THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CAROLYN BROOKS,	)	OEA Matter No. J-0136-08
Employee	)	
	)	Date of Issuance: July 30, 2010
	)	
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Carolyn Brooks ("Employee") worked as a principal with the D.C. Public Schools ("Agency"). On May 5, 2008, Agency issued a notice of non-reappointment to Employee. The notice provided that she would not be reappointed as a principal for the 2008-2009 school year effective June 30, 2008.[1]

On August 5, 2008, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). She argued that her outstanding performance ratings were not considered by Agency in its decision not to reappoint her. Additionally, she provided that while she served as the principal there were not adequate resources available to

[1] *Petition for Appeal*, p. 7-8 (August 5, 2008).

support the academic needs of the school. Thus, Employee requested to be reinstated to her position. Alternatively, if she could not be reinstated, then she sought to be deemed eligible for the "early out/buy out" retirement.[2]

Agency issued its response to Employee's Petition for Appeal on October 24, 2008. It provided that in accordance with Title 5, Chapter 5, Section 520.1, "persons appointed to the position of principal and assistant principal shall serve one year terms, and do not gain tenure in the position." Thus, Employee was serving a term appointment. Agency went on to argue that pursuant to D.C. Official Code § 1-617.1(b) only permanent employees who serve in either the Permanent or Educational Service are entitled to removal for cause and that term employees have no rights of appeal to OEA. Accordingly, it requested that Employee's case be dismissed.[3]

Employee disagreed and argued that she was not an at-will employee. She provided that she was a member of a collective bargaining unit which was a party to a contract with Agency. Employee stated that Agency's decision not to reappoint her amounted to an adverse action without cause, but the contract did not address the wrongful termination without cause of its members. She also asserted that her case was properly appealed to OEA because the bargaining agreement does not address the termination of principals. Moreover, she argued that it is unfair and misleading for Agency to simply decide not to renew her contract.[4]

OEA's Administrative Judge ("AJ") issued her decision on November 26, 2008.

---

[2] *Petition for Appeal*, p. 3 (August 5, 2008).
[3] *District of Columbia Public Schools' Response to Employee's Petition for Appeal,* p. 1-2 (October 24, 2008).
[4] *Employee's Jurisdictional Brief,* p. 2-3 (October 24, 2008).

She agreed with Agency's assessment of this case and held that term employees are not entitled to removal for cause like permanent employees in career or educational service. Because Employee was a term employee, her term ended on the expiration date of the appointment. Additionally, the AJ relied on the D.C. Municipal Regulations Title 5, § 520.1 which provides that principals and assistant principals shall serve one year terms and do not gain tenure. In accordance with the regulation, retention and reappointment are within the sole discretion of the Chancellor. She reasoned that in accordance with D.C. Municipal Regulations § 520.5, the term appointment automatically expires upon the completion of the term. Therefore, the AJ ruled that OEA lacked jurisdiction to consider this case and dismissed Employee's appeal.[5]

On December 31, 2008, Employee filed a Petition for Review of the AJ's Initial Decision. She conceded that she was serving a term appointment. However, she argued that because she had bump and retreat rights, she could have appealed to OEA. Employee also argued that Agency's failure to reappoint her is an adverse action. She went on to note that she was entitled to proper notice of the adverse action taken against her, and Agency failed to provide such notice. Hence, Employee requested that OEA return her to her position with full back pay and benefits.[6]

In accordance with OEA Rule § 629.2 "the employee shall have the burden of

[5] *Initial Decision*, p.2 (November 26, 2008).
[6] *Petition for Review*, p. 3 (December 31, 2008). Employee also argued that the AJ erred in failing to address Agency's untimely filing of its answer in response to her Petition for Appeal. However, the AJ issued an Order on October 3, 2008, which clearly stated that upon reviewing the record, it appeared that Agency was not provided with a copy of the Petition for Appeal. The AJ provided the Agency with a copy and requested its response by October 24, 2008. Agency's Response to Employee's Petition for Appeal was filed on October 24th.

proof as to issues of jurisdiction, including timeliness of filing."[7] As a result, Employee must prove that OEA has jurisdiction over her case. In her Petition for Review, Employee conceded that she was a term employee. She argued that although she was a term employee, she was entitled to certain rights and to notice. This Board disagrees and finds that the protections that Employee outlined are reserved for Career Service employees, not term employees.

D.C. Personnel Regulations, Chapter 16, Part I, § 1600 provides that adverse action protections are afforded to Career Service employees. D.C. Personnel Regulations, Chapter 16, Part I, § 1600.3(b) specifically states that an employee serving a term appointment is excluded from coverage. Thus, the notice requirements applicable to Career Service employees who are subjected to an adverse action are not applicable to term employees.

Because Employee is a term employee, OEA is required to follow District Personnel Regulations § 823.7. This section provides that "an employee serving under a term appointment shall not acquire permanent status on the basis of the term appointment, and shall not be converted to a regular Career Service appointment without further competition, unless eligible for reinstatement." District Personnel Regulation § 823.8 goes on to note that "employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier." Therefore, in accordance with the District Personnel Regulations,

[7] OEA Rule 629.1 provides that preponderance of the evidence is the standard by which the burden of proof is met. The rule defines preponderance of the evidence 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."

Employee was properly removed from employment on June 30, 2008. Her term ended on that date, and Agency had no obligation to reappoint her.[8] Hence, Employee's Petition for Review is denied.

[8] As for Employee's argument pertaining to bump and retreat rights, this also requires that Employee hold a Career Service status to clear the jurisdictional hurdle for OEA to consider the merits of her case. Employee is not a Career Service employee, therefore, this Board lacks jurisdiction to consider her bump and retreat rights argument.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

_____
Clarence Labor, Jr., Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.