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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOHN MCFARLAND,)	
Employee)	OEA Matter No.: J-0130-14
)	
v.)	Date of Issuance: November 3, 2014
)	
D.C. DEPARTMENT OF CONSUMER)	
AND REGULATORY AFFAIRS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
John McFarland, Employee, <i>Pro Se</i>		
Adrienne Lord-Sorensen, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 22, 2014, John McFarland (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) disputing the D.C. Department of Consumer and Regulatory Affairs’ (“Agency”) classification of his position.¹ Employee is a Program Support Specialist with Agency. This matter was assigned to the undersigned Administrative Judge (“AJ”) on September 26, 2014. On October 15, 2014, Agency filed a Motion to Dismiss Employee’s Petition for Appeal for lack of jurisdiction. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to D.C. Official Code, § 1-606.03 (2001), has not been established.

¹ In 2011, Employee filed an appeal to D.C. Department of Human Resources (“DCHR”) requesting a classification review (desk audit) of his position, Program Support Specialist. DCHR completed its audit in 2013. Thereafter, Employee appealed DCHR’s position classification review decision. On June 17, 2014, DCHR’s Director, Shaw Stokes issued a final decision to Employee’s 2013 appeal, which Employee now appeals.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

Agency highlights in its Motion to Dismiss that OEA lacks jurisdiction in this matter since no adverse action was taken against Employee and Employee's Petition for Appeal is untimely. Agency explains that Employee's Petition for Appeal was filed more than thirty (30) days after DCHR's final decision, issued on June 17, 2014. Employee on the other hand submits that, he is seeking equal pay for equal work. He explains that he wants his grade changed and his salary increased to the same grade and salary as another employee. He further notes that he wants to receive back pay that he has earned for the past four (4) years; punitive damages and/or compensation for expenses incurred; and any other compensation deemed appropriate by OEA.

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1², this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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 has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Based on the record, Employee is still employed by Agency. Moreover, the decision from DCHR does not relate to a performance rating that resulted in removal; it is not an

² See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

³ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

adverse action for cause that has resulted in removal, reduction in grade, or suspension for ten (10) or more days; and it is not a reduction-in-force. Employee's is simply appealing his position classification and his right to equal pay for equal work, which falls outside of OEA's purview. Further, Employee has not provided any evidence to show that his complaint is within OEA's jurisdiction. Consequently, I conclude that this Office does not have jurisdiction over Employee's current appeal. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's claims. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge