

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

\_\_\_\_\_  
In the Matter of: )  
 )  
Michael Rasmussen ) OEA Matter No. J-0294-10  
Employee )  
 ) Date of Issuance: December 20, 2011  
v. )  
 ) Senior Administrative Judge  
D.C. Fire and Emergency Medical Services ) Joseph E. Lim, Esq.  
Agency )  
\_\_\_\_\_  
Thelma Chichester, Esq., Agency Representative  
Michael Rasmussen, Employee *pro se*

**INITIAL DECISION**

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On April 19, 2010, Employee filed a petition for appeal with this Office from Agency's final decision placing him on five days enforced leave effective March 13, 2010, due to his arrest on charges of sexual offenses and child abuse. The matter was assigned to the undersigned judge on October 17, 2011. As there was a question of jurisdiction, I ordered Employee to meet his burden of proof regarding this issue before November 7, 2011. Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to respond. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether Employee's appeal should be dismissed for lack of jurisdiction.

STATEMENT OF FACTS

The following facts are not in dispute:

1. Employee was a Firefighter Grade 1, Step 9, with the Agency.
2. On March 5, 2010, Employee was arrested in Charles County, Maryland on sexual offenses and child abuse charges.
3. On March 9, 2010, Employee gave notice of his arrest to Assistant Fire Chief Lawrence Shultz.

4. On March 12, 2010, Agency issued a Proposed Notice to place Employee on enforced leave for five (5) workdays, beginning March 13, 2010.
5. Pursuant to D.C. Official Code §1-617.54, Agency's Assistant Fire Chief is authorized to place civilian and uniformed employees on enforced leave if:  
“(a) A determination has been made that the employee utilized fraud in securing his or her appointment or that he or she falsified official records;  
(b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or  
(c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position...” 6 DCMR §1620.1, 55 DCR 1775 (2/22/08).<sup>1</sup>
6. Once the condition(s) described in 6 DCMR §1620.1 have been met, Agency shall keep an employee on enforced leave until a determination is made to take disciplinary action. 6 DCMR §1620.14.
7. On March 13, 2010, Agency issued Employee a notice of final decision to place him on enforced leave for five (5) days.

### ANALYSIS AND CONCLUSIONS

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA) amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Code in pertinent part as follows:

(1) D.C. Code § 1-606.3(a) is amended as follows:

(a) 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. . . .

Thus, § 101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

- a performance rating that results in removal;
- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or
- a reduction in force

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<sup>1</sup> See also D.C. Fire & Emergency Medical Services (“Fire & EMS”), General Order, Article VII, §14.

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

The plain language of OPRAA 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. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language. *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), \_\_ D.C. Reg. \_\_ ( ); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).

Here, as of October 21, 1998, § 101(d) of OPRAA clearly and unambiguously removed appeals of suspensions of less than ten (10) days and grievance appeals from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving suspensions of less than ten days and grievances are not within our jurisdiction. *See, e.g., Brown, et al. v. Metropolitan Police Department*, OEA Matter Nos. J-0030-99 *et seq.* (February 12, 1999), \_ D.C. Reg. \_\_ ( ); *Phillips-Gilbert v. Department of Human Services*, OEA Matter No. J-0074-99 (May 24, 1999), \_ D.C. Reg. \_\_ ( ); *Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), \_ D.C. Reg. \_\_ ( ); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999), \_ D.C. Reg. \_\_ ( ); *Moore v. Metropolitan Police Department*, OEA Matter No. J-0046-99 (February 17, 1999), \_ D.C. Reg. ( ); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999), \_ D.C. Reg. \_\_ ( ).

Here, Employee is attempting to appeal: 1) a grievable matter; and 2) a suspension of less than 10 days. The record contains no other facts that would erase the statutory mandate of § 1-606.03 of the Code. Thus, I have no choice but to dismiss this appeal for lack of jurisdiction.

#### ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Joseph Lim, Esq.  
Senior Administrative Judge