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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. J-0063-22
)	
v.)	Date of Issuance: September 19, 2022
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
Employee, <i>Pro Se</i>		
Gehrie Bellamy, Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 14, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Public Schools’ (“Agency”) decision not to reappoint him to the position of Principal, effective July 1, 2022. OEA issued a Request for Agency Answer to Employee’s Petition for Appeal on July 15, 2022. On August 12, 2022, Agency filed its Answer to Employee’s Petition for Appeal and Motion to Dismiss. I was assigned this matter on August 12, 2022.

On August 16, 2022, the undersigned issued an Order requiring Employee to address the jurisdiction issue in this matter no later than August 31, 2022. Specifically, the undersigned ordered Employee to submit a written brief in support of his position that OEA had jurisdiction over his of Agency’s decision not to reappoint him to the position of Principal. Agency was also afforded the option to submit a reply brief no later than September 12, 2022. Following Employee’s failure to comply with the August 16, 2022 Order, the undersigned issued an Order for Statement of Good Cause to Employee on September 6, 2022. On the same day, OEA received Employee’s Brief on Jurisdiction.² As of the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

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

² The September 6, 2022, Order for Statement of Good Cause is now moot since Employee has now complied with the August 16, 2022, Order. No further submissions are required from Employee.

JURISDICTION

As will be discussed below, the jurisdiction of this office 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.³

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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In June of 2020, Employee was appointed as a Principal at DCPS. In a letter dated March 31, 2022, Employee was informed of Agency’s decision to not reappoint Employee as Principal effective July 1, 2022.

In his September 6, 2022 brief, Employee notes that on June 15, 2020, he was offered the position of Principal for the 2020-2021 School Year (“SY”), with an effective date of June 29, 2020. Employee explains that the offer letter stated that “this is a term appointment for one (1) year, without tenure. The appointment expires automatically upon the completion of the school year and reappointment is at the discretion of the chancellor.” Employee maintains that these terms were later changed in September of the 2020-2021 SY, but he was never issued a letter acknowledging the changes.⁴ Employee avers that, on July 1, 2021, he was involuntarily transferred to a different location by the Chancellor without reason or justification. On the same day, his Union (CSO American Federation of School Administrators, Council of School Officers, Local 4), wrote a letter to Agency expressing its concerns regarding Employee’s transfer to a new school location. Employee states that on March 31, 2022, he received a letter

³ OEA Rule § 699.1.

⁴ Employee’s September 6, 2022, Submission.

informing him that effective July 1, 2022, he would not be reappointed as Principal for the 2022-2023 SY. Employee asserts that Agency did not offer or instruct him on his reversion rights.⁵

Employee argues that his non-reappointment was a political issue and not performance related. He also asserts that this Office can determine if managerial discretion was legitimately invoked and properly exercised in his matter. In support of his assertion that OEA has jurisdiction over this matter, Employee cited to *District of Columbia v. Thompson*, 593 A.2d, 521, 632 (D.C. 1991), explaining that “clear and convincing evidence is required to rebut the presumption that OEA has jurisdiction over this appeal.”⁶

In its Answer and Motion to Dismiss, Agency cites to D.C. Municipal Regulations (“DCMR”) Title 5, § 520.1⁷ and *Mahoney v. Department of Corrections*⁸, in support of its position that Employee’s Petition for Appeal should be dismissed for lack of jurisdiction. Agency explains that it is within the sole discretion of the Chancellor as to whether to continue Employee’s appointment as Principal and the Chancellor elected not to renew Employee’s appointment as Principal.⁹ Citing to Chapter 6, Title 6 of the DCMR, § 604.1, Agency further argues that while Employee was not reappointed as Principal, he has not been removed, not suspended, nor was he a part of a Reduction-in-Force (“RIF”). Therefore, Employee’s Petition for Appeal should be dismissed as no adverse action has been taken and OEA has no jurisdiction over this matter.¹⁰

*Analysis*¹¹

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 OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions, of permanent employees in Career and Educational Service who are not serving in a probationary period, or who have successfully completed their probationary period. According to 6-B DCMR § 604.1, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;

⁵ *Id.*

⁶ *Id.*

⁷ 5-B DCMR § 520.1 provides that “[p]ersons appointed to a position as Principal shall serve in a term appointment of up to two (2) years, without tenure in the position.”

⁸ OEA Matter No. 1601-0006-14 (November 3, 2014).

⁹ Agency’s Answer to Employee’s Petition for Appeal and Motion to Dismiss (August 12, 2022).

¹⁰ *Id.*

¹¹ 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”).

- (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; or
- (d) Placement on enforced leave for 10 days or more.

As previously noted, OEA Rule § 631.2, states that "...[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule § 631, 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.¹² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹³

In the instant matter, Employee is appealing Agency's decision not to reappoint him to the position of Principal for the 2022-2023 school year. This action by Agency is not related to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Employee is simply appealing his non-reappointment, as well as Agency's decision to transfer him to another school location, and its alleged failure to notify Employee of his reversion rights. Pursuant to 6-B DCMR § 604.1, these issues fall outside of OEA's purview. Further, Employee has not provided any credible evidence to show that his complaint is within OEA's jurisdiction. Thus, I find that this Office does not have jurisdiction over this matter.

Moreover, 5-B DCMR § 520.1 provides that "[p]ersons appointed to a position as *Principal shall serve in a term appointment of up to two (2) years, without tenure in the position.*" (Emphasis added). Here, Employee acknowledged that he was offered a Principal position for the 2020-2021 SY and the offer letter specifically stated that "*this is a term appointment for one (1) year, without tenure. The appointment expires automatically upon the completion of the school year and reappointment is at the discretion of the chancellor.*" (Emphasis added). Employee was appointed Principal for the 2020-2021 SY. Employee was again reappointed as Principal at another location for the 2021-2022 SY. The Chancellor exercised their discretion not to extend Employee's term appointment for the 2022-2023 SY, and Employee was provided notice of this decision in a letter dated March of 2022. Consequently, I find that based on the foregoing, the Chancellor was within their discretion not to reappoint Employee to the position of Principal for the 2022-2023 SY.

Assuming *arguendo* that the Chancellor did not have the discretion to terminate Employee's appointment, 5-B DCMR § 520.1 provides that "[p]ersons appointed to a position as *Principal shall serve in a term appointment of up to two (2) years, without tenure in the*

¹² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹³ 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 General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

position.” (Emphasis added”). This language provides that Employee’s appointment was a “Term appointment” for up to two (2) years. Pursuant to the Omnibus Personnel Reform Amendment Act (OPRAA), which amended the CMPA in 1998, OEA is authorized to hear appeals of *permanent employees* in the Career and Education services who have successfully completed their probationary period (emphasis added). Here, Employee has acknowledged that he was appointed to a “Term” position for two (2) SYs, without any tenure. OEA has consistently held that, this Office lacks jurisdiction over “Term” employees.¹⁴ Because of Employee’s status as a term employee, I find that his appeal cannot be heard by this Office.

Based on the foregoing, I find that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

¹⁴ *Kyanna Feliciano v. Department of Behavioral Health*, OEA Matter No. J-0014-18, *Opinion and Order on Petition for Review* (September 4, 2018); *Roxanne Smith v. D.C. Department of Parks and Recreation*, OEA Matter No. J-0103-08, *Opinion and Order on Petition for Review* (May 23, 2011); *Carolynn Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, *Opinion and Order on Petition for Review* (July 30, 2010); *Carla Norde v. Department of Human Resources*, OEA Matter No. J-0103-16, *Initial Decision* (January 6, 2017).