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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JULIA KEARSE,)	
Employee)	OEA Matter No. 1601-0172-13
)	
v.)	Date of Issuance: December 23, 2013
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Julia Kearse, Employee, <i>pro se</i>)	
Carl Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 30, 2013, Julia Kearse (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) decision to terminate her for: “[o]ther conduct during duty hours that would affect adversely the employee’s or the agency’s ability to perform effectively.”¹ At the time of her termination, Employee was a Custodian at Savoy Elementary School. The effective date of Employee’s termination was September 5, 2013. On November 1, 2013, Agency submitted its Answer to Employee’s Petition for Appeal, along with a Motion to Dismiss for lack of jurisdiction.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on November 18, 2013. Thereafter, in an Order dated November 18, 2013, Employee was required to address the jurisdiction issue in this matter on or before December 3, 2013. Employee did not comply. Subsequently, on December 6, 2013, I issued a Show Cause Order, wherein, I ordered Employee to submit a statement of good cause for her failure to submit a response to the November 18, 2013, Order, by December 13, 2013. Employee submitted a timely response. The record is now closed.

¹ 5-E District of Columbia Municipal Regulation (“DCMR”) section 1401.2(v). Specifically, Employee was terminated for engaging in a verbal and physical altercation with a colleague on June 11, 2013.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ 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 not relevant to this case, of permanent employees in Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period.

In its Motion to Dismiss, Agency stated that OEA did not have jurisdiction over Employee's appeal because Employee filed a grievance with the International Brotherhood of Teamsters, Local Union 639 on August 30, 2013, pursuant to the Collective Bargaining Agreement ("CBA") between her Union and DCPS, disputing her termination, prior to filing her appeal with this Office on September 30, 2013.⁴ D.C. Official Code (2001) §1-616.52 reads in pertinent part as follows:

(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

² See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Public School*, 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).

⁴ See Agency's Answer to Employee's Petition for Appeal (Motion to Dismiss) (November 1, 2013).

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).

Additionally, the Notice of Termination dated August 19, 2013, informed Employee that she may “elect to file a grievance concerning this action in accordance with Article XVII Grievance Procedure, of the Teamsters Agreement, or you may file an appeal with the Office of Employee Appeals (OEA). **You may not, however, do both.**”⁵ (Emphasis added).

According to the record, Employee was terminated effective September 5, 2013. On August 30, 2013, Employee filed a grievance with her local Union, disputing her termination. Subsequently, on September 30, 2013, Employee filed a Petition for Appeal with OEA. In her brief dated December 13, 2013, Employee concedes that she filed a grievance with her Union prior to filing her Petition for Appeal with this Office. Moreover, based on Employee’s termination letter and pursuant to the above referenced code, Employee had the option to appeal her termination with either OEA or through her Union, **but not both.** (Emphasis added). By electing to appeal her termination by filing a grievance under the CBA between Agency and her local Union several weeks before she filed her Petition for Appeal with OEA, Employee waived her rights to be heard by this Office.⁶ Therefore, I conclude that this Office does not have jurisdiction over Employee’s appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁵ *Id.* at Exhibit No. 1.

⁶ *Id.* at Exhibit No. 2.