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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
WIDMON BUTLER,)	OEA Matter No. J-0421-10
Employee)	
)	Date of Issuance: January 22, 2015
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Widmon Butler (“Employee”) worked as a Human Resource Specialist with the Metropolitan Police Department (“Agency”). On July 23, 2010, Agency issued an Advanced Written Notice of Proposed Adverse Action to Employee, suspending him for twenty-five days. Employee was charged with any on duty or employment related act that Employee knew or should reasonably have known was a violation of the law; any on duty or employment related act or omission that interferes with the efficiency or integrity of government operations; and any other on duty or employment related reason for corrective or adverse action that is not arbitrary or capricious.¹ After a departmental hearing, Employee received a Notice of Final Decision,

¹ Specifically, Agency alleged that Employee violated Chapter 16, § 1603.3 of the District Personnel Manual (“DPM”) when he rendered an improper ruling on a Non-Performance of Duty injury claim.

which reduced the suspension to five days and placed him on an Employee Improvement Plan.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 8, 2010. He argued, *inter alia*, that the Notice of Final Decision failed to provide an alleged offense; that the charge and penalty violated the regulations provided in the DPM; that the charge was not supported by substantial evidence; that the adverse action violated D.C. Official Code § 5-1031; and that the penalty was too harsh. Therefore, Employee requested that OEA vacate Agency’s action.³

In response to the Petition for Appeal, Agency filed a Motion for Summary Disposition for Lack of Jurisdiction. The motioned explained that per OEA’s rules, OEA did not have jurisdiction over suspensions of less than ten days. Accordingly, Agency requested that the appeal be dismissed with prejudice.⁴

Employee filed an Opposition to Agency’s Motion for Summary Disposition. He provided that in accordance with the Notice of Final Decision, he was suspended for fifteen days. Employee explained that he was required to serve a five-day suspension for the current matter, and a ten-day suspension for a previous case against him.⁵ Employee provided that he began serving a fifteen-day suspension on September 27, 2010. Therefore, he believed OEA had jurisdiction over the matter and requested that Agency’s motion be denied.⁶

The OEA Administrative Judge (“AJ”) issued an Initial Decision on January 5, 2012. He found that Employee appealed a five-day suspension for the current case and five-day suspension

² Employee was furthered instructed to serve an additional ten-day suspension for a previous case. *Petition for Appeal*, p. 154-161 (October 8, 2010).

³ *Id.*, 3-20.

⁴ *Memorandum of Points and Authorities in Support of Respondent Metropolitan Police Department’s Motion for Summary Disposition for Lack of Jurisdiction*, p. 4-7 (November 17, 2010).

⁵ In the previous case, Employee was suspended for ten days, but five of those days were held in abeyance. He argued that because he had already served five days for the previous suspension, Agency did not have the authority to impose an additional ten days in the current matter.

⁶ *Opposition to Agency’s Motion for Summary Disposition* (December 14, 2010).

for a previous case, wherein an agreement had been reached with Agency. First, the AJ held that OEA lacked jurisdiction over suspensions of less than ten days. Furthermore, he found no law or regulation that would allow Employee to couple two suspensions together for the sake of claiming jurisdiction. Therefore, the matter was dismissed for lack of jurisdiction.⁷

Employee appealed this matter to the Superior Court for the District of Columbia on February 15, 2012. The Court held that Employee appealed his five-day suspension to OEA and did not appeal the ten-day suspension. The Court reasoned that in accordance with D.C. Official Code § 1-606.03(a) and OEA Rule 604.1, OEA lacked jurisdiction to consider Employee's appeal. Moreover, it explained that Employee could not add the days of his two, independent suspensions to meet OEA's jurisdictional threshold. Accordingly, Employee's Petition for Review was denied effective November 4, 2013.⁸

One month later, OEA received a letter filed by Employee. The letter requested that the AJ correct a clerical error. Employee explained that although his penalty was reduced to a five-day suspension, Agency added an additional ten days for a previous case, but only five of those days could have been attributed to that case.⁹ Thus, Employee argued that Agency imposed an additional penalty when it suspended him for fifteen days.¹⁰

OEA Rule 633.12 and D.C. Official Code § 1-606.03(d) state that "any employee or agency may appeal the decision of the Office to the Superior Court of the District of Columbia for a review of the record" Alternatively, OEA Rule 633.1 and D.C. Official Code § 1-606.03(c) provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day

⁷ *Initial Decision*, p. 3-5 (January 5, 2012).

⁸ *Widmon Butler v. Metropolitan Police Department*, Case No. 2012 CA 001415 P(MPA)(D.C. Super. Ct. November 4, 2013).

⁹ Employee explained that in the previous case, he was suspended for ten days with five days held in abeyance.

¹⁰ *Letter to Administrative Judge* (December 17, 2013).

filing period.”¹¹ Therefore, Employee had thirty-five days from the date of the Initial Decision, January 5, 2012, to file a Petition for Review with either the OEA Board or Superior Court. He elected to file his Petition for Review with the Superior Court instead of the OEA Board. The court issued its decision on November 4, 2013. Employee cannot now return to OEA because he disagrees with the Superior Court decision. There is no procedural path that would reinstate OEA’s jurisdiction over this matter once it has been appealed to and ruled on by the Superior Court. Accordingly, Employee’s Petition for Review before the OEA Board is denied.

¹¹ OEA Rule 633.1 allows the party to file a Petition for Review with the OEA Board. The rule provides that “any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty-five (35) calendar days of issuance of the initial decision.”

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is denied.

FOR THE BOARD:

William Persina, Chair

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.