Employee was on duty when the altercation occurred. On May 25, 2010, Employee was placed on Administrative Leave pending the completion of an investigation into the incident.

On September 10, 2010, Agency issued Employee an Advanced Written Notice of Proposed Removal. Employee was charged with "[a]ny on-duty or employment-related act or omission that an employee knew or should have reasonably known is a violation of law. The Notice of Proposed Removal also stated that Employee had the right to submit a written response to the charges levied against him within six (6) calendar days of the receipt of said notice. The notice also provided that Employee had the right to be represented by an attorney or other representative as well as the right to administrative review of the charges by a hearing officer.

Employee, through counsel, submitted a response to the Advanced Written Notice of Proposed Removal on September 18, 2010. In the response, Employee indicated his intent to appeal Agency's proposal to remove him from service. The response also included a motion to enlarge the time in which Employee could file a written response to Agency's Notice of Proposed Termination as well as a request for a hearing. Employee also cited several due process arguments pertaining to the alleged unfairness of the process Agency utilized to notify Employee of its intent to terminate his employment.

On September 22, 2010, Carolyn Peery, Associate Director of the Department of Motor Vehicles, denied Employee's request for an extension of time to appeal the Notice of Proposed

Termination. Ms. Peery indicated that the documentation provided by Employee's counsel was sufficient to prepare a report and recommendation to Agency's director without the need of a hearing.

On September 28, 2010, Agency issued Employee a Notice of Final Decision on Proposed Removal. Employee's termination was effective on September 30, 2010.

Employee filed a petition for appeal with this Office on October 21, 2010. Attached to the appeal was a document entitled "Appeal of Hearing Officer's Denial of Petitioners Motion to Extend Time Within Which to Respond to the Advance Notice of Proposed Removal and to Schedule a Hearing in Accordance with Chapter 16, Part 1 §1612.5 of the District of Columbia Personnel Manual. In his appeal, Employee requested that this Office grant a hearing, discovery of document[s], and requested that OEA extend the time to respond to notice of the intent to terminate Employee's employment.

On December 2, 2010, Agency submitted a response to Employee's petition for appeal. Agency simultaneously filed a Motion for Dismissal or Summary Disposition, arguing that this Office does not have jurisdiction over Employee's appeal. Agency submitted that none of the arguments contained in Employee's appeal pertained to the termination itself, but rather, pre-termination procedural issues.

This Office has no authority to review issues beyond its jurisdiction.<sup>1</sup> OEA Rule 629.1, 46 D.C. Reg. 9317 (1999), states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: "[t]hat 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." Pursuant to OEA Rule 629.3, for appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.03(a) states:

"An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee...an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more...or a reduction in force...."

Thus, §101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a *final agency decision* affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force (emphasis added).

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<sup>1</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order Petition for Review (Sept. 30, 1992).

The crux of Employee's argument is that Agency failed to provide him with adequate time in which to file a response to Agency's Notice of Proposed Termination. Employee took exception to the procedural due process that he was afforded after Agency informed him of their intent to terminate his employment. Furthermore, Employee stated in the petition for appeal that he was appealing Agency's denial of a request for additional time to file a response to the Notice of Proposed termination. Nowhere in the petition for appeal does Employee challenge Agency's action of terminating his employment. Employee did not contend that Agency's action was not taken for cause; Employee only submits that he was not afforded certain due process rights pertaining to the ability to have an internal agency hearing.

Under OEA Rule 629.3, employees have the burden of proof on the issue of jurisdiction. The basis for Employee's petition for appeal was based on pre-termination procedural issues rather than contesting a final agency decision affecting an adverse action for cause that resulted in removal,. These issues Employee raised in his appeal are beyond the purview of this Office and therefore do not fall within OEA's jurisdiction. Based on the foregoing, I find that Employee has not established that this Office has jurisdiction over this appeal. Employee's petition for appeal must therefore be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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Sommer J. Murphy, Esq.  
Administrative Judge