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

_____)	
In the Matter of:)	
)	
BARNEDIA DRAYTON,)	
Employee)	
)	OEA Matter No. J-0021-16
v.)	
)	Date of Issuance: February 24, 2016
D.C. FIRE AND EMERGENCY MEDICAL)	
SERVICES DEPARTMENT,)	
Agency)	
_____)	
Barnedia Drayton, Employee <i>Pro Se</i>)	MICHELLE R. HARRIS, Esq.
Andrea Comentale, Esq., Agency Representative)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 12, 2016, Barnedia Drayton (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department’s (“Agency” or “DCFEMS”) official letter of reprimand. On January 21, 2016, Agency filed its Motion to Dismiss Employee’s Petition for Appeal.

I was assigned this matter on January 19, 2016. Agency noted in its Motion to Dismiss that OEA does not have jurisdiction over this appeal because an official reprimand is not an appealable action to this Office. Consequently, on January 22, 2016, I issued an Order directing Employee to address whether OEA has jurisdiction over this matter. Employee filed her response on February 8, 2016. Agency had the option to submit a response on or before February 18, 2016. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee works for Agency as an Emergency Medical Technician, M-33-2. In a letter dated December 2, 2015, Employee was notified of an official reprimand for violating Agency's Rules and Regulation Article VI § 10. Specifically, the reprimand indicates that on August 30, 2015, Employee failed to report for duty.¹

Employee's Position

Employee argues that she believes the "proposal of reprimand should be dismissed, based on the fact that the actions taken were illegal."² Employee also indicates that she filed a complaint with Agency on December 14, 2015.³ Employee also argues that OEA should have jurisdiction over her appeal based on the District of Columbia Personnel Manual guidelines.⁴

Agency's position

Agency contends that OEA does not have jurisdiction over this matter. Agency asserts that Employee is appealing an official reprimand which "does not meet the statutory requirement for appealable actions." Further, Agency notes that in accordance with OEA Rule 604.1 and D.C. Official Code §1-606.03(a), Employee has not been "subjected to an appealable adverse action for which OEA has jurisdiction and her Petition for Appeal must be dismissed."⁵ Agency argues that Employee was provided with information regarding her rights to "grieve this action through Article 31 of the negotiated grievance procedure within ten (10) working days of the effective date of her official reprimand."⁶ Additionally, Agency notes that, in alignment with Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals.

Jurisdiction

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1⁷, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

¹ Employee's Petition for Appeal at Attached Letter of Reprimand (December 17, 2015).

² *Id.* at Page 4 (January 12, 2016).

³ *Id.* at Page 6 (January 12, 2016).

⁴ Employee's Response on Jurisdiction (February 8, 2016).

⁵ Agency's Motion to Dismiss at Page 2 (January 21, 2016).

⁶ *Id.*

⁷ *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat 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.” This Office has no authority to review issues beyond its jurisdiction.⁸ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁹

In the instant matter, I agree with Agency’s assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Motion to Dismiss that Employee was subject to an official reprimand. As previously cited, this Office’s jurisdiction is limited to appeals related to performance ratings that result in removals, an adverse action that causes removal or suspension of ten (10) days or more, a reduction in force or grade, and enforced leave of ten (10) days or more. Further, Employee acknowledges in her Petition that she is appealing a reprimand. D.C. Official Code § 1-616.52 (a), states that an “*official reprimand or of suspension of less than ten (10) days may be contested as a grievance* pursuant to §1-616.53(emphasis added).”

There is no evidence in the record to suggest that Employee was suspended for ten (10) days or more, removed from her position or otherwise subject to an adverse action that is appealable to OEA. Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a “preponderance of evidence.” I have determined that Employee did not meet this burden. Accordingly, I find that Employee’s appeal is a grievance that does not constitute an appealable action for which this Office has jurisdiction.¹⁰ For this reason, I find that OEA lacks jurisdiction to adjudicate this matter.

ORDER

It is hereby **ORDERED** that Agency’s Motion to Dismiss is **GRANTED**, and the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge

⁸ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁹ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

¹⁰ Omnibus Personnel Reform Amendment Act of 1998, (OPRAA) D.C. Law 12-124.