

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Deirdre Lewis)	OEA Matter No. 1601-0149-08
Employee)	
)	Date of Issuance: February 24, 2009
v.)	
)	Joseph E. Lim, Esq.
D.C. Public Schools)	Senior Administrative Judge
Agency)	
_____)	

Deirdre Lewis, Employee *pro se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee served as a D.C. Public School (the “Agency”) Special Education teacher. She filed this Petition for Appeal with the Office of Employee Appeals (the “Office”) on August 12, 2008, appealing Agency’s final decision letter, dated July 11, 2008, which terminated her employment with Agency, effective August 1, 2008.

This matter was assigned to me on January 26, 2009. A scheduled Prehearing Conference was held on February 20, 2009, with both parties present. At the Conference, Employee admitted that she does not have a teacher’s license to teach in the District of Columbia because she flunked the math and reading portion of the licensing examination. Because no relevant facts were in dispute, an evidentiary hearing was not needed. This decision relied on the documents submitted and respective statements provided at the Conference. The record closed on February 20, 2009.

JURISDICTION

This Office’s jurisdiction was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSIONS

Employee served as a Special Education teacher at one of Agency's public schools. She filed this Petition for Appeal with the Office of Employee Appeals (the "Office") on August 12, 2008, appealing Agency's final decision letter, likewise dated on July 11, 2008, which terminated her employment with Agency, effective August 1, 2008.

Prior to the termination, Agency informed Employee that her continued employment was contingent upon her completing and maintaining teacher certification requirements, which also included becoming licensed. Subsequently, Agency issued messages to Employee, reminding her to obtain a license to teach in the District of Columbia to remain employed with the Agency.

Because Employee failed to obtain a full license, Agency terminated Employee effective August 1, 2008, consistent with the District of Columbia Municipal Regulations §1001.2 licensure law, which states: "all Educational Service employees in grade ET-15 shall satisfy the requirements of the applicable license as approved by the Board of Education as well as all applicable testing requirements."

Employee admitted that she had failed to obtain a teacher's license. However, she argued that she should be allowed more time to complete the courses needed in order to obtain her license. Unfortunately, Employee presents no statute, regulation, or rule that would mandate Agency to give her additional time to obtain her license or to force Agency to issue her a provisional license.

As the deciding AJ, I have determined that the threshold issue in this case is one of jurisdiction. This Office's jurisdiction is conferred upon it by law, and was initially created by the District of Columbia Comprehensive Merit Personnel Act of 1978 (the "Act"), *D.C. Official Code* (the "Code") § 1-601-01, *et seq.* (2001) and then amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which became effective on October 21, 1998. Both the Act and OPRAA confer jurisdiction on the Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in the Career or Education Service who are not serving in a probationary period. The Code § 1-608.01(a)2)(E) confers permanent Educational Service status upon employees who have been appointed to a position, upon completion of a probationary period of at least one year. It is undisputed that Employee was a term employee and thus had no expectation of continued employment. In addition, there is no evidence in the record that Employee became a permanent employee of Agency at the expiration of her term. She was unable to achieve permanent status because she lacked the requisite license. *See* 5 DCMR § 1601.1.

But one thing is certain. Employee did not fully complete the certification requirements and obtain her license even after several years of teaching. Once her provisional license expired, she served solely in an "at will" capacity, subject to Agency's determinations with regard to whether she qualified for continued employment. It is well established that in the District of Columbia, an employer may discharge an at-will employee "at any time and for any reason, or for no reason at all". *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). *See also Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006). As an "at will" employee, Employee did "not have any job tenure or protection." *See* Code § 1-609.05 (2001). Further, as an "at will" employee, Employee had no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).

Employees have the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, *id*, as 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.” I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction.

However, assuming *arguendo* that Employee had met the burden of proof on the issue of jurisdiction, the claim would still fail because she lacked the credentials required to challenge the standards set by Agency. In *Nunez v. Simms*, 341 F.3d 385 (5th Cir, 2003), Nunez was hired by the El Paso, Texas Independent School District in 1996 and issued a three-year probationary license because, like Employee, she did not qualify for a standard teaching certificate at the time of hire. She was terminated in November 2000 for failing to meet the requirements and sued the school district.¹ The Court concluded that Nunez was not qualified to serve as a teacher following the expiration of her provisional license because she lacked the credentials and had no reasonable expectation of or property interest in continued employment.

Further, a recent decision from this Office concluded that by failing to obtain the qualifying performance standards and obtain a teaching license, an employee, terminated under circumstances not too dissimilar to Employee in this case, failed to meet the enumerated performance standards and “[s]uch deficiency is, without a doubt, a condition affecting the performance standards, which is itself a basis for removing an employee”. *Carson v. District of Columbia Public Schools*, OEA Matter No. 1601-0032-06 (June 13, 2006), _____ D.C. Reg. ____ (). See also, *Sandra Weekes v. District of Columbia Public Schools*, OEA Matter No. 1601-0022-06 (July 14, 2006), __ D.C. Reg. ____ (). Thus, this analysis provides an alternative basis for sustaining Agency’s action.

Although Agency provided Employee with information regarding her alleged appeal rights to this Office, Agency’s action was incorrect, since this Office has no jurisdiction. The confusion this caused Employee is regrettable. However, it is well established that this Office’s jurisdiction cannot be enlarged by misinformation to Employee regarding appeal rights. *Alvarez v. Department of Veterans Affairs*, 49 M.S.P.R. 682 (1991). This Office simply has no authority to review matters that are beyond its jurisdiction. *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. ____ (). Unless an employee has permanent status in the Career or Educational Service or is appointed under special authority in the Excepted Service, the employee has no statutory right to be given a statement of cause for a discharge and no statutory right to utilize the appeal processes of this Office.

While it can be argued that Agency should have communicated with Employee more regularly regarding her lack of credentials, it did remind her of this deficiency. Hopefully, Employee will soon

¹ Unlike the instant case, in *Nunez*, the teacher initiated her lawsuit while she was teaching under a “continuing contract” authorized by Section 21.153 of the Texas Education Code. The District of Columbia has no similar provision. Employee’s last contractual relationship with Agency ended with the expiration of her contract.

obtain all of the necessary credentials and a license, so that she can resume the important mission of educating the youth of the District of Columbia.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge