THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
TRELAUNDA BECKET	)	OEA Matter No. J-0102-08
Employee	)	
	)	Date of Issuance: September 9, 2008
v.	)	
	)	
UNIVERSITY OF THE	)	Rohulamin Quander, Esq.
DISTRICT OF COLUMBIA	)	Senior Administrative Judge
Agency	)	
	)	

Trelaundra Beckett, *pro se,* Employee
Christine Poole, Agency Representative

INITIAL DECISION

BACKGROUND

Pursuant to *D.C. Official Code (*the *"Code")* § 1-606.03(a) (2001), a Petition for Appeal was filed on June 30, 2008, by Trelaunda Beckett (the "Employee") against the University of the District of Columbia (the "Agency"). Employee's job title is "Rehabilitation Counselor for Disability Services." Employee asserted that having completed the competitive application process, including relevant interviews, she was advised of her selection for promotion to a new position, "Assistant Director, Disability Services," to take effect on April 15, 2008. However, and despite being advised by Agency staff that the SF 52, Request for Personnel Action, and SF 50, Notice of Personnel Action, had been initiated, Agency failed to complete the personnel documents, to effectuate the steps required to formally implement the promotion.[1]

JURISDICTION

The jurisdiction of the Office to consider and decide this matter, pursuant to the *Code* § 1-606.03 (2001), has not been established.

ISSUE

Whether the record will support a finding that Agency had promoted Employee to another position.

[1] Employee provided an SF 52, but not an SF 50, for the record. Her narrative statement indicates that she was advised that the SF 50 was being processed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) provides that the appealing employee shall have the burden of proof as to issues of jurisdiction. Thus, before this Office could even consider the merits of the Employee's appeal, she would first have to meet the burden of proof, to establish that the Office has jurisdiction to consider the subject matter of her petition, i.e., whether Agency's action of not granting her the promotion that she was anticipating was unlawful, as claimed.

Employee, a Rehabilitation Counselor, responded to two job announcements, each dated January 14, 2008. She made application for her existing position, and also for consideration to be promoted to the position of Assistant Director. It appears that both positions were being converted to permanent. After the standard round of job interviews, Employee was advised by the interviewing panel that she had been selected for the Assistant Director position, with an effective start date of April 15, 2008. When no notification was given that the promotion had been finalized, on May 1, 2008, Employee contacted human resources staff. She was advised that no SF 50, Notice of Personnel Action, had been processed, and that no action had been initiated to adjust Employee's salary, to reflect the alleged promotion.

Employee's self-conducted investigation revealed that, although an SF 50 had been prepared, the implementation of the document and its intended purpose and effect had been placed "on hold," pending the outcome of an inquiry into some supposedly "confidential information[2]" that Agency had received, presumably related to Employee in some manner. At the time of Employee's filing her petition with the Office, she had not been further advised of any decision with regard to her anticipated promotion.

On May 30, 2008, Employee wrote a memorandum to Joseph L. Askew ("Askew"), Chair, Student Affairs Committee, Board of Trustees, University of the District of Columbia. The memo set forth in detail the chronology of the process, including when the job applications were made, the interviews completed, and the investigation into the delay in the formal selection of the Employee for the Assistant Director position. On May 31, 2008, Askew acknowledged receiving the memo, indicating that he would inquire into the matter. Although no additional reply statement from Askew was submitted for my consideration, on June 6, 2008, Christine Poole, Director, Human Resources, advised Employee by e-mail that the position was scheduled to be readvertised, and that the Employee would be notified when the job opportunity is announced.

On June 10, 2008, Employee sent an e mail to Janice Borlandoe, an Agency staff member who had initially interviewed the Employee, challenging an oral statement that it had been determined that Employee was "ineligible" for selection to the Assistant Director position. The nature of the supposed ineligibility was not further developed in the record that Employee submitted for consideration.

Employee requests that this Office find that she has, in fact, been promoted to the position of Assistant Director, Disability Services, and likewise order that Agency compensate her from April

[2] The use of the term, " [Agency] received confidential information," was how Employee characterized the basis for allegedly holding back on her promotion.

15, 2008, the date her "promotion" was to take effect, until the date of this Order. In effect, Employee is asking this Office to order her promotion to the Assistant Director position. This contention cannot be entertained as the record does not sustain any finding that Employee was ever appointed to the position. This Office has long held that, " . . . a decision to promote an employee is discretionary, and unless it can be shown that a failure to promote an employee violates some mandatory duty, retroactive promotion and back pay cannot be awarded." *Employee v. Agency*, OEA Docket No. 1601-0062-84, 36 D.C. Reg. 6458 (1989), citing *United States v. Testan*, 424 U.S. 392 (1976) and *Whitt v. District of Columbia*, 413 A. 2d 1301 (D.C. 1980). I conclude, then, that this Office lacks the authority to order the Agency to promote the Employee, absent a showing that the Agency had a mandatory duty to do so.

Taking the issue a step further, the fact that Agency initiated an action to create a higher level position or to promote Employee, by creating some of the documentation to effectuate the promotion, did not impose upon Agency a mandatory duty to promote. *Patricia Calloway v. Department of Housing and Community Development*, OEA Matter No. 1602-0101-88, May 4, 1993, ___ D.C. Reg. __ ( ). Thus, the creation of the promotion-related documents, i.e., SF 52, SF 50, and SF 1, is not proof of a promotion, but rather that some movement was made in that direction, even if subsequently cancelled for whatever reasons.

Ordinarily, a mandatory duty to promote a public employee only arises where an agency has limited its discretion through a collective bargaining agreement or an agency regulation which requires a promotion after an employee has fulfilled certain requirements. *In re John Cahill*, 58 Comp. Gen. 59, 61-62 (1978); *Brown v. Secretary of the Army*, 918 F.2d 214 (D.C. Cir. 1990), *cert. Denied*, ___ U.S. ___ , 112 S.Ct. 57 (1992). Neither of the above referred to circumstances is present in the matter at hand.

In addition to the above, my determination that the Office lacks jurisdiction to consider this matter is further underscored by both the *D.C. Official Code* and the D.C. Personnel Regulations, both of which specifically recite the scope and limitations of the jurisdiction of the Office. Pursuant to the *Code*, § 1-606.03(a), 2001:

> 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.

None of the above enumerated conditions, each of which sets the jurisdictional parameters of this Office, apply in this case.

Accordingly, I find that the Employee has not met the burden of proof that she was entitled to a promotion, based upon having made application, or established that the elements of her case fit within the specific jurisdictional confines that the Council of the District of Columbia established for this Office. I conclude that I lack subject matter jurisdiction, and cannot grant to Employee the relief that she is seeking. Therefore, Employee's Petition for Appeal should be dismissed.

ORDER

It is hereby ORDERED that Employee's petition is DISMISSED.

FOR THE OFFICE: / s /

ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge