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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0412-10-R23-R25
EMPLOYEE,	)	
Employee	)	
	)	Date of Issuance: June 22, 2026
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE

Mark R. Carter, Esq., Employee Representative
Gehrie Bellamy, Esq., Agency Representative

SECOND INITIAL DECISION ON REMAND

Employee was hired by the District of Columbia Public Schools' on January 3, 2010, and was a member of the Washington Teachers' Union, Local #6 ("WTU" or the "Union"). The 2007-2012 Collective Bargaining Agreement ("CBA") between the Washington Teachers' Union, Local #6 of the American Federation of Teachers, AFL-CIO and the District of Columbia Public Schools ("DCPS" or the "Agency") is applicable to the instant matter. Employee was placed at Spingarn Senior High School. Six months after her hire, Employee received notice that her position would be excessed from the school, and thus she was terminated August 23, 2010. On September 20, 2010, Employee filed a petition for appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the DCPS' action of removing her from service. At the time of her removal, Employee was an English Teacher at Spingarn Senior High School. Employee's tenure with DCPS started on January 3, 2010.¹ According to a letter dated August 23, 2010, addressed to Employee and signed by then DCPS Chancellor Michelle Rhee, Employee was removed from service effective August 23, 2010.² In its Answer to Employee Petition for Appeal, DCPS initially argued that the OEA lacks jurisdiction over the instant matter because Employee was removed from service during her probationary period.³ Accordingly, the undersigned issued an Order on August 20, 2012, wherein Employee was required to address whether the OEA may exercise jurisdiction over the instant matter. On January 29, 2013, the Undersigned issued an Initial Decision

¹ See Agency's Answer at Tab 2 (October 21, 2010).

² *Id.* at Tab 1.

³ *Id.* at 3 – 4.

dismissing Employee's Petition for Appeal due to a determination that OEA lacked jurisdiction since Employee was deemed to be a probationary employee at the time of her removal.

After lengthy review, this matter was remanded back to the Undersigned by the District of Columbia Court of Appeals for an additional determination as to whether the OEA may exercise jurisdiction over this matter.⁴ After this matter was remanded, DCPS filed a Motion to Dismiss dated April 5, 2023. In this motion, DCPS asserted the following:

The CBA provides that either an employee or the WTU may raise a grievance; WTU can process a grievance on behalf of an employee with that employee's consent; and when WTU files a grievance, the employee may not later raise the grievance herself. S.R. 399-400. Pursuant to these procedures, WTU filed and settled two grievances on [Employee] behalf challenging DCPS's decision to excess her position and separate her from employment. S.R. 478-79, 488, 491, 498, 501-02. And these grievances were filed before [Employee] filed her September 20, 2010, OEA appeal, on August 31 and September 2 respectively. Pursuant to D.C. Code § 1-616-52(e), Employee may file a grievance or an appeal for a matter, but not both.

DCPS further asserted that Employee was removed during her probationary period, which they contended provided an additional reason mandating dismissal of this matter. Agency also noted that any miscues related to the filing of a grievance on Employee's behalf were of no fault of its own and that those issues (if they exist) may constitute a separate matter that pertains solely between the WTU and Employee. A Status Conference was held on May 11, 2023. It is uncontroverted that the WTU, on behalf of Employee and several of her colleagues, filed the grievance on their collective behalf in 2010. It is further noted that Employee did not voice her wish to be disassociated from the grievance until November 2018.

The parties were ordered to provide briefs. It should be noted that the same facts and circumstances that gave rise to the Petition for Appeal are identical to the facts and circumstances that were settled by the WTU and DCPS. After reviewing the documents of record, the Undersigned issued an Initial Decision on Remand on May 9, 2024, wherein Employee's appeal was again dismissed for lack of jurisdiction. Employee disagreed with this decision and appealed the matter to the Board of the Office of Employee Appeals ("OEA Board"). On January 16, 2025, the OEA Board issued an Opinion and Order on Petition for Review ("O&O") through which this matter was remanded to the Undersigned for further consideration. On February 26, 2025, a Status Conference was held in this matter to address the questions raised by the OEA Board. During this Status Conference, the Undersigned ordered the parties to submit briefs addressing if Employee actually exercised her discretion to have the WTU file a grievance on her behalf, in light of the holding in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*.⁵ ⁶The O&O also directed the Undersigned to

⁴ *Employee v. DCPS*, No. 18-CV-1350 (February 13, 2023).

⁵ 277 A.3d 1272 (D.C. 2022).

⁶ *Barbara Brewer v. District of Columbia Public Schools' Opinion and Order on Petition for Review*, OEA Matter No.: 1601-0412-10-R23-R25 p. 8 – 9 (January 16, 2025).

determine “if recovery in the grievance prevents OEA from rendering a decision in this matter.” *Id.* Another Status Conference was held on February 26, 2025. Following this conference a briefing schedule was adopted. The parties complied with the briefing schedule that was given. After reviewing the documents of record, I find that no further proceedings are warranted. The record is now closed.

JURISDICTION

As will be explained below, the OEA lacks jurisdiction over the instant matter.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 *id.* States:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

According to the OEA Board’s Remand in this matter, the Undersigned may only examine the following:

1. Did Employee actually exercise her discretion to have the WTU file a grievance on her behalf. And,
2. Does recovery in the grievance prevent OEA from rendering a decision in this matter

Employee strongly asserts that she did not authorize the WTU to proceed on her behalf in the settlement negotiations. Agency in a nutshell responds by noting that Employee did in fact authorize the WTU to represent her in the group negotiations that allowed for her recovery via settlement. DCPS further notes that the WTU grievance filed on behalf of all covered employees was filed before Employee filed her original Petition for Appeal on September 20, 2010. Agency further asserts that any complaint that Employee has with this process should be squared directly with the WTU and that regardless of whether she has physically claimed her settlement recovery, that the settlement award has been and remains available for her to collect. In response to the OEA Boards’s first query, I find that Employee’s response (much like her status as an at-will employee

with alleged appeal rights through the CBA) is something “in-between.” Given the circumstances that evolved over time with this matter, it is uncontroverted that Employee did not actively assert her desire to proceed without WTU assistance before the settlement was reached and awarded. Employee could have actively informed the WTU that she did not want to be included in the class action while it proceeded in a separate litigation track.

In a group grievance filed September 2, 2010, the WTU grieved this matter, of which Employee was a party, and the matter was settled on January 30, 2016. Employee, among several others, was awarded a monetary settlement that she can personally collect. It was only after she was notified of the award that Employee actively tried to distance herself from it. While it has been asserted by Employee that when she provided a signed release of her personnel file to the WTU that she was not giving that organization express approval to proceed on her behalf in any action, she *should have known* that the express purpose of the request and subsequent acquiescence on her part was for further litigation purposes tacitly on her behalf.

In response to the OEA Board’s query as to whether recovery through the settlement agreement precludes further OEA review, I note that what is most telling in this matter is that the Agency, in its Surreply dated June 2, 2025, asserted as follows: *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D. C. Metro. Police Dep’t*, 277 A.3d 1272, 1279-80 (D.C. 2022) allows [Employee] to file both a grievance *and* an appeal, because the statute does not indicate that there are potential jurisdictional implications for filing in one and not the other. Agency went on to explain that even if this were true, what this ruling *does not* allow is recovery in both forums.⁷ The Court held that while some procedural flexibility at times may be warranted, it does not override the prohibition against duplicative recovery for the same issues. “Once a claim has been finally adjudicated, the doctrine of claim preclusion, or *res judicata*, prevents the same parties from relitigating the same claim, including any issue that either was or might have been raised in the first proceeding... As a corollary, the doctrine of issue preclusion, embracing the concepts of direct and collateral estoppel, prevents the same parties from relitigating an issue actually decided in a previous, final adjudication, whether on the same or a different claim” *Rhema Christian Ctr. v. D.C. Bd. of Zoning Adjustment*, 515 A.2d 189, 193 (D.C. 1986). (Internal citations omitted).

As a member of the WTU, the Union was obliged to represent her and others in order to assert their collective argument that the actions taken by DCPS were not justified. Seemingly, it was successful in that endeavor by securing an expansive monetary settlement agreement with DCPS that included a surfeit of affected employees (including Employee herein). It is uncontroverted that Employee gave permission for her official personnel record with DCPS to be shared with the WTU. Afterwards, she did nothing either for or against the WTU grievance for years. It was only after she learned of the monetary award and the amount she would derive from same that she sought to actively distance herself from the WTU grievance settlement award.

Flowing from this argument, it is apparent to the Undersigned that Employee herein is attempting to have multiple bites at the apple. Of more critical importance, Employee did not seek to disassociate herself from the WTU grievance until she was made aware of the settlement. While recent case law may make multiple avenues available to petitioners who are seeking redress, eventually the petitioners must make a choice as to which avenue they will seek to avail themselves

⁷ See Respondents Sur-reply Brief on OEA Remand, pp. 4-5 (June 2, 2025).

for relief. To allow Employee to have dual track lanes for litigation and then be allowed to wait years till there is a recovery in one in order to determine which one she will pursue is abhorrent to the general principle of comity between WTU, its members, and DCPS. Employee's removal was effectuated many years ago and it is patently obvious from the record developed that Employee now enjoys the fruit of the settlement procured on her behalf by the WTU but seemingly wants to move forward in a measured attempt at a different/better outcome.

Presently, she is (apparently) dissatisfied with the settlement procured on her behalf. What employee neglects is that "an attorney-client relationship can exist even if the parties do not have a written agreement, the client does not pay the attorney any fees, and the attorney does not give the client any legal advice."⁸ Employee's failure to actively disassociate herself from WTU's group grievance gave the appearance (to DCPS' chagrin) that it was settling all of the named matters involving the host of WTU members that had been excessed many years ago. Given the instant circumstances, I find that Employee's miscalculation cannot be absolved or rectified with further OEA litigation. She may have other avenues or entities that may provide other means of redressing her complaints but given her lengthy and peculiar circumstances, I find that she cannot utilize the OEA appeal process given the settlement award that has been procured on her behalf by the WTU and her timing of allegedly trying to disassociate from same. I conclude that given the totality of the circumstances as enunciated in the instant decision, Employee is precluded from proceeding with her OEA appeal.⁹

ORDER

Based on the foregoing, it is ORDERED that Employee's Petition for Appeal is hereby DISMISSED.

FOR THE OFFICE:

/s/ Eric T. Robinson
ERIC T. ROBINSON, ESQ.
Senior Administrative Judge

⁸ *Teltschik v. Williams & Jensen, PLLC*, 683 F. Supp. 2d 33, 45 (D.D.C. 2010), aff'd, 748 F.3d 1285 (D.C. Cir. 2014). (internal citations omitted).

⁹ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence"). This finding notes, *inter alia*, that Employee sought to litigate the circumstances surrounding the merit (or alleged lack thereof) of her excess and removal from DCPS.