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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
MARISA DUNMORE)	
Employee)	OEA Matter No. J-0025-20
)	
v.)	Date of Issuance: April 30, 2020
)	
OFFICE OF THE CHIEF FINANCIAL OFFICER)	JOSEPH E. LIM, ESQ.
Agency)	Senior Administrative Judge
)	

Marisa Dunmore, Employee *Pro-Se*
Chaia Morgan, Esq., Agency Representative

INITIAL DECISION¹

PROCEDURAL BACKGROUND

Marisa Dunmore, Employee, filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 6, 2020, appealing the decision of the Office of the Chief Financial Officer (“OCFO”), Agency, to suspend her for two (2) days from her employment as an Executive Assistant, effective October 10 and 11, 2019. On January 27, 2020, Agency filed a motion to dismiss for lack of jurisdiction. The matter was assigned to this Administrative Judge (“AJ”) on February 5, 2020. In its motion to dismiss, Agency argued that pursuant to D.C. Official Code § 1-204-25(a), all Agency employees have at-will status, and therefore this Office has no jurisdiction to hear Employee’s appeal. On February 7, 2020, I issued an Order directing Employee to respond to Agency’s motion by February 20, 2020. In the Order, Employee was reminded that employees have the burden of proof on all issues of jurisdiction. The Order was sent by first class mail, postage prepaid, to Employee at the address she listed in her petition for appeal. The Order was not returned to OEA as undelivered. Employee did not respond to the Order or contact the AJ to ask for additional time. The record has closed.

JURISDICTION

The jurisdiction of this Office has not been established.

¹ This decision was issued during the District of Columbia’s Covid-19 State of Emergency.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

In its January 27, 2020, Motion to Dismiss, Agency notes that OEA lacks jurisdiction to hear Employee's appeal in this matter because OCFO is an independent personnel authority and is expressly exempt from the Comprehensive Merit Personnel Act ("CMPA"). Agency maintains that employees at OCFO are 'at-will' employees and not covered by the CMPA, and therefore, Employee was an at-will employee not covered by the CMPA. Employee has not responded.

This Office's jurisdiction is conferred upon it by law, and it 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. According to Title 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1², 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 days.

For the reasons discussed below, OEA lacks statutory authority to assert jurisdiction in personnel matters involving the Office of the Chief Financial Officer (hereafter, "OCFO"). It is recognized that OEA has appellate jurisdiction over certain employee claims against the District of Columbia government arising under the Comprehensive Merit Personnel Act, (See D.C. Official § Code 2-606.03 and Grillo v. District of Columbia, 731 A.2d 384). However, the OCFO is an independent personnel authority and is expressly exempt from the CMPA. In this regard, Congress amended the District of Columbia Home Rule Act in Section 202 of the 2005 District of Columbia Omnibus Authorization Act approved October 16, 2006 (P.L. 109-356) to state in pertinent part as follows:

"... notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia... shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978, except that nothing in this section may

² See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

be constructed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.” [Emphasis added.]

See also D.C. Official Code § 1-204.25(a) wherein it specifically states that OCFO employees “shall be considered at-will employees not covered by Chapter 6 of this title.”

This Congressional amendment gives permanency to what had been heretofore yearly legislative measures that OEA has previously considered in making its determination that employees of the OCFO are not entitled to the notice and just cause provisions of the CMPA based upon, at that time, an implied repeal of those provisions under Section 152(a) of the 1996 District of Columbia Appropriations Act (“DCAA”) and subsequent Congressional legislation.³ See Initial Decision, *Leonard et al. v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0241-96 (February 5, 1997) (Judge Hollis) (holding that the CFO held legal authority to terminate employees without cause and opportunity to respond).⁴ Judge Hollis’ decision was upheld on appeal before the Superior Court of the District of Columbia and the Court of Appeals for the District of Columbia in *Leonard v. District of Columbia*, 794 A.2d 618, 626 (2002). Section 152 effectively removed employees of the OCFO from any protection afforded by the CMPA and these employees can be terminated without cause.⁵

Employee does not dispute that she was an ‘at-will’ employee serving at the pleasure of the Chief Financial Officer at the time of her suspension. Accordingly, I find that at the time of the suspension, Employee’s status was ‘at-will’ and she served at the pleasure of the Chief Financial Officer. Consequently, I further find that OEA lacks the authority to exercise jurisdiction over Employee’s Petition for Appeal.

There is another ground for dismissal of this matter for lack of jurisdiction. As Title 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1 enumerated above shows, suspensions of less than ten days do not fall under OEA’s jurisdiction. Employee’s two-day suspension falls short of that threshold. According, I find that OEA has no jurisdiction over this matter.

³ The Omnibus Consolidated Rescission and Appropriation Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-102 (1996), as amended and extended, (hereinafter “OCRA Act”) at § 152, expands the authority of the Chief Financial Officer (CFO) of the District of Columbia by transferring all budget, accounting, and financial management personnel in the executive branch of the District government from the Mayor’s authority to the CFO’s authority. It also provides, at § 152 (a), that employees in these financial offices shall be appointed by, and shall serve at the pleasure of, the CFO.

⁴ Judge Hollis issued identical decisions on February 13 and 24, 1997 in *Gains v. OCFO*, OEA Matter No. 1601-0265-96, and *D. Jackson v. OCFO*, OEA Matter No. 1601-0242-96.

⁵ In the Leonard case, appellants sued the District of Columbia for unlawful termination, alleging that they were career civil service employees who had been terminated from their employment without cause, prior notice or due process and in violation of the CMPA. Leonard held that the OCRA Act “implicitly repealed appellants’ career service status and converted them to “at-will” employees subject to discharge without the benefit of the procedures specified in the CMPA [Act]....., thereby, divesting employees of any pre-termination procedural rights or rights to be terminated only for cause under the CMPA”.

Lastly, in accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a petition for appeal may be dismissed when an employee fails to prosecute the appeal. Here, Employee has failed to submit a brief as ordered, thereby providing another ground for dismissal.

ORDER

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

FOR THE OFFICE:

/s/ Joseph Lim
Joseph E. Lim, Esq.
Senior Administrative Judge