

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Hilton Burton)	OEA Matter No. J-0117-08
Employee)	
)	Date of Issuance: December 31, 2008
v.)	
)	Joseph E. Lim, Esq.
Metropolitan Police Department)	Senior Administrative Judge
Agency)	

Theresa Quon Hyden, Esq., Agency Representative
J. Michael Hannon, Esq., Employee Representative

INITIAL DECISION

INTRODUCTION

On July 18, 2008, Employee, a former Commander in the Police force, filed a petition for appeal from Agency's final decision denying his request for a retained rate. This matter was assigned to me on September 15, 2008. During a Prehearing Conference, Agency filed its motion for summary judgment. Subsequently, both parties submitted their responses. Because there were no relevant facts in dispute, no hearing was held. The record is closed.

JURISDICTION

Jurisdiction in this matter was not established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts are undisputed:

1. Employee was a policeman for almost 18 years. He was first appointed as a police officer in the Career Service on July 16, 1990.
2. Effective June 23, 2003, Employee was promoted from the rank of Inspector to the rank of

Commander. His personnel record DC Form 1 (Personnel Form) indicated that he was in the Career Service.

3. Mayor-elect Adrian Fenty appointed Cathy Lanier as Chief of Police and the Council of the District of Columbia confirmed her appointment on April 3, 2007.
4. On January 22, 2008, Chief Lanier informed Employee that she was reducing his rank from Commander to Inspector, effective immediately, and that his salary would be reduced to that of a “top step” Inspector, resulting in a reduction in pay of approximately \$15,000 per annum. No reason was given. Instead, Chief Lanier informed Employee that he was an “at will” employee.
5. Employee appealed his demotion to the Office of Employee Appeals on February 21, 2008. This was docketed as OEA Matter No. 1601-0051-08.
6. In May 14, 2008, Employee made a request to management for a retained rate. A retained rate is a policy wherein command staff officers who have served at least two years at their current rank whose rank is then reduced or reassigned could retain their salary for a period of two years after the change in rank.
7. On June 18, 2008, Chief Lanier denied Employee’s request for a retained rate. Employee appealed this denial to this Office the same day, and this appeal was docketed as OEA Matter No. J-0117-08.
8. On July 22, 2008, I issued an Initial Decision (I.D.) on OEA Matter No. 1601-0051-08 upholding Agency’s action.
9. Employee appealed the I.D. to D.C. Superior Court where it is currently docketed as *Burton v. MPD*, Case No. 2008 CA 006371.

ANALYSIS AND CONCLUSIONS

The determination whether this Office has jurisdiction over an issue is “quintessentially a decision for the OEA to make in the first instance.” *Taggart-Wilson v. District of Columbia*, 675 A.2d 28, 29 (D.C. 1996). OEA must interpret its enabling statute in a way that is “reasonable and consistent with the statutory language.” *Id.*, quoting *Lenkin Co. Management v. District of Columbia Rental Housing Comm’n*, 642 A.2d 1282, 1285 (D.C. 1994).

There are two grounds by which this appeal should be dismissed. The first is that the issue of Employee’s decrease in pay has been decided in the larger context of his change in position in my July 22, 2008, Initial Decision (I.D.) on OEA Matter No. 1601-0051-08. That matter is currently on appeal at the D.C. Superior Court. If Employee ultimately prevails on the issue of his change in job position, then he automatically gets back his former pay scale. If not, then the issue of his pay

reduction is likewise settled.

The second ground by which this appeal may be dismissed is the lack of jurisdiction. Effective October 22, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 ("OPRAA") amended certain sections of the D.C. Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, D.C. Code § 1-601.1 *et seq.* ("CMPA"). Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-603.1 of the Code by restricting the Office's jurisdiction to Employee appeals from the following personnel actions only:

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

Thus, as of October 22, 1998, this Office no longer has jurisdiction over, *inter alia*, appeals from denials of grievances.

"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." *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *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. __ ().

Here, as of October 22, 1998, § 101(d) of OPRAA "clearly and unambiguously" removed appeals from grievance denials from the jurisdiction of the Office. In *Robin Hoey v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0074-07, *Opinion and Order on Petition for Review* (June 25, 2008), _D.C. Reg._ (), the OEA Board has held that the Police Chief's demotion of a police officer from Commander to Captain is not an adverse action. Since the demotion itself is not an adverse action, it follows that the salary reduction resulting from the Chief's action is also not an adverse action.

Since Employee's appeal from a denial of his request for a retained rate is not considered an adverse action, it is therefore a grievance. The bright-line rule of § 101(d) removes grievances from the Office's jurisdiction. Thus, the matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that Employee's appeal from the denial of his retained rate is

DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge