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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DENISE THORNTON,)	
Employee)	OEA Matter No. J-0019-11
)	
v.)	Date of Issuance: March 3, 2011
)	
OFFICE OF THE STATE)	
SUPERINTENDANT OF)	
EDUCATION,)	
)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Administrative Judge
Denise M. Clark, Esq., Employee Representative		
W. Iris Barber, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 12, 2010, Denise Thornton (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the Office of the State Superintendent of Education (“Agency”) action of removing her from service. I was assigned this matter on or around February 4, 2011. Employee’s last position of record within the Agency was Assistant Terminal Manager. After reviewing the documents of record, I determined that there existed a question as to whether the OEA may exercise jurisdiction over this matter. Accordingly, on February 4, 2011, I issued an Order requiring Employee to address whether this Office may exercise jurisdiction over this matter. Employee has since submitted her brief on jurisdiction. After reviewing said brief along with the other documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office has jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Agency argues that Employee was serving in an at-will position at the time of her removal and considering as much she did not enjoy the protections accorded to a number of District government employees by operation of D.C. Official Code § 1-606.03 *et al.* In support of its contention, Agency cites D.C. Official Code §1-608.01a(b)(2)(A)(i), which provides in relevant part:

(b) The Board shall issue rules and regulations governing employment, advancement, and retention in the Educational Service, which shall include all educational employees of the District of Columbia employed by the Board. The rules and regulations shall be indexed and cross referenced as to the incumbent classification and compensation system...

(2)(A)(i) Excluding those employees in a recognized collective bargaining unit, those employees appointed before January 1, 1980, those employees who are based at a local school or who provide direct services to individual students, and those employees required to be excluded pursuant to a court order (collectively, “Excluded Employees”), a person appointed to a position within the Educational Service shall serve without job tenure.

Agency contends that Employee did not qualify for any of the exclusions cited within the preceding statute that would otherwise confer upon Employee any right to appeal a removal action before the OEA. Accordingly, Agency asserts that the OEA lacks the authority to adjudicate the instant matter.

Employee counters with the assertion that the OEA has the authority to review this matter because his position was subjected to a Reduction-in-Force (“RIF”). Employee did not proffer any sort of credible evidence, circumstantial or otherwise, to support this bare assertion.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter “CMPA”), sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

(a) An employee may appeal [to this Office] 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. . .

This Office has no authority to review issues beyond its jurisdiction. *See Banks v.*

District of Columbia Pub. Sch., OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. See *Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ (); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ().

Relying on D.C. Official Code §1-608.01a(b)(2)(A)(i), I find that Employee was serving as an at-will employee at the time of her removal. Accordingly, I further find that Employee's other claim that her position was subjected to a RIF is baseless. I conclude that Employee cannot appeal her removal to the OEA because the OEA lacks the jurisdiction to preside over her appeal.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE