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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LANRE BANJO,)	
Employee)	
)	OEA Matter No.: J-0098-10
v.)	
)	Date of Issuance: October 27, 2010
D.C. OFFICE OF THE)	
CHIEF FINANCIAL OFFICER,)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge
Sandy V. Lee, Employee Representative(s)		
Clarene P. Martin, Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 23, 2009, Lanre Banjo (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the Chief Financial Officer’s (“OFCO” or “Agency”) decision to terminate him on October 20, 2009. Employee’s position of record at the time of his removal was Director of Accounting and Operations. Prior to being terminated, Employee was issued several written reprimands based on allegations of insubordination and disregard for authority.¹ Employee was also suspended without pay for three (3) business days during October of 2009.

I was assigned this matter on or about August 10, 2010. After reviewing Employee’s Petition for Appeal, I determined that a question existed regarding whether OEA has jurisdiction over the instant matter. As a result, I issued an order on August 24, 2010, requiring Employee to

¹ See *Agency’s Answer to Petition for Appeal* (January 5, 2010). Employee was given written reprimands on July 21, 2009, July 25, 2009, and October 7, 2009 respectively.

address the jurisdictional issue in a written brief. I subsequently granted Employee an extension of time in which he could file the brief. The Employee complied with the order. After careful review of the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether OEA has jurisdiction over this matter.

ANALYSIS AND CONCLUSION

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” OEA Rule 629.1, states that 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: “[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.”

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

“An employee may appeal a final agency decision affecting 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....”

Agency’s primary argument is that this Office lacks jurisdiction to hear Employee’s appeal in this matter because OEA does not have the statutory authority to assert jurisdiction over personnel matters involving OCFO. Agency describes its position in detail as follows:

“It is recognized that OEA has appellate jurisdiction over certain employee claims against the District of Columbia government arising under the Comprehensive Merit Personnel Act, (See: D.C. Official Code 2-606.03 and *Grillo v. District of Columbia*, 731 A.2d 384). However, the Office of the Chief Financial Officer is expressly exempt from the Comprehensive Merit Personnel Act (hereafter “CMPA”). In this regard, Congress amended the District of Columbia Home Rule Act in Section 202 of the “2005 District of Columbia Omnibus Authorization Act” approved October 16, 2006 (P.L. 109-356) to state in pertinent part as follows:

“ . . . notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement, employees of the Office of the Chief Financial Officer of the District of Columbia . . . shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978, except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.”

See also D.C. Official Code 1-204.25(a) wherein it specifically states that OCFO employees “shall be considered at-will employees not covered by Chapter 6 of the title.”

This recent legislation gives permanency to what had been heretofore yearly legislative measures that OEA has previously considered in making its determination that employees of the OCFO are not entitled to the notice and just cause provisions of the CMPA based upon, at that time, an implied repeal of those provisions under Section 152(a) of the 1996 District of Columbia Appropriations Act (“DCAA”) and subsequent Congressional legislation.² See: Initial Decision, *Leonard et al. v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0241-96 (February 5, 1997) (Judge Hollis) (holding that the CFO held legal authority to terminate employees without cause and opportunity to respond).³ Judge Hollis’ decision was upheld on appeal before the Superior Court of the District of Columbia and the Court of Appeals for the District of Columbia in *Leonard v. District of Columbia*, 794 A.2d 618, 626, 2002. Section 152 effectively removed employees of the OCFO from any protection afforded by the CMPA and these employees can be terminated without cause.⁴

² The Omnibus Consolidated Rescission and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-102 (1996), as amended and extended, (hereinafter “OCRA Act”) at §152, expands the authority of the chief financial officer (CFO) of the District of Columbia by transferring all budget, accounting, and financial management personnel in the executive branch of the District government from the Mayor’s authority to the CFO’s authority. It also provides, at § 152(a), that employees in these financial offices shall be appointed by, and shall serve at the pleasure of the CFO.

³ Judge Hollis issued identical decisions on February 13 and 24, 1997 in *Gaines v. CFO*, OEA Matter No. 1601-0265-96, and *D. Jackson v. CFO*, OEA Matter No. 1601-0242-96.

⁴ In the *Leonard* case, appellants sued the District of Columbia for unlawful termination, alleging that they were career civil service employees who had been terminated from their employment without cause, prior notice or due process and in violation of the CMPA. *Leonard* held that the OCRA Act “implicitly repealed appellants’ career

Each of the Petitioners, in the instant cases, held an “at-will” status under P.L. Law 109-356 and served at the pleasure of the Chief Financial Officer (hereafter CFO). In accordance with P.L. 109-356 and controlling decisions of the OEA which are consistent with the decisions of the Court of Appeals for the District of Columbia, set forth above, the CFO has the legal authority to terminate any OCFO employee with or without cause and, except for employees covered by the collective bargaining agreement, without regard to the provisions of the CMPA⁵ or any other law to the contrary.

In sum, it is well established that the CFO may terminate the employment of OCFO employees pursuant to the CFO’s congressionally bestowed “at-will” authority, and that the U.S. Congress acted within the scope of its constitutional plenary authority over the District of Columbia in permanently removing OCFO personnel from the protections of the CMPA. *See Alexis v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0120-97 *et seq.*, *Opinion and Order on Petition for Review* (October 10, 1997) (recognizing Congressional authority to revoke statutory rights on a prospective basis by legislative enactment).⁶

Employee raises several constitutional arguments regarding Employee’s due process rights and procedural safeguards.⁷ 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 of ten days or more; or reductions in force.⁸ This Office has no authority to review issues beyond its jurisdiction.⁹ Employee’s arguments regarding due process and Fifth Amendment rights are beyond the purview of OEA’s jurisdiction and will therefore not be addressed.

After review of the parties’ positions, I find that Agency’s analysis of the issue concerning jurisdiction comprehensive and accurate. In *Sharon Bartee, et al. v. District of Columbia Office of Tax and Revenue*¹⁰, Agency addressed an identical jurisdictional issue to the one in this case. The Administrative Judge held that OEA did not have jurisdiction over cases appealed from OCFO. The AJ further adopted Agency’s analysis of the applicable laws related to this Office’s jurisdiction over employee matters appealed from OCFO. Accordingly, I also

service status and converted them to “at-will” employees subject to discharge without the benefit of the procedures specified in the CMPA [Act]....., thereby divesting employees of any pre-termination procedural rights or rights to be terminated only for cause under the CMPA”.

⁵ The AFSCME, District Council 20, AFL-CIO collective bargaining agreement with the District and which the OCFO is a signatory requires “cause” for any adverse action against a union employee.

⁶ Agency’s Answer to Petition for Appeal (January 5, 2010); *See also* Agency’s Response to Employee’s Brief on Jurisdiction (October 6, 2010).

⁷ Plaintiff’s Brief to Defendant’s Answer to and Motion to Dismiss Petition for *Appeal* (September 30, 2010).

⁸ OEA Rule 604.1, 46 D.C. Reg. 9299 (1999).

⁹ *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), ___ D.C. Reg. ___ ().

¹⁰ OEA Matter No. 1601-0036-09, *et seq.* (October 2, 2009).

adopt Agency's argument enumerated above. Employee served at the pleasure of the Chief Financial Officer at the time of his removal. Because this Office does not have the authority to exercise jurisdiction over this matter, Employee's appeal must be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

SOMMER J MURPHY, ESQ
ADMINISTRATIVE JUDGE