

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Zann Lewter,) OEA Matter No. 1601-0187-11
Employee)
) Date of Issuance: April 2, 2014
v.)
) Senior Administrative Judge
D.C. Public Schools,) Joseph E. Lim, Esq.
Agency)

Sara White, Esq., Agency Representative
Zann Lewter, Employee *pro se*

INITIAL DECISION

INTRODUCTION

Employee filed a petition with the Office of Employee Appeals (OEA) on July 26, 2011, appealing Agency’s decision to remove him from his position as an Attendance Counselor, effective July 29, 2011, due to an “Ineffective” IMPACT rating. At the time the petition was filed, Employee was in permanent career status. This matter was assigned to me on June 18, 2013. On June 27, 2013, I issued an Order notifying Employee that he had a burden of proof on jurisdiction, an issue that Agency had raised in its answer to Employee’s petition. Employee responded in a timely manner. The record is closed.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this Petition for Appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In his reply brief, Employee does not dispute that he filed a grievance regarding his removal pursuant to the terms of a Collective Bargaining Agreement between his exclusive bargaining representative and Agency before he filed an appeal with OEA. Employee did not address this issue. Instead, he complains about the disciplinary actions he received from Agency after filing a grievance against a principal. Employee also notes how Agency had mistreated him after giving 18 years of his service to it. In the process, Employee completely ignores the fact that he had filed a grievance with his union and that by grieving his termination pursuant to the terms of Collective Bargaining Agreement first, Employee is barred from appealing the matter to

OEA. I therefore find that Employee did file a grievance regarding his removal before he filed an appeal with OEA.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 D.C. Reg. 2129 (2012). Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, 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”.

This Office’s jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Office Code (2001) Section 1-616.52 which states in pertinent part:

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both**. (emphasis added).

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first**.(emphasis added).

Employee elected to grieve the matter through the Collective Bargaining Agreement before filing the appeal with OEA. His appeal rights to OEA were contained in the Final Agency Notice, and he does not contend he was unaware of his rights before this Office.

In sum, based on the arguments and evidence presented, and the applicable laws, rules and regulations, the Administrative Judge concludes that Employee has not met his burden of proof on jurisdiction in this matter.

ORDER

It is hereby ORDERED that the Petition for Appeal is DISMISSED.

FOR THE OFFICE:

Joseph Lim, Esq.
Senior Administrative Judge