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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0001-14
KEITH SLAUGHTER,	)	
Employee	)	
	)	Date of Issuance: September 11, 2015
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	Sommer J. Murphy, Esq.
_____	)	Administrative Judge
Keith Slaughter, Employee, <i>Pro Se</i>		
Brenda Wilmore, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 1, 2013, Keith Slaughter (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Metropolitan Police Department’s (“Agency” or “MPD”) action of suspending him from his position as a Police Officer. Employee was charged with violation of General Order 120.21 for “[f]ailure to obey orders and directive issued by the Chief of Police.” Specifically, Employee failed to submit PD-81s (Property Records) in a timely manner for evidence recovered from crime scenes on several dates in 2012 and 2013.

I was assigned this matter in May of 2014. On July 10, 2014, a Prehearing Conference was held for the purpose of assessing the parties’ arguments. During the conference, it was determined that there was a question as to whether OEA has jurisdiction over the instant appeal. Employee was subsequently ordered to submit a written brief addressing the jurisdictional issue. Agency was given the opportunity to submit an optional response. Both parties responded to the order. The record is now closed.

**JURISDICTION**

Jurisdiction has not been established in this matter.

ISSUE

Should Employee's appeal be dismissed for lack of jurisdiction?

***Uncontested Facts***

1. Employee works as a Police Officer in MPD's Seventh District.
2. On January 12, 2013, Employee submitted five (5) PD-81s to Lieutenant Spencer for signatures in reference to evidence recovered from crime scenes on December 1, 2012, December 8, 2012 (Two PD-81s), December 28, 2012, and January 5, 2013. Each of the forms was submitted after the date that the property was recovered from the respective crime scene.<sup>1</sup>
3. Agency subsequently conducted an investigation into Employee's late submission of the PD-81s. On February 13, 2013, MPD issued its Final Investigative Report Concerning the Mishandling of Property by Seventh District Crime Scene Search Officer Keith Slaughter.<sup>2</sup>
4. As a result of his actions, Agency issued Employee a Notice of Proposed Adverse Action on May 14, 2013. Employee was charged with "Failure to obey orders and directive[s] issued by the Chief of Police." The misconduct was further specified in Agency's General Order 601.1, Recording, Handling and Disposition of Property Coming into the Custody of Department."<sup>3</sup> The notice further proposed suspending Employee for ten (10) workdays. Employee was provided the opportunity to submit a response to the charges in writing.
5. Employee submitted a response to the Notice of Proposed Adverse Action on June 5, 2013.<sup>4</sup>
6. On July 16, 2013, Agency issued a Final Notice of Adverse Action, finding that the charge and specifications levied against Employee were supported by a preponderance of the evidence. The notice stated that:

"For the cited violations you will receive a ten (10) day suspension. Your suspension will begin within thirty days of this notice, and continue without interruption unless you appeal this decision to the Chief of Police. If you elect to appeal this action to the Chief of Police, imposition of the suspension will be held in abeyance pending her final agency action decision."<sup>5</sup>

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<sup>1</sup> Agency Answer to Petition for Appeal, Exhibit 1 (November 6, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at Exhibit 2.

<sup>4</sup> *Id.* at Exhibit 3.

<sup>5</sup> *Id.* at Exhibit 4.

7. Employee appealed the Final Notice of Adverse Action on July 30, 2013, denying the alleged misconduct and requested that he be transferred from the Seventh District in lieu of being suspended.
8. On August 19, 2013, MPD's Chief of Police, Cathy Lanier, issued a letter denying Employee's appeal and request to be transferred to another district. However, Chief Lanier decided to hold five (5) days of Employee's ten (10) day suspension in abeyance for one year.<sup>6</sup>
9. Employee subsequently filed a Petition for Appeal with this Office on October 1, 2013.
10. Agency filed its Answer to Employee's Petition for Appeal on November 6, 2013. On June 12, 2014, Agency filed a Motion for Summary Disposition, requesting that this matter be dismissed for lack of jurisdiction.

#### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

“An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee...an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more...or a reduction in force....”

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence is “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.” Under OEA Rule 628.2, 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. The aforementioned rights, as conferred by the CMPA, may be exercised by aggrieved Career Service and Educational Service employees of the District of Columbia government. Employee argues that Agency's decision to hold five (5) days of his ten (10) day suspension in abeyance was done without his consent and, if given the choice, he would have elected to serve the entire ten day suspension when it was originally imposed instead of “having a 5 day penalty held over [his] head for a year....”<sup>7</sup>

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<sup>6</sup> *Id.* at Exhibit 6.

<sup>7</sup> Employee Brief (July 30, 2014).

It is well-settled that OEA lacks jurisdiction over suspensions of less than ten (10) days.<sup>8</sup> In *Thomas v. Metropolitan Police Department*, the employee appealed MPD's decision to suspend him for ten (10) days with five (5) days held in abeyance.<sup>9</sup> OEA dismissed the appeal for lack of jurisdiction, holding that the employee failed to meet his burden of proof on the issue of jurisdiction. Likewise, in *Calligaro v. Metropolitan Police Department*, the employee appealed MPD's imposition of a ten day suspension—five days of which were held in abeyance, plus an additional two days from a prior case, for a total of seven days of suspension.<sup>10</sup> In *Calligaro*, the employee cited to *Jordan v. D.C. Metropolitan Police Department*,<sup>11</sup> arguing that the Administrative Judge (“AJ”) should solely consider the original number of suspension days proposed by MPD and disregard the days held in abeyance for purposes of determining jurisdiction. The AJ dismissed the employee's Petition for Appeal, reiterating that “as outlined in the D.C. Official Code and OEA Rules, only those actions *resulting* in suspensions of ten days or more may be appealed.”<sup>12</sup>

In this case, I find that the OEA lacks the authority to adjudicate an appeal of a suspension that is less than ten (10) days. Consistent with the holdings in *Thomas* and *Calligaro*, Agency's imposed adverse action against Employee has only *resulted* in a five (5) day suspension. Moreover, the period of time in which the five (5) days of suspension were held in abeyance has passed. Accordingly, I find that Employee has failed to meet the threshold for establishing OEA's jurisdiction over this matter. Therefore, Employee's appeal must be dismissed for lack of jurisdiction.

#### ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

\_\_\_\_\_  
SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE

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<sup>8</sup> See *Burton v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0156-09 (November 7, 2011) \_\_ DCR \_\_ ( ), (OEA lacked jurisdiction over employee's six-day suspension).

<sup>9</sup> OEA Matter No. J-0149-04 (June 10, 2005).

<sup>10</sup> OEA Matter No. 1601-0019-14 (May 8, 2015).

<sup>11</sup> OEA Matter No. 1601-0003-06, *Opinion and Order on Petition for Review* (July 24, 2008) \_\_ DCR \_\_ ( ), (OEA lacked jurisdiction over an eight day suspension with two days held in abeyance). Employee noted that MPD routinely suspends employees for one period of time, but will hold a number of days in abeyance for one year. If said employee commits another offense during that one year time period, then the days of suspension held in abeyance will be imposed.

<sup>12</sup> *Jordan* at 5. Emphasis added.