

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Elliotte Coleman) OEA Matter No. J-0123-11
Employee)
) Date of Issuance: August 18, 2011
v.)
) Senior Administrative Judge
D.C. Department of Consumer & Regulatory Affairs) Joseph E. Lim, Esq.
Agency)

Charles Thomas, Esq., Agency Representative
Elliotte Coleman, Employee *pro se*

INITIAL DECISION

PROCEDURAL BACKGROUND

Between July and November 2008, Employee applied for four different DS-9 level positions at the Agency. He was never offered a position. Employee alleges that Agency's hiring practices violated D.C. Personnel Regulations.

Employee also filed suit in D.C. Superior Court seeking monetary damages. After the Court dismissed Employee's complaint on the ground that he has not exhausted his administrative remedies, Employee appealed to the Office of Employee Appeals (OEA) on June 27, 2011.

On August 2, 2011, this matter was assigned to me. I ordered Employee to answer Agency's Motion to Dismiss by August 12, 2011. To date, Employee has not responded. I closed the record after ascertaining that there were no material issues of fact in dispute.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

JURISDICTION

The Office does not have jurisdiction in this matter.

FINDINGS OF FACT

The following facts are undisputed:

1. Between July and November 2008, Employee applied for four different DS-9 level positions at the Agency. He was never offered a position.
2. Employee filed a grievance with Agency, alleging that Agency's hiring practices violated D.C. Personnel Regulations. His grievance was denied.
3. Employee filed suit in D.C. Superior Court seeking damages and remedies for Agency's alleged violations.
6. On June 21, 2011, the Court dismissed Employee's complaint on the ground that he has not exhausted his administrative remedies.
7. Employee filed an appeal with the Office of Employee Appeals (OEA) on June 27, 2011.

ANALYSIS AND CONCLUSIONS

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). "[A] statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language." *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), _ D.C. Reg. __ ().

Here, as of October 22, 1998, § 101(d) of OPRAA "clearly and unambiguously" removed appeals from grievance denials from the jurisdiction of the Office. The law clearly states that this Office lacks jurisdiction over his appeal. In summation, Employee has proffered no argument that would erase the bright-line rule of § 101(d). Thus, the matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge