THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. J-0074-23
	)	
v.	)	Date of Issuance: May 10, 2024
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Dawn Jackson, Esq., Employee Representative
Lynette Collins, Esq., Agency Representative

INTIAL DECISION

On September 29, 2023, Employee filed a Petition for Appeal contesting the District of Columbia Public Schools ("DCPS" or the "Agency") action of suspending him for the first five high school football games as Eastern Senior High School's ("Eastern") Head Football Coach.[1] On October 2, 2023, the OEA sent an executed letter to the Agency, requiring it to provide an Answer to Employee's Petition for Appeal. On October 13, 2023, as its Answer, DCPS submitted a Motion to Dismiss, asserting that the OEA cannot exercise jurisdiction over this matter. On October 17, 2023, this matter was assigned to the Undersigned. On that same day, the Undersigned issued an Order requiring Employee to address Agency's Motion to Dismiss. Initially, Employee did not provide a response. Accordingly, on November 16, 2023, the Undersigned issued an Order for Statement of Good Cause requiring Employee to explain is failure to provide a response. On November 27, 2023, the Undersigned issued a subsequent Order Regarding Jurisdiction, since it was explained that there was a clerical error in recording that Employee had retained legal counsel and that documents regarding this matter had not been forwarded to Employee's counsel. The parties were given a new deadline for submitting their response and both parties complied in a timely manner. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

[1] The suspension was for Eastern's 2023/2024 football season in the 2023/2024 school year.

JURISDICTION

As will be explained below, the OEA lacks authority to adjudicate this matter.

ISSUE

Whether this matter should be dismissed.

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

Agency notes that Employee's primary position of record is Parent Coordinator at Eastern. In its Motion to Dismiss, DCPS further explains that Employee's position as Head Football Coach ("Coach") was ostensibly a part-time job and that his regular full time position was in no way impacted by this suspension; that given the instant facts, Employee's part time position as a Coach is outside of the positions covered by the Comprehensive Merit Personnel Act; and that Employee did not/will not suffer any financial harm in this suspension due to the fact that Employee's pay will not be affected by this suspension.[2]

Employee counters that what has been purported to be a five-game suspension was in reality a 26-day suspension since he was not allowed to be with the football team for an extended period of days surrounding the date of the games noted in his suspension.[3] He further notes that he has suffered embarrassment due to the suspension. He further notes that at the time he filed the Petition for Appeal, he was not made aware that his corresponding pay was not being docked.[4]

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[2] *See*, DCPS Motion to Dismiss (October 13, 2023). See also, DCPS Response to the Employee's Opposition to the Motion to Dismiss (December 28, 2023).
[3] *See*, Employee's Opposition to Agency's Motion to Dismiss pp. 2 – 6 (December 14, 2023).
[4] *Id*.

The D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-601.01 et seq. (2001), established this Office, which 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. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") states in pertinent part that:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

Further, OEA Rule 631.3 provides that Employee has the burden of proof for establishing jurisdiction.[5] Pursuant to OEA Rule 604.1, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating which results in removal of the employee;

(b) An adverse action for cause which results in removal;

(c) A reduction in grade;

(d) A suspension for ten (10) days or more;

(e) A reduction-in-force; or

(f) A placement on enforced leave for ten (10) days or more.[6]

When Employee filed his appeal with this tribunal, he was appealing a five-game suspension from his head coaching duties at Eastern. Seminal to this matter is the undisputed fact that Employee's position of record with DCPS is Parent Coordinator at Eastern. Secondarily, Employee was also employed as Eastern's Head Football Coach. What is paramount in this matter is that Employee has not suffered an actionable harm that the OEA is allowed to review.

The OEA cannot exercise jurisdiction over appeals from grievances. I find that Employee's complaint is a grievance as he has not been suspended for 10 days or more. Buttressing this is the fact that his notice of suspension only dictates that he could not appear for five delineated games.[7] Further buttressing this finding is the fact that Employee's pay was not docked in a manner corresponding to his suspension. As noted above, OEA's jurisdiction (with respect to suspensions)

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[5] 59 DCR 2129 (March 16, 2012).
[6] OEA Rule 604, 59 DCR 2129 (March 16, 2012); D.C. Official Code § 1-606.03.
[7] *See*, Employee's Opposition to Agency's Motion to Dismiss at Exhibit A (December 14, 2023).

requires at least 10-days of imposed suspension. What is also required, tangentially, is the petitioner must have also suffered a loss in pay. I find that neither requirement has occurred in the instant matter.

The plain language of the CMPA and OEA Rules 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.[8] A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.[9] Here, the CMPA clearly and unambiguously removed grievance appeals from the jurisdiction of this Office. Further, this Office has consistently held that appeals involving grievances are not within our jurisdiction.[10] [11]

ORDER

Based on the foregoing, it is hereby ORDERED that the above-captioned Petition for Appeal be DISMISSED for lack of jurisdiction.

FOR THE OFFICE: /s/ *Eric T. Robinson*
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[8] *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975).
[9] *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).
[10] *See, e.g., Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999).
[11] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").