THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
ROXANNE SMITH Employee	OEA Matter No. J-0103-08
v.	Date of Issuance: October 5, 2009
D.C. DEPARTMENT OF PARKS AND RECREATION Agency	Lois Hochhauser, Esq. Administrative Judge

Frederic Schwartz, Esq., Employee Representative
Richelle Marshall, Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition with the Office of Employee Appeals (OEA) on June 8, 2008, appealing Agency's decision not to renew her term appointment as Staff Assistant, effective May 30, 2008. At the time of separation, Employee held a term appointment.

This matter was assigned to me on July 28, 2008. On August 8, 2008, I issued an Order notifying Employee that the jurisdiction of this Office was at issue because of the nature of her appointment. I directed her, through counsel, to present legal and/or factual arguments to support her position regarding this Office's jurisdiction. Employee responded in a timely manner. On October 1, 2008, I issued an Order allowing Agency to respond to Employee's submission by October 21, 2008. I notified the parties that the record in this matter would close on that date unless they were notified to the contrary. Agency filed a timely submission. The Administrative Judge determined that a decision could be rendered based on the submissions. Therefore pursuant to the discretion granted by OEA Rule 625.2, no evidentiary proceedings were scheduled, and the record closed on October 21, 2008.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Did Employee meet her burden of proof on the issue of jurisdiction? If not, should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) states that the employee filing an appeal with this Office has the "burden of proof as to 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 D.C. Code Section 1-617.1(b) (1992 Repl.), this Office's jurisdiction is limited to permanent employees who are serving in the career or education services and who have successfully completed their probationary periods. Term employees are not permanent and therefore cannot appeal the expiration of their term appointments. Volume I of the D.C. Personnel Regulations (DPM) provides in pertinent part:

> 823.8 The employment of a term employee shall end automatically on the expiration of his or her term appointment unless he or she has been separated earlier.

Since Employee held a term appointment at the time she was separated from service, it would appear that this office lacks jurisdiction of this matter. *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90 (December 4, 1992), ___D.C. Reg. _____ ( ), *petition for review denied* (January 22, 1993), ____D.C. Reg. _____ ( ). Employee has the burden to prove that although she is a term employee, she still qualifies to have her petition heard by this Office. She argues that OEA has jurisdiction of this matter for several reasons. First, she contends that she was "summarily removed in March 2008" and not permitted to return to work, so that the matter is an adverse action over which OEA has jurisdiction. Second, she contends that the dismissal violates the District of Columbia Family and Medical Leave Act.

Agency maintains that OEA lacks jurisdiction because Employee's separation was due to her termination of her appointment and not an adverse action or reduction-in-force. It also contends that the appeal is untimely.

Based on the arguments and documents presented by the parties, it appears that the following facts are not in dispute: On March 24, 2008, Agency issued a Notice of Summary Removal to Employee based on charges of absence without official leave (AWOL) and abandonment of position. Thereafter, Agency amended the notice to a 15 day advance notice of proposed removal issued on

April 14, 2008. Agency took no further action on the proposed removal, but rather, on May 16, 2008, notified Employee that her term appointment would expire on May 30, 2008.[1]

The Administrative Judge concludes that Employee has not met her burden of proving that this Office has jurisdiction of this appeal. Employee does not argue that this Office has jurisdiction of appeals by term employees who have not had their terms extended. Rather, she contends that Agency did not allow her to return to work after it issued the summary removal notice and did not allow her to use FMLA leave. Agency disputes both contentions, contending that Employee did not return to work but rather remained in AWOL status through the expiration of her Term Appointment and also that that Employee did not apply for FMLA leave.

Agency did not complete actions required to finalize either the summary removal or the proposed adverse action. The issues raised by Employee regarding Agency's alleged refusal to allow her to return to work or to take FMLA leave do not confer jurisdiction on this Office since Employee was not removed through an adverse action or a reduction-in-force, but rather, her term appointment expired. Any relief to which Employee may be entitled cannot be granted by this Office, since this Office has no authority to review issues beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public Schools,* OEA Matter No. 1602-0030-90 *Opinion and Order on Petition for Review* (September 30, 1992), ____D.C. Reg. _____ ( ).

For these reasons, the Administrative Judge concludes that Employee failed to meet her burden of proof regarding this Office's jurisdiction of this appeal.

ORDER

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

FOR THE OFFICE: LOIS HOCHHAUSER, ESQ.
Administrative Judge

[1] The parties do not disagree that the notice was erroneously dated for March 16, 2008.