

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Jorge Alma)	Matter No. J-0062-11
Employee)	
)	Date of Issuance:
v.)	June 16, 2011
)	
D.C. Metropolitan Police Department)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
)	

Brenda Wilmore, Esq., Agency Representative
Jorge Alma, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On January 28, 2011, Employee, a Police Officer, Grade 1/6, filed a petition for appeal from Agency’s decision transferring him for: “Conduct unbecoming an Officer.” This matter was assigned to me on April 14, 2011.

Because Employee has the burden of proof on jurisdiction (OEA Rule 629.2), I ordered Employee to submit a written brief on the issue of jurisdiction by close of business May 12, 2011. To date, Employee has failed to respond.

Because this case could be decided on the basis of the above documents of record, no proceedings were conducted. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction.

FACTS, ANALYSIS AND CONCLUSIONS

Employee was initially suspended for 25 days for “Conduct unbecoming an officer,” “Willfully disobeying orders or insubordination,” and “Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making an untruthful statement before any court of hearing.” However, Employee appealed his suspension to Police Chief Cathy Lanier, who dropped the charges to just “Conduct unbecoming an officer,” and rescinded his suspension and instead transferred him to a different unit. This appeal then followed.

OEA Rule 629.2, 46 D.C. Reg. at 9317, reads as follows: “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 629.1, *id*, a party’s 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.” As will now be discussed, Employee has failed to meet his burden of proof as to the issue of jurisdiction.

This Office was established by the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.1 *et seq.* (1999 repl.) and 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. Code Ann. § 1-606.3. Here, Employee is attempting to appeal Agency’s action transferring him to a different section. Employee’s allegation is the proper subject of a grievance. As will now be discussed, this Office lacks jurisdiction over grievance appeals, including this appeal.

OEA’s authority was established by D.C. Official Code §1-606.03(a). It provides that:

“[a]n 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 grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which 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.”

Therefore, OEA can only consider adverse actions that result in removal, reductions-in- grade, suspensions of 10 days or more, or reductions-in-force.

Moreover, District Personnel Regulations and OEA Rules sections 604.1 and 604.3 provide the following regarding OEA’s jurisdiction:

604.1

Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.1 et seq. or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for ten (10) days or more; or
- (c) A reduction-in-force.

604.3

The Office shall exercise jurisdiction over appeals filed with the Office before October 21, 1998 by an employee appealing a final agency decision that:

- (a) Denies his or her appeal of a performance evaluation;
- (b) Effects an adverse action against him or her;
- (c) Releases him or her through reduction-in-force procedures;
- (d) Resolves a grievance;
- (e) Refuses to grant a waiver of the District's claim for an erroneous overpayment to an employee;
- (f) Denies his or her appeal regarding records management and privacy of records; or
- (g) Denies his or her classification appeal.

OEA's jurisdiction changed on October 21, 1998. According to OEA Rule 604.3, the agency only had jurisdiction over grievances if the appeal was filed with the Office *before* October 21, 1998. Employee's Petition for Appeal was filed in January 28, 2011, nearly 13 years after the deadline. This Office has consistently held that OEA lacks jurisdiction to consider those matters.¹

Employee's grievance clearly falls outside the scope of this Office's jurisdiction. Because this Office does not have jurisdiction over the Employee's grievance, we cannot consider the merits of his claims. Thus, Agency's motion to dismiss is hereby granted and Employee's petition for appeal is dismissed.

¹ *Rebecca Owens v. Department of Mental Health*, OEA Matter No. J-0097-03, Opinion and Order on Petition for Review (January 25, 2006), ___ D.C. Reg. ___; *Lillian Randolph v. District of Columbia. Water and Sewer Authority*, OEA Matter No. 2401-0085-02, Opinion and Order on Petition for Review (July 16, 2006), ___ D.C. Reg. ___; and *Mark James v. Office of the Chief Technology Officer*, OEA Matter No. J-0003-08, Opinion and Order on Petition for Review (November 23, 2009), ___ D.C. Reg. ____.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

Joseph Lim, Esq.
Senior Administrative Judge