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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
PATRICIA BUTLER,)	
Employee)	OEA Matter No. J-0008-19
)	
v.)	Date of Issuance: March 15, 2019
)	
D.C. DEPARTMENT OF CORRECTIONS,)	
Agency)	
)	Arien P. Cannon, Esq.
)	Administrative Judge
_____)	
Patricia Butler, Employee, <i>Pro se</i>)	
Jacqueline Johnson, Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Patricia Butler (“Employee”) filed a Petition for Appeal on October 17, 2018, challenging the District of Columbia Department of Correction’s (“Agency” or “DOC”) decision not to renew her Term appointment as Teacher. Employee’s Term appointment expired on May 8, 2018. I was assigned this matter on December 5, 2018.

An Order on Jurisdiction was issued on December 10, 2018, which required Employee to submit a statement of reason(s) why she believed this Office may exercise jurisdiction over her appeal. Employee was required to submit this statement on or before December 24, 2018. Employee failed to submit her statement as required, thus a Show Cause Order was issued on December 28, 2018. Employee submitted a response to the Show Cause Order on January 4, 2019. In Employee’s response, she requested an extension of time to address the jurisdictional issue in this matter. An Order was issued on January 7, 2019, granting Employee’s extension request, and gave Employee until January 22, 2019, to respond. On January 22, 2019, Employee submitted a request for a 60-day extension. This request was granted, in part, on January 29, 2019, and gave Employee until March 1, 2019, to submit a response to the Order on Jurisdiction.

To date, Employee has not submitted a detailed statement as to why this Office may

exercise jurisdiction over her appeal, despite the appeal being filed more than thirty (30) days after the effective date of her termination. The record is closed.

JURISDICTION

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

ISSUE

1. Whether this Office may exercise jurisdiction over Employee's appeal.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ "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.

*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.*²

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

This Office's jurisdiction is established pursuant to the District of Columbia's Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code § 1-601-01, *et seq.* (2001). Pursuant to OEA Rule 604.2³, this Office has jurisdiction in matters involving District government Career Service (Permanent) employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

However, District Personnel Manual ("DPM") Section 823.9 provides that "Employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier." Here, Employee's position with Agency was a term appointment. It is not disputed that Employee's term appointment with Agency expired on May 8, 2018. In a letter attached with Employee's Petition for Appeal, she acknowledges that "employees were told that DOC did not renew their contract" in 2016. Employee further acknowledges that her 13-month term was up on March 17, 2018.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ 59 DCR 2129 (March 16, 2012)

Employee was issued a termination letter dated, April 27, 2018.⁴ This letter informed Employee that DOC was not renewing her term appointment as a Teacher. Employee's term was set to expire on May 8, 2018. Thus, Employee's position was terminated at the close of business on May 8, 2018. Because DPM Section 823 makes clear that a term appointment ends automatically at the end of a term appointment, Employee is not afforded the same protections of Career Service employees who have obtained permanent status. As such, I find that Employee has not established the jurisdiction of this Office.

ORDER

Accordingly, it is hereby **ORDERED** that Petition for Appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁴ See Petition for Appeal, Attachments (October 17, 2018).