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

In the Matter of:)	
)	OEA Matter No.: J-0019-24
EMPLOYEE, ¹)	
Employee)	
)	Date of Issuance: April 25, 2024
v.)	
)	
D.C. DEPARTMENT OF EMPLOYMENT)	
SERVICES)	NATIYA CURTIS, Esq.
Agency)	Administrative Judge
)	
Employee, <i>Pro Se</i>)	
Tonya Robinson, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 5, 2024, Employee filed a Petition for Appeal (“Petition”) with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Employee Services’ (“Agency” or “DOES”) decision to suspend her for five (5) days from her position as a Program Support Assistant, effective January 8, 2024, through January 12, 2024. On January 5, 2024, OEA issued a letter which requested Agency’s Answer. On February 5, 2024, Agency filed its Answer and Motion to Dismiss Employee’s Petition for Appeal. Agency asserted that this Office lacked jurisdiction over this matter because Employee was suspended for less than ten (10) days. This matter was assigned to the undersigned Administrative Judge (“AJ”) on February 6, 2024.

On February 14, 2024, the undersigned issued an Order for Briefs on Jurisdiction requiring Employee to address the jurisdiction issue raised by Agency in its Motion to Dismiss Employee’s Petition for Appeal and Answer. Employee’s brief was due on or before March 1, 2024. Agency had the option to submit a brief on or before March 15, 2024. Employee did not comply with the prescribed deadline. Accordingly, on March 12, 2024, the undersigned issued an Order for Statement of Good Cause to Employee for her failure to submit a response pursuant to the February 14, 2024, Order. Employee was required to submit her brief and statement to the undersigned and Agency’s representative, by the close of business on March 22, 2024.

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

On March 18, 2024, the undersigned received Employee's Brief in Support of Jurisdiction and Statement of Good Cause. Accordingly, on March 25, 2024, the undersigned issued an Order for Briefs on Jurisdiction, which amended Agency's deadline for submission of its optional response to on or before April 8, 2024. Agency did not submit a response. After considering the parties' arguments as presented in their submissions to this Office, the undersigned has determined that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee's Position

Employee asserts that she was improperly suspended. In her Brief in Support of Jurisdiction, Employee argues that Agency wrongfully suspended her. Employee further asserts that Agency improperly applied the *Douglas* Factors in assessing her suspension.² Employee also asserts that she experienced hostility and bullying in the workplace. Employee further avers that this Office can retain jurisdiction over an employee who is suspended for less than ten (10) days, pursuant to OEA Rule 602, which gives an Administrative Judge discretion to waive a rule in an individual case for good cause shown, if the application of the rule is not required by statute.³

Agency's Position

² *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

³ Employee's Brief in Support of Jurisdiction (January 5, 2024).

Agency asserts in its Motion to Dismiss Employee's Petition for Appeal and Answer that this Office lacks the jurisdiction to adjudicate this matter because Employee's corrective action was a suspension of less than ten (10) days. Agency avers that an employee cannot appeal a five (5) day suspension because OEA's jurisdiction is limited to a suspension for ten (10) days or more. Accordingly, Agency asserts that OEA has no jurisdiction over this appeal.⁴

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.⁵ 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 the OPRAA conferred jurisdiction on this Office to hear appeals, with some exceptions. According to the rules of this Office, established at 6-B of the District of Columbia Municipal Regulation ("DCMR") Chapter 600, Rule 604.1 states 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. (Emphasis added.)

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from suspensions of less than ten (10) days.

In the instant matter, the undersigned agrees with Agency's assertion that OEA lacks jurisdiction over this matter. Here, the record reflects, and Employee does not dispute, that she was suspended for five (5) days from January 8, 2024, through January 12, 2024.⁶ It is well-settled that OEA lacks jurisdiction over suspensions of less than ten (10) days.⁷

While Employee asserts several arguments in support of jurisdiction, the undersigned finds that those arguments do not overcome Employee's burden to establish jurisdiction by a preponderance of the evidence. Further, while Employee cites to OEA Rule 602.3, this Office's jurisdiction is established by statute, as noted above, and accordingly cannot be waived.⁸ Accordingly, that I find this Office lacks jurisdiction over Employee's appeal.

⁴ Agency's Motion to Dismiss Employee's Petition for Appeal and Answer (February 5, 2024).

⁵ *See, Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁶ Agency's Motion to Dismiss Employee's Petition for Appeal and Answer (February 5, 2024).

⁷ *Burton v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0156-09 (November 7, 2011), (OEA lacked jurisdiction over employee's six-day suspension); *Jordan v. DC Metropolitan Police Department*, OEA Matter No. 1601-0003-06, *Opinion and Order on Petition for Review* (July 24, 2008) (OEA lacked jurisdiction over an eight-day suspension with two days held in abeyance).

⁸ Rule 602.3 states: "The Board may revoke or amend a rule as it applies generally to all cases in accordance with applicable procedures of the District of Columbia Administrative Procedure Act. The Board or an Administrative

Grievances

Lastly, assuming *arguendo* that this Office could retain jurisdiction, the merits of Employee's arguments do not fall within the purview of OEA's scope of review. Employee asserts that she was subject to a hostile work environment and workplace bullying. These arguments are best characterized as grievances and are also outside of OEA's jurisdiction to adjudicate. It is an established matter of public law that as of October 21, 1998, pursuant OPRAA, D.C. Law 12-124, that OEA no longer has jurisdiction over grievance appeals. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims. Accordingly, the undersigned finds that OEA lacks jurisdiction in this matter.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Natiya Curtis
NATIYA CURTIS, Esq.
Administrative Judge