THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
GEOFFREY KAMANDA, Employee	OEA Matter No. 1601-0039-06
	Date of Issuance: November 13, 2008
DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Geoffrey Kamanda ("Employee") worked as a teacher with the District of Columbia Public Schools ("Agency"). On January 6, 2006, Employee received a notice from Agency informing him that due to low enrollment it had to equitably distribute resources across the district to align with student enrollment. The notice went on to state that Employee was teaching under an expired provisional license; it expired on June 30, 2002. Agency asserted that Employee was informed that his employment was contingent on maintaining his teacher certification requirements. Because he failed to do so, Employee was terminated on February 4, 2006.[1]

[1] *Petition for Appeal*, p. 7 (March 3, 2006).

On March 3, 2006, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He argued that his termination was improper and illegal. Employee alleged that his termination notice came after he expressed concern over the lack of special education teachers at the middle school. He also claimed that the school was in violation of the Individual with Disabilities Education Act. Therefore, it was his belief that his termination was a form of retaliation. As for his teacher certification, Employee stated that he was informed that he had until June 30, 2006, to prove his certification. As a result, he requested that he be reinstated to his position with back pay.[2]

Agency filed its Response to Employee's Petition for Appeal on April 5, 2006. It argued that Employee was on notice that his employment was contingent on the completion and maintenance of his teacher certification and license requirements. Agency provided that because Employee's provisional license expired on June 30, 2002, he was properly terminated. It also argued that OEA lacked jurisdiction over this matter because this was not an adverse action, reduction-in-force, or a suspension for 10 days or more. Agency argued that Employee was dismissed because he did not meet a qualification of his employment. Therefore, it requested that Employee's case be dismissed.[3]

On May 8, 2006, Employee wrote a letter to the Administrative Judge ("AJ") informing him that he decided to withdraw his appeal. The reason for his withdrawal was because he decided to pursue his claims against Agency under the D.C.

---

[2] *Id.* at 6.
[3] *District of Columbia Public Schools' Response to Employee's Petition for Appeal*, p. 2 (April 5, 2006).

Whistleblower Protection Act in federal court or the Superior Court of the District of Columbia.[4]

On May 9, 2006, the AJ issued an Initial Decision. He found that OEA did have jurisdiction over the matter. However, pursuant to Employee's request he dismissed the case. The AJ noted in his Initial Decision that Employee elected to withdraw the matter with prejudice.[5]

Because the AJ dismissed Employee's Petition for Appeal with prejudice, Employee filed a Petition for Review on May 19, 2006. In his Petition, he argued that he never requested a final decision on his Petition for Appeal only that the petition be withdrawn. Employee also asserted that there was nothing in the record that supported a dismissal with prejudice. He highlighted that the AJ failed to cite to any statutory language that supported such a dismissal. It was Employee's belief that because of D.C. Official Code § 1-615.56(b), the AJ exceeded his authority. Employee requested that the OEA Board issue an order stating that the Petition for Appeal be withdrawn without prejudice. Otherwise, he felt that Agency could argue that any future claims filed by Employee were barred.[6]

Employee's sole request to the Board is that his case be dismissed without prejudice instead of with prejudice as the AJ held in the Initial Decision. D.C. Official Code § 1-615.56(b) provides that "no civil action shall be brought pursuant to § 1-615.54 if the aggrieved employee has had a final determination on the same cause of action from

[4] *Letter to OEA Administrative Judge,* p. 1 (May 8, 2006).
[5] *Initial Decision,* p. 2 (May 9, 2006). It should be noted that the dismissal with prejudice language was not present in Employee's letter to the Administrative Judge.
[6] *Employee's Appeal of Initial Decision,* p. 1-3 (May 19, 2006).

the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract." This section of the Code pertains to remedies available to employees under whistleblower protection claims.[7] The language provides that if an employee has had a final determination on the *same* cause of action from OEA, then no civil action shall be brought. However, Employee did not raise any whistleblower issues before OEA in his Petition for Appeal. The AJ did not discuss any whistleblower claims in his Initial Decision. The case was dismissed even before a decision was made on the merits. Therefore, he is not barred from raising such claims in Superior Court.

Even though D.C. Official Code § 1-615.56(b) will not negatively impact Employee as he argued, we do agree that there was no real basis for the AJ to dismiss this matter with prejudice. It is our belief that based on Employee's withdrawal of his Petition for Appeal that his case should have been dismissed without prejudice.[8] Accordingly, Employee's Petition for Review is granted in part.[9]

[7] Specifically, this section outlines that employees are precluded from filing civil actions and actions with OEA.
[8] The only D.C. Official Code section that discusses dismissing a matter with prejudice is when both parties agree to a settlement of the case before it is heard on its merits. *See* D.C. Official Code § 1-606.06. This clearly did not occur in this case. The parties did not settle the matter. Employee decided instead that a whistleblower action in Superior Court would be a better option for him. Therefore, without the AJ offering any reasons, we find no justification for his dismissal of the case with prejudice.
[9] Employee specifically requested that his Petition for Appeal be withdrawn without prejudice. It is this Board's belief that the AJ had the authority to dismiss the matter when Employee filed a withdrawal request. However, as previously stated the proper dismissal should have been without prejudice.

ORDER

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

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.