

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 2401-0081-24
)	
v.)	Date of Issuance: October 29, 2024
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
)	Senior Administrative Judge
)	
Employee, <i>Pro Se</i>)	
Angel Cox, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 19, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Public Schools’ (“DCPS” or “Agency”) decision to terminate her position as a teacher at Simon Elementary School. Employee’s removal was administered through Agency’s ‘Excess’ process.² OEA issued a Request for Agency Answer to Petition for Appeal on August 19, 2024. Thereafter, on September 18, 2024, Agency filed its Answer to Petition for Appeal and Motion to Dismiss wherein, it stated that OEA lacked jurisdiction over Employee’s Petition for Appeal because Employee was never separated from DCPS, and she is on administrative leave with pay, while awaiting placement at a school.³

This matter was assigned to the undersigned Senior Administrative Judge on September 19, 2024. Subsequently, the undersigned issued an Order on September 26, 2024, requiring

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Agency’s Answer to Petition for Appeal and Motion to Dismiss at Exhibit 4 (September 18, 2024). This Exhibit references the Collective Bargaining Agreement (“CBA”) between Agency and the Washington Teachers’ Union (“WTU”), which defines ‘excessed’ as “an elimination of a Teacher’s position at a particular school due to a decline in student enrollment, a reduction in the local school budget, a closing or consolidation, a restructuring, or a change in the local school program, when such an elimination is not a ‘reduction in force’ (RIF) or ‘abolishment.’” See Article 4.5.1.1 of the CBA.

³ Agency’s Answer and Motion to Dismiss, *supra*.

Employee to address the jurisdiction issue raised by Agency in its September 18, 2024, submission. Employee's brief on jurisdiction was due on or before October 11, 2024, and Agency had the option to file a reply brief on or before October 25, 2024. While Employee filed her brief as required as of the date of this decision, Agency has not submitted a sur-reply brief. Because I have determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. 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.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.⁴

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW⁵

The threshold issue in this matter is one of jurisdiction. 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

⁴ OEA Rule § 699.1.

⁵ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1⁶, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more (Emphasis added);
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction.⁷ Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.⁸ In the instant matter, Employee was notified in a letter dated May 9, 2024, that her position would be ‘excessed’ effective June 18, 2024, pursuant to the CBA between the WTU and Agency.⁹ Because the ‘excess’ did not result in an adverse action of removal, reduction in grade, or suspension for 10 days or more; or a reduction-in-force; or a placement on enforced leave for ten (10) days or more, I find that this Office does not have jurisdiction over Employee’s ‘excess’ issue.

Additionally, Agency asserts in its Answer and Motion to Dismiss that although Employee was issued an ‘excess’ notice on May 9, 2024, upon learning that Employee was on Workers’ Compensation, Employee was never separated from service, and she is on administrative leave with pay while awaiting placement at a school. Agency provided Employee’s Standard Form 50 (“SF-50”) in support of this assertion.¹⁰ Agency further avers that “since Employee is still in pay status with DCPS with no break in service, the Employee’s appeal is moot and should be dismissed.”¹¹ Agency concludes that there is no relief available to Employee since she is still in pay status with no break in service.¹²

In her October 10, 2024, brief on jurisdiction, Employee does not deny Agency’s assertion that she was still employed with DCPS. Instead, she asserts that Agency’s May 2024, termination notice violated her rights as guaranteed by the D.C. Human Rights Act, the Americans with Disability Act, Family Medical Leave Act, and Workers’ Compensation Act of 1979. Employee states that Agency falsely claimed that her termination was a result of budget cuts, which constitutes a violation of the principles of good faith and fair dealings, as well as a

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

⁷ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁸ 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).

⁹ See Agency’s Answer and Motion to Dismiss, *supra*, at Exhibit 4.

¹⁰ *Id.* at Exhibits 5 and 6.

¹¹ *Id.*

¹² *Id.*

violation of the Whistleblower Protection Act.¹³ She cites that “the indefinite administrative leave imposed upon me constitutes a constructive removal”, to which she is entitled to challenge. Employee requested that this Office assign her legal representation as “guaranteed under various civil, federal and D.C. state laws to protect my due process rights.”¹⁴ She also requests that this Office “grant my request for reasonable accommodation by allowing all communication via email.”¹⁵ Employee concludes that “I also urge this tribunal to take into account the recent legal developments surrounding Chevron deference and thoroughly scrutinize the Agency’s interpretation of my employment status.”¹⁶

Both parties confirmed in their submissions to this Office that Employee is currently on paid administrative leave. Specifically, Employee cited in her Brief on Jurisdiction that “the indefinite *administrative leave* imposed upon me constitutes a constructive removal.” (Emphasis added). Moreover, pursuant to the July 28, 2024, SF-50, Employee was returned to ‘pay status’.¹⁷ Further, based on the September 8, 2024, SF-50, Employee is still employed as a Teacher, General Elementary.¹⁸

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 631.1, *id*, 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.” Based on the foregoing, I conclude that Employee has not met the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that Agency’s Motion to Dismiss is **GRANTED** and the Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge

¹³ Employee’s Brief on Jurisdiction (October 10, 2024).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Agency’s Answer and Motion to Dismiss, *supra*, at Exhibit 5.

¹⁸ *Id.* at Exhibit 6.