

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
ANDEBRHAN BERHE) OEA Matter No. 1601-0161-08
)
Employee) Date of Issuance: February 25, 2009
)
v.) Sheryl Sears, Esq.
) Administrative Judge
)
D.C. PUBLIC SCHOOLS)
)
Agency)
)
)

Andebrhan Berhe, Employee, *Pro Se*
Harriet E. Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Andebrhan Berhe (“Employee”) was a Teacher for the D.C. Public Schools (“Agency”). Agency removed him effective August 1, 2008, for the lack of a valid teaching license. On September 2, 2008, Employee filed an appeal with the D.C. Office of Employee Appeals (“the Office”).

By order issued on January 27, 2009, this Judge directed Employee to submit, in writing, a statement addressing the following questions: 1) Did you have full credentials at the time of the separation (so as to be able to claim that you were a “career service employee” with full rights and not an “at will” employee)? 2) If not, on what law, rule or regulation do you rely in claiming that this Office has jurisdiction over your appeal?

Employee presented a timely written statement in which he stated, *inter alia*, “The matter of fact [is] that though I am [an] employee who is *not fully certified*, but I will be in compliance with the DCMR [District of Columbia Municipal Regulations] Section 16013.1 regarding Teachers Certifications Requirements.” (Emphasis added.)

Employee recounted that he submitted a Licensure and Highly Qualified Action Plan to Agency in accordance with the directive of Dr. Thelma Monk, Agency Director. He detailed his efforts toward certification including gaining a Bachelors Degree in Engineering, enrolling in a teacher education/certification program at the University of

the District of Columbia with an expected completion date of March, 2009, and presenting the agency with information about his most recent Praxis¹ scores.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. This decision is based upon the record of documentary evidence and written legal arguments by the parties. The record is now closed.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .” Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is by a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence 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.” Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over his appeal.

JURISDICTION

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

Employee was required to have a license to teach. It is undisputed that, at the time of the separation, he did not have one. Employee has argued that, because he submitted a Licensure and Highly Qualified Action Plan when directed to do so by Agency and is working towards gaining certification, he should be allowed to continue working. According to Employee, Agency’s “sudden interruption” of his Action Plan, was “an action of retaliation” against him for filing discrimination charges. However, there is no evidence to that effect.

To the contrary, the evidence, including a stream of appeals filed before this one by other teachers who were removed for lack of credentials, is that Agency was acting in an effort to comply with the dictates of the *No Child Left Behind Act* of 2001.² In so

¹ *The Praxis Series*TM assessments provide educational tests and other services that states use as part of their teacher licensure and certification process. The *Praxis I*® tests measure basic academic skills, and the *Praxis II*® tests measure general and subject-specific knowledge and teaching skills.

² The *No Child Left Behind Act* of 2001 is a federal law under which state and local governments are granted funding for education from kindergarten through high school. To qualify, a school district must comply with guidelines including strict licensure requirements for teachers.

doing, Agency has removed many teachers who are not properly licensed for their positions. And no matter how ardently Employee might believe that Agency should have allowed him more time to become qualified for the position he held, under the law, he held no such entitlement.

Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from at will employees. It states that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). An at will employee may be terminated at any time and “for any reason at all.” *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ ().

The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.” However, that review is only afforded to employees who have a right to challenge their removals. In the matter of *Williamson v. D.C. Public Schools* (April 25, 2008), ___ D.C. Reg. ___ (), this Judge held that a teacher without full licensure did not meet all of the requirements of her contractual agreement with the agency. Therefore, she never achieved career status. Instead, she was an “at will” employee subject to removal at any time. Her removal was upheld.

It is undisputed that, at the time of the separation, Employee did not have full credentials for his position. For that reason, instead of holding “career” status, he was an “at will” employee and subject to removal by the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this appeal must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal
in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
