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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOHN DONNELLY, SR.,)	
Employee)	OEA Matter No. 1601-0022-14
)	
v.)	Date of Issuance: March 24, 2015
)	
D.C. FIRE AND EMERGENCY)	
MEDICAL SERVICES)	
DEPARTMENT,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
James W. Pressler, Jr., Esq., Employee Representative		
Rahsaan J. Dickerson, Esq., Agency Representative		

INITIAL DECISION

PROCEDURAL BACKGROUND

On November 18, 2013, John Donnelly, Sr., (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department (“FEMS” or the “Agency”) action of demoting him from Deputy Fire Chief to Battalion Fire Chief. This matter was assigned to the undersigned on or around June 6, 2014. On June 20, 2014, I issued an Order Convening a Prehearing Conference requiring the parties to appear at the OEA on October 2, 2014. The prehearing conference was held as scheduled and after considering the contrasting positions of the parties, I decided that an evidentiary hearing was warranted. Accordingly, on October 2, 2014, I issued an Order Convening a Hearing which was set to occur on March 19, 2015.

On March 18, 2015, Agency, through counsel, submitted a Motion to Dismiss Appeal. FEMS noted in this motion that it has rescinded Employee’s demotion and said action has voided OEA’s jurisdiction over this matter. On March 20, 2015, Employee, through counsel, submitted his response to Agency’s Motion to Dismiss. Employee states the following in his response “Employee has no objection to the dismissal of the instant appeal based on the Agency’s decision to rescind the adverse action/demotion that is the subject of this appeal.”

JURISDICTION

The Office has jurisdiction pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed.

ANALYSIS AND CONCLUSION

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

As noted above, I find that the jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade; suspensions or enforced leave of ten days or more; or reductions in force. *See* OEA Rule 604.1. The OEA does not have jurisdiction over adverse actions that have been rescinded. Accordingly, I find that I must dismiss this matter over a lack of jurisdiction

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge