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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
VENNIE JONES,)	
Employee)	OEA Matter No. J-0003-19
)	
v.)	Date of Issuance: December 3, 2019
)	
UNIVERSITY OF THE DISTRICT OF)	
COLUMBIA,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Vennie Jones (“Employee”) worked as a Clerk with the University of the District of Columbia (“Agency”) Community College, Workforce Development and Lifelong Learning Division. On September 25, 2018, Employee received a notice that her temporary appointment would expire on September 30, 2018. Specifically, Agency explained that it did not receive funding to extend the grant into fiscal year 2019, and therefore, Employee would not receive a new temporary appointment.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 4, 2018. She claimed that Agency blacklisted her from being considered for other temporary full-time or permanent full-time positions. She also asserted that Agency retaliated

¹ *Petition for Appeal*, p. 1-2 (October 4, 2018).

against her. Therefore, Employee requested that she be reinstated to a permanent position as a secretary or comparable position and receive compensation for her accrued annual leave.²

On November 5, 2018, Agency filed a Motion to Dismiss for Lack of Jurisdiction. It asserted that Employee held a temporary appointment; thus, OEA lacked jurisdiction over the matter. Additionally, Agency posited that Employee knew that she was a temporary, full-time employee when she received her appointment letter. Agency argued that pursuant to District Personnel Manual (“DPM”) § 826.1, Employee’s employment ended at the expiration date of her temporary appointment. Moreover, Agency noted that Employee admitted that her position should have been terminated since Agency did not receive additional funding for the grant. Accordingly, it requested that Employee’s Petition for Appeal be dismissed.³

Employee filed a response to Agency’s Motion to Dismiss on January 10, 2019. She contended that she worked in a hostile work environment. Additionally, Employee reiterated that she should be awarded a permanent position with Agency and receive compensation for her accrued annual leave. Therefore, she requested that Agency’s Motion to Dismiss be denied.⁴

On January 18, 2019, the OEA Administrative Judge (“AJ”) issued his Initial Decision. The AJ found that Employee was on notice that her appointment was a temporary appointment. Additionally, he explained that once a temporary or term employee’s status expired, there is no legal obligation for Agency to renew the appointment. Moreover, the AJ reasoned that OEA consistently held that pursuant to OEA Rule 628.2, employees have the burden of proving that OEA has jurisdiction to hear and decide their appeals. He determined that Employee did not meet

² *Id.*, 1-2.

³ *Board of Trustees of the University of the District of Columbia’s Motion to Dismiss for Lack of Jurisdiction*, p. 2-4 (November 5, 2018).

⁴ *Employee Brief for why Agency Motion to Dismiss for Lack of Jurisdiction Should be Dismissed*, p. 2, 5-6 (January 10, 2019).

this burden. Consequently, the AJ dismissed the appeal for lack of jurisdiction.⁵

On February 8, 2019, Employee filed a Petition for Review. She argues that the AJ failed to address all of the issues of law and fact; that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy; and that the AJ did not consider her original arguments. Employee maintains that she worked in a hostile work environment and that Agency blacklisted her from being considered for other temporary full-time or permanent full-time positions.⁶

This Board certainly appreciates the issues raised by Employee in her Petition for Review. It is clear that her intent was to shed a light on some problems that she claims existed in Agency. Unfortunately, this Board lacks jurisdiction to consider Employee's arguments. Section 8-B of the DCMR applies specifically to University of the District of Columbia employees. In its employment letter to Employee, Agency referenced that its “. . . offer [was] made in accordance with the District of Columbia Municipal Regulations, Title 8 University of the District of Columbia and District Personnel Manual.”⁷ Although Agency provided Section 8 of the DCMR in its offer letter, it utilized DPM § 826.1 as its basis for ending Employee's employment. The AJ agreed. A thorough review of the record shows that the AJ utilized the correct regulation when rendering his decision.

8B DCMR 1100.1(a) provides that the “D.C. Comprehensive Merit Personnel Act of 1978 (“CMPA”) . . . provides for the creation of the Educational Service for all employees of the University of the District of Columbia except . . . clerical, stenographic, or secretarial positions.”

⁵ *Initial Decision*, p. 2-3 (January 18, 2019).

⁶ *Employee Petition for Review of Initial Decision*, p. 2-3 (February 8, 2019).

⁷ *Petition for Appeal*, p. 6-7 (October 4, 2018).

Moreover, 8B DCMR 1100.2 provides that “employees within the exceptions designated in § 1100.1 shall be considered part of the Career Service established under the CMPA.” Employee was hired as a clerk by Agency. In her position, she was responsible for, *inter alia*, assisting with data entry for students enrolled in the hospitality academy.⁸ Her position was clerical in nature. Therefore, this matter must be evaluated under the Career Service section of the CMPA.

As the AJ provided, DPM Section 823 is the appropriate regulation to be used in this case. DPM § 823.1 provides that “a personnel authority may make a term appointment for a period of more than one (1) year when the needs of the service so require and the employment need is for a limited period of four (4) years or less.” Agency’s June 2, 2017 offer of employment clearly provides that Employee’s position was temporary and “the not to exceed date of this appointment is September 30, 2018.”⁹ Employee’s appointment was for longer than one year and did not exceed four years. Therefore, Agency complied with DPM § 823.1.

Additionally, DPM § 823.9 provided that “employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier.” Furthermore, DPM § 826.1 provides that “the employment of an individual under a temporary or term appointment shall end on the expiration date of the appointment” As previously provided, Employee’s offer letter outlined that her appointment would not exceed the date of September 30, 2018. Similarly, in its letter of expiration of appointment, Agency provided that Employee’s appointment would expire on September 30, 2018, and a new appointment would not be made because it was unable to secure funding to extend the appointment.¹⁰ Thus, Employee

⁸ *Id.* at 10.

⁹ *Id.*, p. 6-7.

¹⁰ *Board of Trustees of the University of the District of Columbia’s Motion to Dismiss for Lack of Jurisdiction*, Attachment (November 5, 2018).

was properly removed from employment on September 30, 2018, and Agency had no obligation to extend her appointment. Accordingly, Agency also complied with DPM §§ 823.9 and 826.1.

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. This Board concludes that the AJ's ruling was based on substantial evidence. The AJ correctly provided that in accordance with D.C. Official Code § 1-606.03(a), OEA has jurisdiction over performance ratings resulting in removal; adverse actions for cause that result in removal, reduction in grade, placement on enforced leave, or suspension for ten days or more; or reductions in force. Employee was not removed for any of the outlined reasons. She was in a term appointment status and her appointment ended at the date set by Agency in its employment offer letter. Thus, we agree with the AJ's determination that our office lacks jurisdiction to consider the arguments provided by Employee. Accordingly, Employee's Petition for Review is denied.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Clarence Labor, Chair

Patricia Hobson Wilson

Jelani Freeman

Peter Rosenstein

Dionna M. Lewis

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.