

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
LENORE VERRA,	)	
Employee	)	OEA Matter No. J-0040-07
	)	
v.	)	Date of Issuance: May 21, 2007
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
_____	)	

Lenore Verra, Employee *Pro-Se*  
Audrey J. Anderson, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 3, 2007, Lenore Verra (hereinafter “the Employee”) filed a petition for appeal with the Office of Employee Appeals (hereinafter “OEA” or “the Office”) contesting the District of Columbia Public Schools’ (hereinafter “the Agency”) adverse action of removing her from service. After reviewing the Employee’s petition for appeal, I have determined that the jurisdiction of this Office was in question. Consequently, I ordered the parties to file briefs regarding whether the OEA may exercise jurisdiction over this matter. The parties have each submitted their respective briefs as required. After considering the positions contained therein, I have determined that no further proceedings are warranted. The record is now closed.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact

shall be by a preponderance of the evidence.  
“Preponderance of the evidence” shall mean:

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.

OEA Rule 629.2, id. states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.

### JURISDICTION

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

### FINDING OF FACTS, ANALYSIS AND CONCLUSION

The proceeding statement of facts, analysis and conclusions are based on the documents of record as submitted by the parties. At the time of her removal from service, the Employee was employed with the Agency as an Attorney Advisor. The Employee argues that at all times relevant to this matter she was member of the Career or Educational service and as such should be afforded the protections that are provided for aggrieved employee’s pursuant to D.C. Official Code § 1-606.03<sup>1</sup>, namely appeal rights to the OEA. The Employee provides as evidence of her employment status a Personnel Action Form One dated December 14, 2006, which describes the Employee’s position type as “Career”.

The Agency counters that at the time of her removal, the Employee was a member of the Legal Service and as such does not enjoy the protections afforded to aggrieved employee’s pursuant to D.C. Official Code § 1-606.03. To buttress its contention, the Agency notes that the Employee’s job title (Attorney Advisor) and series (090501)<sup>2</sup> would mandate that the Employee job title is statutorily defined as an “attorney” and she was therefore employed as a member of the Legal Service and not the Career or

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<sup>1</sup> 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. . .

<sup>2</sup> Both also found on the aforementioned Employee’s Form One.

Educational service. D.C. Official Code § 1-608.51 (2) states in pertinent part that an Attorney is “any position which is classified as part of Series 905....”. The Agency further contends that “[a]s a Legal Service employee, [the Employee] cannot be a Career Service employee. In making this argument, the Agency relies on D.C. Code § 1-608.01 (a) which provides in pertinent part that the Career Service “shall include all persons appointed to positions on the District government, except persons appointed to positions in the ... Legal Service.”

The Agency’s explains that the discrepancy noted by the Employee relative to her job series designation and the position type as it appears on the Employee’s Form One is a “mischaracterization”<sup>3</sup> and that the OEA should not confer jurisdiction on this matter simply as a result of this unintended mischaracterization. The Agency relies on *Johnson v. D.C. Office of Employee Appeals*, 912 A.2d 1181, 1184 (D.C. 2006), which held, *inter alia*, that an error on an employee’s Personnel Form One is not, in of itself, legally conclusive of an employee’s employment status with the Agency. *See also, Hoage v. Board of Trustees of the University of the District Columbia*, 714 A.2d 776, 781 (D.C. 1998). Considering as much, the Agency contends that, given the Employee’ series designation (905) and job title (Attorney Advisor), she was a member of the Legal Service and therefore cannot appeal her removal from service to the OEA. I agree.

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. \_\_ ( ).

Based on the foregoing, I find that the Employee, when she was removed from service, was a member of the Legal Service regardless of what her position title or type is described as on her Personnel Form One. I further find that pursuant to D.C. Official Code § 1-608.56 (c), the Employee’s appeal rights relative to this matter lie *possibly* with either the Mayor of the District of Columbia or the Agency head, but in any event her appeal rights *do not* lie with the OEA. Consequently, I conclude that the Employee has failed to establish the jurisdiction of this Office in the instant matter and I must therefore dismiss this matter for lack of jurisdiction.

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<sup>3</sup> Additional Response of the District of Columbia Public Schools to OEA’s Question of Jurisdiction at 3.

ORDER

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

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.  
Administrative Judge