

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of)	
)	
GEORGE O. DOWARD, SR.)	OEA Matter No. 1601-0111-09
)	
Employee)	
)	Date of Decision: July 30, 2009
v.)	
)	
D.C. PUBLIC SCHOOLS,)	ROHULAMIN QUANDER, Esq.
DIVISION OF TRANSPORTATION)	Senior Administrative Judge
)	
Agency)	
_____)	

George O. Doward, , Sr., Employee
Ronald E. Holt, Employee Representative¹
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee, a Transportation Assistant with the D.C. Public Schools, Division of Transportation (the “Agency”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (the “Office” or “OEA”) on April 19, 2009, contesting Agency’s decision and notice, dated March 24, 2009, that he would be suspended for 10 days without pay for having engaged in behavior which was detrimental to the efficiency of the operation of Agency, to wit, a failure to perform his job assigned duties. The specifics related how Employee allegedly failed to perform due diligence, by failing to inspect and approve certain buses, prior to their being sent for vehicle inspection. As a result, at least nine school bus vehicles failed inspection, and had to be temporarily removed from service during a time frame when vehicular availability was critical.

¹ The Office of Employee Appeals was notified by a third party that Mr. Holt was no longer Employee’s Representative. However, no one officially advised the Office of Mr. Holt’s allegedly having withdrawn. Therefore, he is listed as Employee’s Representative in this Initial Decision, and, like Employee, was provided with a copy of the decision.

Employee denied the allegation and filed this appeal. Question #22 on the appeal form asked the petitioner, "What relief are you seeking, i.e., what do you want this Office to do?," In reply, Employee stated, "I would like for this Agency to overturn their decision." On May 25, 2009, he filed a supplemental statement to his petition, raising several additional issues that were not posed in the initial appeal.

After evaluating its initial action, Agency elected to rescind the suspension action, and advised Employee to that effect, including issuing a written notice, dated July 14, 2009, with a payroll check for the 10 days enclosed. Subsequent to Agency's motion to dismiss, an unknown third party contacted the Office and requested that OEA continue with this matter, and grant Employee the additional relief that he seeks, consistent with the items outlined in his letter of May 25, 2009. This AJ is unaware of who called the Office on Employee's behalf. It is this AJ's further understanding that this third party also indicated that Ronald E. Holt, who entered his appearance as Employee's designated representative, is no longer serving in that capacity. There is no record in the case file of Mr. Holt having filed any written notice with the Office to that effect.

There was no evidentiary hearing in this matter. This decision is rendered based solely upon the documents of record. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether the Office has jurisdiction to proceed with this matter, and consider whether Employee is entitled to the total relief that he seeks, once Agency elects to rescind the decision to suspend.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Pursuant to a letter issued by Agency on March 24, 2009, Employee was advised that he was to be suspended for 10 working days without pay, based upon a determination that he had failed to perform certain of his assigned job duties related to the maintenance of vehicles (school buses) used by Agency's Division of Transportation. As a result of Employee's alleged job deficiency, at least nine buses failed inspection, and had to be temporarily pulled from service. This situation created not only an embarrassment to Agency, but also imposed a critical shortage in available vehicles at a time that Agency was challenged to meet certain operational guidelines.

When Employee filed the above-noted supplemental letter of May 25, 2009, he raised several additional matters, none of which was reflected in his initial petition, including:

1. Challenging the timeliness of the suspension notification;
2. Whether the alleged neglect ever occurred, due to some uncertainty of exactly what Employee's job duties were;
3. Asserting that the responsibility to inspect the buses was vested with another employee, not this Employee;
4. Various allegations regarding alleged failures in the implementation of due process procedures;
5. The loss of several hours of use or loose annual leave, due to a denial of a request to use the leave before it was vacated; and
6. Anticipated promotion or pay raise, neither of which was implemented.

Subsequently, Agency decided to rescind the suspension for reasons that are not a part of this record. On July 14, 2009, Keith Pettigrew, Agency's Chief Operating Officer, issued a follow up letter to Employee, advising him that the suspension had been rescinded. A check representing the amount of lost wages for the 10-day period was enclosed. On July 22, 2009, Agency filed *Agency's Motion to Dismiss Employee's Petition for Appeal*, pointing out that, based upon the rescission of the suspension, this Office has no further jurisdiction to continue with this matter. Agency underscored that it has both withdrawn the suspension, and also awarded to Employee everything that he asked for in his appeal petition that lies within the jurisdiction of this Office to grant. Accordingly, his appeal is moot and should be dismissed.

Agency particularly relied upon the holding in *Uhlig v. Department of Justice*, 83 M.S.P.R. 27, ¶ 7 (1999), which held that, "mootness can arise at any stage of litigation, and an appeal will be dismissed as moot where the appellant has obtained all of the relief that she could have obtained had she prevailed before the Board, or where there is not further relief the Board can grant."

A reference to the statutory jurisdiction and authority of this Office is also helpful. The jurisdiction of this Office is both established and limited by statute. *D.C. Official Code* § 1-606.03 (a) (2001) recites the jurisdiction of this Office. It states in relevant part:

An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . [or] an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force.

Employee would have me adjudicate his case to fit within the parameters of the above-noted jurisdictional provision.

Based upon the record created, including Agency's officially withdrawing the 10-day suspension that was the basis for Employee's filing his appeal, I find that the Office no longer has jurisdiction to consider Employee's appeal. I conclude that the other issues that he raised, if they have merit, must be raised in another forum, such as a grievance procedure, which might have jurisdiction to consider his concerns. None of the above enumerated statutory conditions, upon which the jurisdictional authority of this Office would rest, apply in the remainder of this case.

Pursuant to OEA Rule § 629.2, 46 D.C. Reg. at 9317 (1999), Employee has the burden of proof as to the issue of jurisdiction, and must prove that he could still qualify to have his petition be considered by this Office. Relevant language from selected court cases is illuminating. "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. __ ().

In the matter at hand, Employee has not met this burden. I conclude that the Office does not have subject matter jurisdiction, and cannot now grant Employee any additional relief at this time. Therefore, I further conclude that this matter should be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

ROHULAMIN QUANDER, Esq.
Senior Administrative Judge