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

\_\_\_\_\_  
In the Matter of: )

JOHN FELENCHAK )  
Employee )

v. )

METROPOLITAN POLICE )  
DEPARTMENT )  
\_\_\_\_\_  
Agency )

OEA Matter No. J-0047-06

Date of Issuance: March 24, 2006

Daryl J. Hollis, Esq.  
Senior Administrative Judge

John Felenchak, *Pro se*  
Terrence Ryan, Esq., Agency General Counsel

**INITIAL DECISION**

**INTRODUCTION, PROCEDURAL HISTORY AND STATEMENT OF FACTS**

On March 20, 2006, Employee, a Police Officer in the Career Service, filed a petition for appeal in which he claimed that he had been suspended for 20 days for "Conduct Unbecoming an Officer" and "Insubordination". However, he also admitted that the suspension, the final notice of which was issued by Chief Charles Ramsey on February 16, 2006, was being held in abeyance for one year. Thus, it is undisputed that the suspension has not been effected.<sup>1</sup>

<sup>1</sup> The Chief's decision refers to the length of the suspension as being 15 days. However, all of the other official documents in the record show that the suspension was for 20 days, and Employee's claim is that the

In his petition for appeal, Employee also appealed that portion of the Chief's decision that reads as follows: "Effectively immediately, you shall be revoked from taking your canine cruiser home and your canine shall be kenneled at the end of each tour of duty."

This matter was assigned to me on March 24, 2006. Because the case could be decided based on the documents of record, no proceedings were held. The record is closed.

### JURISDICTION

The Office lacks jurisdiction over this appeal.

### ISSUE

Whether this appeal must be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

This Office was established by the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-601.01 *et seq.* (2001) and has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Official Code § 1-606.03. Here, Employee is attempting to appeal a proposed suspension that has not been effected and the Chief's decision pertaining to his canine and canine cruiser. The latter portion of Employee's appeal is the proper subject of a grievance. As will now be discussed, this Office lacks jurisdiction over both aspects of this appeal.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Code 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 . . . an adverse

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suspension was for 20 days. However, since the suspension has never been effected, its actual duration is not of decisional significance.

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 appeals from the following personnel actions only:

- a performance rating that results in removal;
- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or
- a reduction in force.

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from grievances. Further, since the suspension (whether it is for 15 or 20 days) has not been effected, Employee has not at this time been subjected to an appealable adverse action.

The plain language of OPRAA compels the dismissal of this appeal for lack of jurisdiction. "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." *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), \_\_ D.C. Reg. \_\_ ( ); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).

It is well-settled that the Office lacks jurisdiction over proposed suspensions that have been held in abeyance and therefore not effected. *Thomas v. Metropolitan Police Department*, OEA Matter No. J-0149-04 (June 10, 2005), \_\_ D.C. Reg. \_\_ ( ); *Wcingard v. Metropolitan Police Department*, OEA Matter No. J-0070-02 (January 28, 2003), \_\_ D.C. Reg. \_\_ ( ). Further, since the passage of OPRAA, this Office has consistently held that appeals involving grievances are not within our jurisdiction. *See, e.g., Brown, et al. v. Metropolitan Police Department*, OEA Matter Nos. J-0030-99 *et seq.* (February 12, 1999), \_\_ D.C. Reg. \_\_ ( ); *Phillips-Gilbert v. Department of Human Services*, OEA Matter No. J-0074-99 (May 24, 1999), \_ D.C. Reg. \_\_ ( ); *Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), \_ D.C. Reg. \_\_ ( ); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999),


D.C. Reg. \_\_\_ ( ); *Lucas v. Department of Corrections*, OEA Matter No. J-0024-02 (February 20, 2002), \_ D.C. Reg. \_\_\_ ( ); *Wells v. Department of Human Services*, OEA Matter No. J-0001-04 (October 23, 2003), \_ D.C. Reg. \_\_\_ ( ); *Nadybal v. Office of the Chief Financial Officer*, OEA Matter No. J-0029-04 (February 2, 2004), \_ D.C. Reg. \_\_\_ ( ); *Graham v. Department of Corrections*, OEA Matter No. J-0018-05 (January 24, 2005), \_ D.C. Reg. \_\_\_ ( ); *Hammett v. Office of Unified Communications*, OEA Matter No. J-0037-06 (March 16, 2006), \_ D.C. Reg. \_\_\_ ( ).

Here, Employee is attempting to appeal: 1) a proposed adverse action that has not been effected; and 2) a grievable matter. As discussed above, neither of his claims are within this Office's jurisdiction. Therefore, his petition for appeal must be dismissed.

ORDER

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

FOR THE OFFICE:

  
DARYL J. HOLLIS, Esq.  
Senior Administrative Judge