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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROLAND TYLER,)	
Employee)	OEA Matter No.: J-0048-15
)	
v.)	Date of Issuance: March 17, 2015
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF TRANSPORTATION,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Roland Tyler, Employee, <i>Pro Se</i>)	
Michael F. O’Connell, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 6, 2015, Roland Tyler (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) disputing the District of Columbia Department of Transportation’s (“Agency”) decision to place him on administrative leave pending an investigation into alleged misconduct.¹ Employee is a Traffic Control Officer with Agency. On March 11, 2015, Agency filed a Motion to Dismiss Employee’s Petition for Appeal for lack of jurisdiction. This matter was assigned to the undersigned Administrative Judge (“AJ”) on March 11, 2015. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to D.C. Official Code, § 1-606.03 (2001), has not been established.

¹ Employee tested positive for a controlled substance and he was placed on administrative leave effective February 19, 2015.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

Agency highlights in its Motion to Dismiss that OEA lacks jurisdiction in this matter because placement on administrative leave pending an investigation is not a final agency decision. Agency explains that only a final agency decision can be appealed to OEA, and Agency has not issued a final agency decision affecting Employee's employment status.² Agency further contends that when asked when Employee received his final agency decision in his Petition for Appeal, Employee responded "not available", noting that this admission by Employee demonstrates that Agency has not yet issued a final decision adverse to Employee.

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") § 604.1³, 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.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Based on the record, although Employee is on administrative leave, he is still

² Agency's Answer (March 11, 2015).

³ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁴ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ 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).

employed by Agency. Moreover, Agency's decision to place Employee on administrative leave pending the investigation into his alleged misconduct does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Moreover, Employee is simply appealing his placement on administrative leave, which falls outside of OEA's purview. Also, Employee did not provide any evidence to show that his complaint is within OEA's jurisdiction. He noted in his Petition for Appeal that the final agency decision was not available.⁶ Since Agency has not issued a final agency decision in this matter, I find that Employee's Petition for Appeal is premature. Based on the foregoing, I conclude that this Office does not have jurisdiction over Employee's current appeal. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's claims. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁶ Employee's Petition for Appeal at page 4 (March 6, 2016).