

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of: )  
BRIAN K. JORDAN )  
Employee ) OEA Matter No. 1601-0123-09  
v. ) Date of Issuance: March 22, 2010  
METROPOLITAN POLICE ) Sheryl Sears, Esq.  
DEPARTMENT ) Administrative Judge  
Agency )

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Leslie Deak, Esq., Employee Representative  
Teresa Quon Hyden, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION

On May 26, 2009, Brian K. Jordan (“Employee”), a Captain with the Metropolitan Police Department (“Agency”) filed a petition for appeal with the Office of Employee Appeals (“the Office”) challenging the final decision of Agency to demote him from the rank of Commander to Captain. On July 6, 2009, Agency presented a “Motion for Summary Disposition” seeking the dismissal of Employee’s appeal on the grounds that the Chief of Police acted with lawful discretion. The appeal was assigned to this Judge on August 19, 2009. On August 19, 2009, the Judge issued an order setting a deadline for Employee to make a written submission on the motion. That deadline was September 4, 2009. To date, Employee has made no submission.

JURISDICTION

For reasons that will be detailed below, this Office does not have jurisdiction over Employee’s appeal.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

## BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .” Employee has the burden of proving that this Office has jurisdiction over his appeal.

## ANALYSIS AND CONCLUSIONS

Agency has presented a motion for the summary disposition of this appeal. Office of Employee Appeals Rule 616.1 provides as follows:

If, upon examination of the record in an appeal, it appears to the Administrative Judge that there are no material and genuine issues of fact, that a party is entitled to a decision as a matter of law, or that the appeal fails to state a claim upon which relief can be granted, the Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal argument, render a summary disposition of the matter without further proceedings.

There is no factual dispute that Agency promoted Employee to the rank of Commander and, later, returned him to the rank of Captain.

D.C. Official Code § 1-606.03 (2001) lists those actions that employees of the District of Columbia government may appeal to this Office. Section 101(d) of OPRAA amended § 1-606.03 of the Code to provide for jurisdiction as follows:

(a) An employee may appeal a final agency decision effecting 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. (Emphasis added.)

However, Agency contends that this reduction in grade is not comprehended by the above provision due to the operation of other applicable laws.

Section 1-608.01 of the D.C. Official Code states as d-1 as follows:

For members of the Metropolitan Police Department and notwithstanding §1-632.03(1)(B) or any other law or regulation, the Assistant and Deputy Chiefs of Police and Inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines.

Pursuant to Mayor's Order 97-88 (5/9/97), the Mayor delegated to the Chief of Police his authority to appoint to office, assign to duty and promote all officers and members of the Metropolitan Police Department.

Agency contends that, in keeping with these provisions and the ruling of this Office in *Robin Hoey v. Metropolitan Police Department*, OEA Matter No. 1601-0074-07, *Opinion and Order on Petition for Review* (June 25, 2008), the Chief acted lawfully. In that matter, a Judge concluded that Agency acted unlawfully in demoting a Commander to Captain and ordered Agency to return him to the rank he formerly held. The Board, upon review, found that, even though the employee held a career service position, "D.C. Official Code §§ 1-608.01(d-1) and 5-105(a) explicitly permit the Mayor, who has delegated personnel authority to the Chief of Police, to return a Commander to the rank of captain at his or her discretion." Thus, stated the Board, "it logically follows that such action should not be considered an adverse action for which there must be cause." In accordance with that ruling, Agency seeks a summary disposition of this matter in its favor.

The employee, in this matter, is similarly situated to the appellant in *Hoey*. Employee was promoted, through the lawful discretion of the Chief of Police, to the rank of Inspector. Later, the Chief exercised the same lawful discretion to return him to the position of Captain. The applicable law does not require that Agency state cause for such an action.

There are no material and genuine issues of fact in this matter. Agency, having acted lawfully, is entitled to a decision as a matter of law. This Office does not have jurisdiction to review or grant relief for Agency's lawful exercise of discretion to demote Employee. Therefore, Agency's motion for summary disposition must be granted and this appeal dismissed.

ORDER

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

FOR THE OFFICE:

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SHERYL SEARS, ESQ.  
ADMINISTRATIVE JUDGE