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

In the Matter of:)	
)	
MATTHEW KING,)	
Employee)	
)	OEA Matter No. 1601-0082-16
v.)	
)	Date of Issuance: May 19, 2017
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	Michelle R. Harris, Esq.
)	Administrative Judge
Matthew King, Employee <i>Pro Se</i>		
Brenda Wilmore, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 29, 2016, Matthew King (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Metropolitan Police Department’s (“Agency” or “MPD”) decision to suspend him for twelve (12) days from his position as a Police Officer. The effective date of the suspension was August 3, 2016. On September 28, 2016, Agency filed a Motion for Summary Disposition citing OEA lacked jurisdiction over this appeal. Following a failed attempt to resolve this matter through mediation, this matter was assigned to the undersigned Administrative Judge (“AJ”) on November 8, 2016. On November 16, 2016, I issued Order scheduling a Status/Prehearing Conference for December 21, 2016. However, due to a scheduling conflict, on November 21, 2016, I issued a subsequent Order rescheduling the Status/Prehearing Conference for December 28, 2016.

On December 28, 2016, both parties were present for the Status/Prehearing Conference. Agency asserted during the Prehearing Conference that OEA lacks jurisdiction over this matter because Employee’s suspension was not ten (10) days or more, since three (3) of the twelve (12) days that were levied against Employee were held in abeyance. As a result, I issued a Post Status/Prehearing Conference Order requiring the parties to address whether OEA has jurisdiction over the instant appeal. Employee’s brief was due on or before February 10, 2017, and Agency’s was due March 3, 2017. Both parties submitted their briefs in accordance with the prescribed deadlines.

ISSUE

Whether OEA has jurisdiction to adjudicate this appeal.

JURISDICTION

The jurisdiction of this Office has not been established.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1¹, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[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." This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³

In the instant matter,⁴ Agency asserts that OEA lacks jurisdiction over this matter because the suspension levied against Employee did not *result* in a suspension of ten (10) days or more since three (3) days of the twelve (12) day suspension were held in abeyance.⁵ As a result, Agency argues that because Employee only served a nine (9) day suspension, Employee cannot meet his jurisdictional burden.⁶ In a final agency notice letter dated August 3, 2016, following an appeal by Employee, the Chief of Police sustained the twelve day suspension, but held three days in abeyance.⁷

¹ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM").

² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁴ Employee did not specifically address the jurisdiction issue in his brief, but instead focused on the merits of the case.

⁵ Agency's Brief (March 3, 2017).

⁶ *Id.*

⁷ *Id.* at Tab 1.

Employee served nine (9) days suspension in September 2016.⁸ Accordingly, Agency maintains that because Employee's suspension only *resulted in* nine (9) days that were served, that OEA lacks jurisdiction over this matter.

The undersigned agrees. While the penalty imposed upon Employee reflected twelve (12) days, three (3) of those days were held in abeyance for one year. As a result, Employee has only been subject to serve a nine (9) day suspension. This Office has consistently held that it lacks jurisdiction over suspensions that *result in* less than ten (10) days or more.⁹ In *Jordan v. D.C. Metropolitan Police Department*, the OEA Board concluded that suspensions which fall short of the ten (10) day requirement found in the D.C. Official Code and OEA Rules are not appealable to this Office for adjudication.¹⁰ The OEA Board held in *Jordan* that the employee was not subject to a suspension that resulted in ten (10) days or more because in agency's final decision, employee's suspension was reduced to ten (10) days, eight (8) of which were held in abeyance for one year and two (2) in which leave could have been used in lieu of suspension.¹¹ As a result, the Board found that OEA lacked jurisdiction over employee's appeal. Additionally, the District Personnel Manual ("DPM") defines a suspension as the "temporary placing of an employee in a non-duty, non-pay status."¹² In the instant matter, Employee was suspended (non-duty, non-pay status) for only nine (9) days. Consequently, I find that Employee has not been subject to a suspension that *resulted in* ten (10) days or more. Accordingly, I find that OEA lacks the jurisdictional authority to adjudicate this appeal.

ORDER

It is hereby **ORDERED** that Agency's Motion for Summary Disposition is **GRANTED** and Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Michelle R. Harris, Esq.
Administrative Judge

⁸ *Id.* at Tab 2.

⁹ *Keith Slaughter v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0001-14 (September 11, 2015). *See also Calligaro v. Metropolitan Police Department*, OEA Matter No. 1601-0019-14 (May 8, 2015); *Brian Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06 *Opinion and Order on Petition for Review* (July 23, 2008).

¹⁰ *Id.*

¹¹ *Brian Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06 *Opinion and Order on Petition for Review* (July 23, 2008).

¹² District Personnel Manual §1699.1 Definitions (Effective Date February 25, 2016). *The definition is the same for the previous August 27, 2012 version of the DPM.*