THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
Dwayne Hollaway Employee	OEA Matter No. 1601-0329-10
v.	Date of Issuance: February 6, 2012
D.C. Office of the Chief Financial Officer Agency	Senior Administrative Judge Joseph E. Lim, Esq.

Charlene Martin, Esq., Agency Representative
Dwayne Hollaway, Employee *pro se*

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On July 8, 2010, Employee filed a petition for appeal with this Office pursuant to D.C. Code Ann. § 1-606.3(a) (1999). The Employee appealed Agency's termination of her employment due to a restructuring of the agency.

I ordered Employee to submit a legal brief in response to Agency's motion to dismiss by August 12, 2011. To date, Employee has failed to respond. The record is closed.

JURISDICTION

In accordance with *Leonard* and its progeny, which will be discussed *infra*, the Office has jurisdiction in this matter.

ISSUE

Whether the Chief Financial Officer (CFO) acted within the scope of his personnel authority in removing this employee.

FINDING OF FACTS

It is uncontroverted that on October 2, 2009, Human Resources Director LaSharn Moreland delivered to Employee a notice that his employment was being terminated. In

pertinent part, that notice reads as follows:

> Pursuant to the authority vested in the Chief Financial Officer of the District of Columbia by Section 424 of the District of Columbia Home Rule Act, approved December 24, 1973 [87 Stat. 774; D.C. Code § 47-317), as amended by Section 201 of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. 109-356; 120 Stat. 2029), this correspondence is to inform you that you will be involuntarily separated at the close of business on Friday, October 9, 2009. This involuntary separation is due to the abolishment of your position in a restructuring of the Office of the Chief Information Officer [OCIO].

Following his receipt of this correspondence, Employee filed the instant appeal with this Office.

ANALYSIS AND CONCLUSIONS

This Office has dealt with the issue of the legality of summary removals of employees by the CFO. In *J. David Leonard et al. v. Office of the Chief Financial Officer,* OEA Matter Nos. 1601-0241-96 *et al.* (February 5, 1997), the late Senior Administrative Judge Darryl Hollis held that: 1) this Office had jurisdiction over the employees' appeals; 2) Section 152(a) of the District of Columbia Appropriations Act of 1996 (DCAA-96)[1] repealed § 1601(b) of the Comprehensive Merit Personnel Act (CMPA), thereby converting the status of the employees to "at-will", and thereby divesting them of the due process protection of the CMPA; and 3) the CFO acted within

---

1 Section 152(a), effective April 26, 1996, reads in part as follows:

> **Sec. 152.** Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997 --
>
> > **(a)** the heads and all personnel of the following offices, together with all other District of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:
> >
> > [1] The Office of the Treasurer.
> > [2] The Controller of the District of Columbia.
> > [3] The Office of the Budget.
> > [4] The Office of Financial Information Services.
> > [5] The Department of Finance and Revenue.

the scope of § 152(a) in removing the employees without cause and an opportunity to respond. In *Avis Bachman-Dewel et al v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0006-97 *et al*, issued on May 15, 1997, § 142(a) of DCAA-97, effective September 9, 1996, expanded the time periods during which the CFO could exercise his authority, and also expanded the scope of the CFO's authority to include "financial personnel" in independent agencies. Other than the expansion of authority and operable time periods, § 142(a) is identical to § 152(a).

The holdings in *Leonard* and *Bachman-Dewel* have been consistently applied by this Office. *See Beatrice W. Gaines v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0265-96 (February 13, 1997); *David B. Jackson v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0242-96 (February 24, 1997); *Azra Qutb v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0043-97 (June 19, 1997); *Herbert Ogu et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0108-97 *et al.* (July 28, 1997); *Christopher T. Pyne v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0007-98 (February 23, 1998); *Douglas Foster v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0009-98 (March 4, 1998); *Nemat Hassan-Zadeh v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0015-98 (May 8, 1998); *Annie Daniels v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0013-98 (October 27, 2000); *Josiah Akinnuso v. Office of the Chief Financial Officer*, OEA Matter No. 2401-0033-01 (April 30, 2001); *Anthony Henderson v. Office of the Chief Financial Officer*; OEA Matter No. 1601-0001-02 (July 26, 2002); *Ethelean Flood v. Office of the Chief Financial Officer*, OEA Matter No. 2401-0094-02 (August 6, 2002). *See also Opinions and Orders on Petitions for Review* issued by the OEA Board on October 10, 1997, involving Employees Rosa Anderson (one of the members of the *Leonard* group), Azra Qutb, Herbert Ogu, and several members of the *Ogu* group.

The decision in *Leonard* was appealed to the Superior Court of the District of Columbia. In *Leonard v. District of Columbia*, C.A. No. 96-9962 (July 28, 1997), Judge Frederick Weisberg upheld the decision. Judge Weisberg's decision was appealed to the D.C. Court of Appeals. In *Leonard et al v. District of Columbia*, 794 A.2d 618 (D.C. 2002), the Court upheld the finding that § 152 converted the appellants' employment status to "at-will". *See* 794 A.2d at 625-627. Additionally, on July 29, 1997, Judge Emmet Sullivan of the United States District Court for the District of Columbia issued a decision concluding that § 152 converted the subject employees' status to at-will. *See American Federation of State, County and Municipal Employees v. District of Columbia*, C.A. No. 97-0185 (D.D.C. July 29, 1997).

Further, the CFO's personnel authority as originally set forth in §§ 152 and 142 has been continued without interruption since the passage of those sections.[2] This authority was most recently continued and made permanent when Congress amended the District of Columbia Home

2 *See, e.g.*, § 111(c) of the District of Columbia Appropriations Act of 2002, Pub. L. 107-96 and § 409 of the 2002 Supplemental Appropriations Act, Pub. L. 107-206; § 2302 of the Emergency Wartime Supplemental Appropriations Act of 2003, Pub. L. 108-11; Section 424 of the District of Columbia Home Rule Act, approved December 24, 1973 [87 Stat. 774; D.C. Code § 47-317), as amended by Section 201 of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. 109-356; 120 Stat. 2029).

Rule Act in Section 202 of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. 109-356; 120 Stat. 2029) to state in pertinent part as follows:

> "…not withstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia…shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the *Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978*, except nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees or personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer." [Emphasis added.]"

See also D.C. Official Code § 1-204.25 (a), wherein it specifically states that Agency (Office of the CFO) employees "shall be considered at-will employees not covered by Chapter 6 of this title."

Thus, as set forth in *Leonard* and its progeny, § 152(a) of DCAA-96, § 142(a) of DCAA-97 and the laws that followed converted the status of all employees under the control of the CFO to "at-will". It is clear that Employee is similarly situated to the employees in *Leonard* and its progeny. Thus, I conclude that the decisions in *Leonard* and its progeny apply to Employee. Accordingly, I further conclude that at the time of his removal, Employee was an at-will employee who could be removed from his position "for any reason or no reason at all". *Rosa Anderson v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0301-96, *Opinion and Order on Petition for Review* (October 10, 1997), slip op. at 3.[3]

Therefore, I conclude the CFO acted within the scope of his authority in removing Employee.

ORDER

---

3 Additionally, in the October 10, 1997 *Opinion and Order* issued in *Anderson*, the OEA Board held:

> By law, the CFO has the authority to terminate Employee without reasonable notice and without just cause. Therefore, even if Employee could demonstrate that the CFO's decision to terminate her was completely unwarranted, that fact would be immaterial because it would not affect the outcome of her case. OEA rules do not require the [Administrative Judge] or the Board to address immaterial issues.

Anderson, slip op. at 3. Given the Board's holding, it is unnecessary to discuss Employee's arguments as set forth in his petition for appeal.

It is hereby ORDERED that Agency's action removing Employee is UPHELD.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge