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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
RODNEY PANNELL,)	
Employee)	OEA Matter No. J-0076-18
)	
v.)	Date of Issuance: October 12, 2018
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
_____ Rodney Pannell, Employee, <i>Pro Se</i> Hillary Hoffman-Peak, Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 9, 2018, Rodney Pannell (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) requesting a hearing in connection with the Office of the State Superintendent of Education’s (“Agency”) decision to change his seniority date in a letter dated June 19, 2017. Thereafter, Agency filed a Motion to Dismiss Employee’s Petition for Appeal for lack of jurisdiction.

I was assigned this matter on September 7, 2018. Subsequently, on September 14, 2018, I issued an Order requiring Employee to address the jurisdiction issue in this matter no later than September 28, 2018. Agency was also afforded the option to submit a reply brief no later than October 8, 2018. While Employee submitted a timely brief, as of the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

JURISDICTION

As will be discussed below, the jurisdiction of this office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

ANALYSIS AND CONCLUSIONS OF LAW

In its Motion to Dismiss, Agency highlights that OEA lacks jurisdiction in this matter because Employee’s “seniority date is not a result of a performance rating, an adverse action, a reduction in grade, a separation, a suspension, a reduction in force or enforced leave.” Specifically, Agency notes that Employee’s seniority date as a motor vehicle operator is determined pursuant to the Collective Bargaining Agreement (“CBA”) between Agency and Employee’s union. Agency further asserts that CBAs are not within the jurisdiction of this Office.¹ Agency also argues that, assuming OEA has jurisdiction over this matter; Employee’s appeal is late as it was filed more than thirty (30) days from the date the seniority letter was issued.

Employee asserts in his reply to the Jurisdiction Order that his seniority was taken unjustly. He explained that he had his seniority for a year and a half; however, when it was time to bid, his seniority was taken without any explanation.²

Analysis

This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions.

¹ See Agency’s Motion to Dismiss Employee’s Petition for Appeal (September 12, 2018).

² See Employee’s September 27, 2018 letter.

According to Title 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1³, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) Placement on enforced leave for 10 days or more.

As previously noted, OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined 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.” This Office has no authority to review issues beyond its jurisdiction.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵

In the instant matter, Employee is appealing Agency’s decision to change his seniority date without explanation. This action by Agency does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Employee’s is simply appealing his position seniority date, which falls outside of OEA’s purview. Further, Employee has not provided any evidence to show that his complaint is within OEA’s jurisdiction. Therefore, I conclude that this Office does not have jurisdiction over this matter.

Agency also argues that assuming that OEA has jurisdiction over this matter; Employee’s appeal is late as it was filed more than thirty (30) days from the date the seniority letter was issued. Because I find that Employee is appealing his seniority standing and this action is not appealable to OEA, I will not address the timeliness of Employee’s petition for appeal.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.⁶ Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, *id*, 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.” Based on the foregoing, I find that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee

³ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

⁴ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁶59 DCR 2129 (March 16, 2012).

may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, ESQ.
SENIOR ADMINISTRATIVE JUDGE