THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JARRATT HARVELL,	)	
Employee	)	OEA Matter No. 1601-0133-14
	)	
v.	)	Date of Issuance: January 9, 2015
	)	
D.C. FIRE AND EMERGENCY	)	
MEDICAL SERVICES,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Jarratt Harvell, Employee, *pro se*
Lindsay Neinast, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 30, 2014, Jarratt Harvell ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the D.C. Fire and Emergency Medical Services Department's ("Agency") decision to suspend him for ninety-six (96) hours. On November 14, 2014, Agency filed a Motion to Dismiss Employee's appeal for lack of jurisdiction.

This matter was assigned to the undersigned Administrative Judge on November 19, 2014. Thereafter, On November 25, 2014, I issued an Order requiring Employee to address the jurisdiction raised by Agency in its Motion to Dismiss. Employee's brief on jurisdiction was due on or before December 10, 2014, and Agency had the option to submit a reply to Employee's brief on jurisdiction on or before December 19, 2014. Subsequently, on December 15, 2014, I issued an Order for Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the November 25, 2014, Order, on or before December 19, 2014. On December 19, 2014, Employee submitted his brief addressing the jurisdiction issue in this matter. Agency also submitted its optional brief on December 19, 2014. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to 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 628.2 *id.* states:

> 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.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of jurisdiction. 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") § 604.1[1], 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.

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

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.[2] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[3]

Here, following a Trial Board hearing held on May 21, 2014, and the Trial Board's June 25, 2014, Findings of Facts and Conclusions, Agency issued its Final Agency Decision on August 29, 2014, suspending Employee for ninety-six (96) hours. Employee was a Firefighter EMT at the time of his suspension. He argues that although OEA only has jurisdiction over suspensions for ten (10) or more days, it is unclear how that applies to shift work schedule. Employee explains the he served a ninety-six (96) hours suspension without pay over four (4) shifts and that based on his twenty-four (24) hours shift that he works, a four (4) days suspension represents ninety-six (96) hours. Employee further notes that in the eight (8) hour work day which many city employees work, the ninety-six (96) hours would be equivalent to twelve (12) days suspension and this meets the ten (10) days or more suspension rule for jurisdiction, thus, entitling him to an appeal. Agency on the other hand highlights that Employee is trying to appeal a four (4) day suspension which does not meet the statutory requirement for appealable actions. Additionally, Agency maintains that because Employee has not been subjected to an appealable adverse action for which OEA has jurisdiction, Employee's Petition for Appeal must be dismissed.

I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Based on the record, Employee was suspended for ninety-six (96) hours effective October 17, 2014. According to Employee's work schedule, the ninety-six (96) hours constitutes four (4) calendar days. Further, OEA Rule 603.1 provides in part as follows: "[i]n the computation of time periods which involve calendar days, the first day counted shall be the next calendar day following the day the event occurs from which the time period begins to run." Therefore, pursuant to OEA Rule 603.1, I conclude that although ninety-six (96) hours in a regular eight (8) hours work schedule is equivalent to twelve (12) calendar days, as it applies to employee's compressed work schedule, this is equivalent to four (4) calendar days.

Moreover, Black's Law Dictionary (Free 2nd Edition) defines a day as "a period of time consisting of twenty-four hours and including the solar day and the night." Based on this definition, the ninety-six (96) hours divided by a twenty-four (24) hour period is equivalent to four (4) days. Consequently, I find that although the ninety-six (96) hours suspension resulted from an adverse action for cause, the suspension was for less than 10 calendar days. And as such,

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

[3] *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).

this Office does not have jurisdiction over Employee's appeal.[4] For this reason, the Petition for Appeal must be dismissed.

ORDER

It is hereby **ORDERED** that Agency's Motion to Dismiss is **GRANTED**: and it is

FURTHER ORDERED, that Employee's Petition is **DISMISSED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

[4] *See Lehan v. District of Columbia Fire and Emergency Medical Services*, OEA Matter No. J-0166-12, *Opinion and Order on Petition for Review* (March 4, 2014).