THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CLARK SCOTT II	)	OEA Matter No. J-0096-10
Employee	)	
	)	Date of Issuance: October 4, 2010
v.	)	
	)	Lois Hochhauser, Esq.
OFFICE OF THE CHIEF FINANCIAL OFFICER	)	Administrative Judge
Agency	)	
	)	

Mr. Clark Scott II, Employee
Clarene Martin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Clark Scott II, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on October 23, 2009, appealing the decision of the Office of the Chief Financial Officer, Agency herein, to remove him from his position as a Computer Programmer pursuant to a reduction-in-force (RIF) effective October 9, 2009. The matter was assigned to me on July 19, 2010.

In Agency's response to the petition, it argued that Employee had filed a grievance pursuant to a negotiated agreement between Agency and the American Federation of State, County and Municipal Employees, District Council 20, Local 1200, Union herein, prior to filing his appeal with OEA. Agency submitted a copy of a Step 4 class-action grievance that it contended the Union had filed on Employee's behalf. On July 12, 2010, I issued an Order directing Employee to present legal and/or factual argument regarding this Office's jurisdiction consistent with D.C. Code Section 1-616.52 (2001 ed.) and information regarding when the original grievance was filed.[1] On September 7, 2010, I issued an Order directing the parties to submit a copy of the Step 1 grievance. I advised Employee that if the Step 1 grievance predated the filing date of the OEA appeal, he should

[1] The employee named in the caption of the Step 4 Grievance was listed as "Scott Clark". In the July 12th Order, I directed Employee to confirm or deny that he was the individual named in the caption of the grievance. Employee confirmed that he was in fact the individual named in the caption of the grievance.

submit good cause why the OEA appeal should not be dismissed. Similarly, I advised Agency that if the grievance postdated the OEA appeal, it should submit good cause why the matter should not proceed. Submissions were due on September 24, 2010. The parties were notified that the record would close on September 24, 2010, unless they were notified to the contrary. Employee filed timely responses to both Orders. The record in this matter closed on September 24, 2010.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Office Code (2001) Section 1-616.52 which states in pertinent part:

> (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 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).

The Step 1 grievance filed by the Union in which Employee is a named grievant, on October 6, 2009, several weeks before Employee filed his petition for appeal with OEA on October 23, 2009. In his submissions, Employee confirmed that Agency provided him with information regarding his appeal rights with OEA in a packet of information accompanying the RIF letter.[2] Employee presented argument and documentation that he was a hard-working employee who had performed

[2] This packet was not submitted with the petition for appeal, and the undersigned wanted to be sure that Agency had provided Employee with his appeal rights to this Office.

commendably during his long tenure with Agency. However, that information is not relevant on the issue of OEA's jurisdiction to hear this matter. Employee did not present any evidence or argument that the Union acted improperly or without his knowledge when it filed the grievance on his behalf. Employee also stated he was aware of his appeal rights with OEA.

Employee has the burden of proof on all issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). He must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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". The facts before the Administrative Judge establish that Employee filed a grievance through his exclusive bargaining representative on October 6, 2009, 17 days before he filed his petition with OEA. Employee did not present good cause why the petition for appeal before this Office should not be dismissed based on D.C. Office Code (2001) Section 1-616.52, cited above. Employee did not meet his burden of proof on this issue of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE: LOIS HOCHHAUSER, ESQ.
Administrative Judge