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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TIMOTHY STURGIS)	OEA Matter No. J-0037-10
Employee)	
)	Date of Issuance: September 3, 2010
v.)	
)	Lois Hochhauser, Esq.
UNIVERSITY OF THE DISTRICT OF COLUMBIA)	Administrative Judge
Agency)	
_____)	

Timothy Sturgis, Employee
Andrea Bagwell, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Timothy Sturgis, Employee herein, filed a petition with the Office of Employee Appeals on October 11, 2009, appealing Agency's decision to terminate his temporary appointment, effective September 30, 2009. In its response, the University of the District of Columbia, Agency herein, contended that it had acted appropriately and attached relevant documents.

This matter was assigned to me on June 30, 2010. On July 12, 2010, I issued an Order advising Employee that the jurisdiction of this Office was at issue because of his status as a temporary employee at the time of his removal. I advised him that employees have the burden of proof on issues of jurisdiction, and I ordered him to submit factual and/or legal argument to support his position regarding this Office's jurisdiction. The employee filed a timely response. The record closed on July 30, 2010.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Did Employee meet his burden of proof on the issue of jurisdiction?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) states that employees filing appeals with this Office have the burden of proof on issues of jurisdiction. According to OEA Rule 629.1, this burden must be met by a “preponderance of the evidence”, which is defined as the “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’s jurisdiction is conferred upon it by law. Pursuant to the Omnibus Personnel Reform Amendment Act, (OPRAA), D.C. Law 12-124 (1998), this Office’s jurisdiction is limited primarily to permanent employees in the career and education services. These employees are entitled to removal for cause. Temporary employees are one of the categories of employees who are not eligible to appeal their terminations to this Office.

Employee states that he served in a temporary status during his tenure with Agency, and Agency submitted documents to support its contention that Employee remained in a temporary status at the time he was terminated. The documents indicate that his appointment was renewed annually from 2005 until 2008, with a not-to-exceed date of September 30 each year.

Employee claims that during the four years he was employed with Agency, he received positive evaluations, and, although hired as a Clerk, he was assigned additional duties with more responsibilities and a different job title. He contends that he was told that he would “become permanent when the new administration and budget was in place for the new fiscal year of 2006” and would be appointed to the new job title with additional pay. When he learned his status had not changed after that time, he said he was assured by Dean Wisemoore that the change in status and job title would take place. He stated that after Dean Wisemoore left Agency, the Dean’s successor renewed those promises. However, those changes did not occur, and at the time Employee removed, his job title remained “Clerk” and his job status remained “temporary.”

The decision to promote an employee or to change an employee’s status from, for example, temporary to permanent, is within the agency’s discretion. This Office lacks the authority to direct an agency to take action to promote an employee or change the employee’s job status absent extraordinary circumstances. *Sinai v. Department of Human Services*, OEA Matter No. 1601-0126-91 (November 18, 1993), ___D.C. Reg. _____. In this case, no extraordinary circumstances were presented. While Employee’s supervisors and managers may have been impressed with his work performance, may have assigned him responsibilities consistent with a job description of a higher status than the one to which he was hired, and may have promised to make his position permanent, Agency did not take the steps necessary to effectuate any of those changes. *Employee v. Agency*, OEA Matter No. 1602-0157-81, *Opinion and Order on Petition for Review* (September 11 1992), ___D.C. Reg. _____. Therefore he was in temporary status at the time of his removal, and this Office does not have authority to hear his appeal.

Based on the facts presented, and the analysis herein, I conclude that based Employee did not meet his burden of proof on the issue of jurisdiction. Since this Office lacks jurisdiction of this petition, Employee's appeal must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge