

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TERRELL HILL)	OEA Matter No. J-0138-09
Employee)	
)	
vs.)	Date of Issuance: December 7, 2009
)	
D.C. DEPARTMENT OF)	Rohulamin Quander, Esq.
CONSUMER & REGULATORY AFFAIRS)	Senior Administrative Judge
Agency)	

Terrell Hill, Employee, *pro se*
Joseph E. Schilling, Agency Representative

INITIAL DECISION

INTRODUCTION

Employee, an Investigator, DS Grade 12-3, with the D.C. Department of Consumer and Regulatory Affairs (the “Agency”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) on June 22, 2009, appealing the Agency’s imposition of a five (5) calendar day suspension without pay for cause. Employee is alleged to have inappropriately verbally accosted another Agency employee without Agency sanction. After an Agency-conducted investigation into the incident confirmed Employee’s behavior, Agency imposed the above-noted five (5) calendar day suspension. I have reviewed the entire record of Employee’s filing, including certain responsive documents that were generated by Agency’s management staff before this appeal was filed.

JURISDICTION

Pursuant to the legal parameters of *D.C. Official Code* § 1-606.03 (2001), the jurisdiction of the Office over this appeal has not been established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSION

Since October 21, 1998, pursuant to the *Omnibus Personnel Reform Amendment Act of 1998* (“OPRAA”), D.C. Law 12-124, this Office no longer has jurisdiction over five-day suspensions, which come under the general inclusion of grievances. Of particular relevance to this matter, §101(d) of OPRAA amended §1-606 of the *D.C. Official Code* in pertinent part as follows:

(1) D.C. Official Code §1-606.03(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 . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force . . .

Accordingly, the jurisdiction of this Office is now limited to performance ratings that result in: a) removals; b) final agency decisions effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 or more days; or, c) reductions in force. *See* OEA Rule 604.1, 46 D.C. Reg. 9299 (1999). Agency’s action in this matter does not fall into any of these categories. Since October 21, 1998, this Office has consistently held that appeals involving grievances are not within our jurisdiction. *See, Brown et al v. Metropolitan Police Department*, OEA Matter J-0030-99 *et seq.* (June 1, 1999). __ D.C. Reg. __ (). An employee’s appeal, whether it is characterized as a grievance appeal or an appeal of a performance evaluation that does not result in his removal, is outside of this Office’s jurisdiction.

Employees have the burden of proof on issues of jurisdiction. OEA Rule 629.2, 46 D.C. Reg. at 9317. In this instance Employee has not met this burden, and for this reason this petition for appeal should be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

ROHULAMIN QUANDER, Esq.
Senior Administrative Judge