

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
STEVE STEINBERG,	)	
Employee	)	OEA Matter No. 1601-0015-14
	)	
v.	)	
	)	Date of Issuance: April 18, 2017
DISTRICT OF COLUMBIA	)	
FIRE AND EMERGENCY MEDICAL	)	
SERVICES DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Steve Steinberg (“Employee”) worked as an Emergency Medical Technician (“EMT”) with the D.C. Fire and Emergency Medical Services Department (“Agency”). Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on November 5, 2013. According to Employee, he filed a previous appeal with OEA in 1997. Employee provided that although he was reinstated to his position as a result of the 1997 appeal, Agency still had not finalized the calculations of his back pay and benefits.<sup>1</sup>

Employee explained that on February 25, 2013, he was working a reduced schedule pursuant to orders from Dr. Kennel at the D.C. Police and Fire Clinic. He contended that at the

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<sup>1</sup> *Petition for Appeal*, p. 5-6 (November 5, 2013).

end of the work day, he was told that he would be on Administrative Leave with Pay (“ALWP”). Employee asserted that while he was on leave, Agency informed him that it was unable to calculate his back pay and benefits from the 1997 appeal based on the tax documents that he provided. Therefore, effective October 6, 2013, Agency changed his work status from ALWP to Leave Without Pay (“LWOP”).<sup>2</sup>

Employee argued that he was on ALWP for medical reasons. However, he claimed that Agency forced him to take LWOP for reasons unrelated to his medical issues. It is Employee’s position that Agency could not use its inability to calculate back pay and benefits to justify altering his leave status. Therefore, he requested that he be returned to the ALWP designation; that Agency restore his administrative leave improperly taken; and that Agency cease using any improper leave from his leave balance.<sup>3</sup>

On November 26, 2013, Agency filed a Motion to Dismiss Employee’s Petition for Appeal. It explained that Employee’s appeal should be dismissed due to OEA’s lack of jurisdiction. According to Agency, Employee’s appeal pertains to a pay status change and does not meet the statutory requirements for appealable actions to OEA. Therefore, it requested that Employee’s appeal be dismissed.<sup>4</sup>

In response to Agency’s Motion to Dismiss, Employee provided that he was placed on enforced leave for an indefinite period. Moreover, he contends that Agency did not follow the statutory requirements provided in D.C. Official Code when placing him on enforced leave. Therefore, he requested that Agency’s Motion to Dismiss be denied.<sup>5</sup>

The OEA Administrative Judge (“AJ”) issued her Initial Decision on November 13,

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<sup>2</sup> *Id.*, 10-11.

<sup>3</sup> *Id.*, 12-14.

<sup>4</sup> *D.C. Fire and Emergency Medical Services Department’s Motion to Dismiss Employee’s Petition for Appeal*, p. 1-4 (November 26, 2013).

<sup>5</sup> *Employee’s Opposition to Agency’s Motion to Dismiss Employee’s Petition for Appeal* (December 12, 2013).

2015. She found that Agency's decision to change Employee's pay status from ALWP to LWOP, did not constitute an enforced leave action as defined under D.C. Official Code § 1-616.54 and District of Columbia Municipal Regulations ("DCMR") § 1620. The AJ explained that Agency's October 2, 2013 letter to Employee specifically addressed its inability to calculate back pay. The AJ found that the letter was not a proposed advanced notice of Agency's intent to place Employee on enforced leave without pay based on any reasons enumerated in D.C. Official Code § 1-616.54. Moreover, she stated that the letter did not serve as a final notice that Employee was being placed on enforced leave without pay. The AJ ruled that OEA does not have jurisdiction over grievances and found no credible evidence to support a finding that Employee's appeal would fall within OEA's jurisdictional parameters. Accordingly, the appeal was dismissed for lack of jurisdiction.<sup>6</sup>

Employee filed a Petition for Review with the OEA Board on December 17, 2015. He argues that Agency's action resembles an enforced leave as outlined in D.C. Official Code § 1-616.54. Alternatively, he contends that the action constituted a suspension for ten days or more, as defined in DCMR § 1699.1. Employee reasons that both an enforced leave and indefinite suspensions are appealable to OEA. Employee maintains that he was forced on to LWOP for reasons entirely unrelated to his ALWP. He states that he complied with Agency's requirement to produce the appropriate tax information. Accordingly, Employee requests that the Initial Decision be vacated and that the matter be remanded to the AJ for further proceedings.<sup>7</sup>

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative

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<sup>6</sup> *Initial Decision*, p. 3-6 (November 13, 2015).

<sup>7</sup> *Employee's Petition for Review*, p. 5-11 (December 17, 2015).

findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. Therefore, if there is substantial evidence to support the AJ's decision that OEA lacks jurisdiction to consider the merits of this case, then this Board must accept it.

D.C. Official Code § 1-606.03(a) provides that “an employee may appeal a final agency decision affecting a performance rating which results in removal . . . , an adverse action for cause that results in removal, reduction in force . . . , reduction in grade, placement on enforced leave, or suspension for 10 days or more . . . .” First, this Code section provides that an employee may appeal a final agency decision. As the AJ held, there was no final Agency decision in this case. The document that Employee attempts to rely on as a final Agency decision is related to Agency's reinstatement efforts. The letter discusses Agency's inability to calculate back payment based on incomplete tax returns submitted by Employee.

In accordance with District Personnel Manual (“DPM”) §1614.1 the following must be provided to an employee in a notice of final decision:

- . . . (a) Which of the reasons in the notice of proposed corrective or adverse action have been sustained and which have not been sustained, or which of the reasons have been dismissed with or without prejudice;
- (b) Whether the penalty proposed in the notice is sustained, reduced, or dismissed with or without prejudice;
- (c) When the final decision results in a corrective action, the employee's right to grieve the decision as provided in § 1617;
- (d) When the final decision results in an adverse action, the right to appeal to the Office of Employee Appeals as provided in § 1618. The notice shall have attached to it a copy of the OEA appeal form; and
- (e) The effective date of the action.

There is also no evidence of a proposed action in this matter. Furthermore, none of the above-mentioned language appears in the notice provided to Employee because Agency never purported for it to be considered a final Agency decision. The subject of the letter clearly indicates its intent – to address outstanding reinstatement issues.

Moreover, D.C. Official Code § 1-606.03(a) provides that OEA has jurisdiction to consider final agency decision affecting a performance ratings, adverse actions for cause, reductions in force, reductions in grade, placement on enforced leave, or suspensions for ten days or more. Agency did not propose any of these actions against Employee. As the AJ provided, the record shows that Agency changed Employee's work designation from ALWP to LWOP. This change does not fall within the causes of actions outlined under OEA's jurisdiction.

OEA can only address matters falling into one of the categories provided by D.C. Official Code § 1-606.03(a). Contrary to Employee's position, the statute does not provide that OEA has jurisdiction to consider matters resembling any of these causes of action. An action resembling an enforced leave or suspension does not rise to the level of these actions. Therefore, this Board must uphold the Initial Decision and deny Employee's Petition for Review.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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Sheree L. Price, Chair

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Vera M. Abbott

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Patricia Hobson Wilson

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P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.