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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CARLA NORDE,)	
Employee)	OEA Matter No. J-0103-16
)	
v.)	Date of Issuance: December 30, 2016
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HUMAN RESOURCES,)	
Agency)	
)	Arien P. Cannon, Esq.
_____)	Administrative Judge
Carla Norde, Employee, <i>Pro se</i>		
John J. Cheek, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Carla Norde (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 30, 2016, challenging the District of Columbia Department of Human Resources’ (“Agency”) decision to remove her from her position as a LEAP¹ Intern. This matter was assigned to the undersigned on October 6, 2016. Agency filed its Answer and Motion to Dismiss on November 1, 2016.

An Order on Jurisdiction was issued on November 2, 2016, which required Employee to submit a brief addressing why she believed this Office may exercise jurisdiction over her appeal. Employee’s brief was due on or before November 16, 2016. After failing to initially submit her brief and a subsequent Show Cause Order was issued, Employee ultimately submitted her response to the Order on Jurisdiction and Show Causer Order on December 2, 2016. I have determined that an evidentiary hearing is not warranted. The record is now closed.

¹ The District’s Learn, Earn, Advance, Proper (L.E.A.P.) Academy is a program of interconnected partners utilizing the “earn-and-learn” approach that links the city’s unemployed residents with employment, education, and training opportunities. See Agency’s Answer to Employee’s Petition for Appeal, Footnote 1 (November 1, 2016).

JURISDICTION

As discussed below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.² “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.

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.³

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Employee was offered a position for a Career Service Temporary position as a LEAP Intern, with an effective date of September 6, 2016.⁴ Employee’s offer was contingent upon a successful completion of a general background check. This temporary position was also not-to-exceed September 6, 2017.⁵ The background check performed by Agency for the District’s LEAP Program revealed that Employee was removed from her position as a Special Education Aide with the District of Columbia Public School System in 2014. Based on this knowledge, Agency determined that Employee was ineligible for rehire by the District government at the time it intended to hire her as a LEAP Intern. Employee was then removed from her position as a LEAP Intern less than two weeks after being extended a contingent offer. Her removal was effective September 16, 2016.

OEA Rule 628.2 provides that employees have the burden of proof for establishing jurisdiction.⁶ OEA’s jurisdiction is generally “limited to permanent employees who are serving in the career or educational services and who have successfully completed their probationary periods.”⁷ It is undisputed that Employee was serving in a term appointment not to extend beyond September 6, 2017.⁸ The OEA Board has held that this Office lacks jurisdiction over

² 59 DCR 2129 (March 16, 2012).

³ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

⁴ Agency Answer, Tab 2 (November 1, 2016).

⁵ *Id.*

⁶ *Id.*

⁷ *Roxanne Smith v. D.C. Department of Parks and Recreation*, Initial Decision, OEA Matter J-0103-08 (October 5, 2009).

⁸ *See* Agency’s Motion to Dismiss, Tab 2 and Tab 4 (November 1, 2016);

term employees.⁹

In Employee's appeal, she focuses her argument on her suitability for employment with the District government rather than her probationary or term appointment status. She argues that she was deemed suitable for employment with the District government in June 2016, and the suitability determination was valid until June 2018; thus, Agency did not need to conduct a subsequent suitability screening for the LEAP Program pursuant to District Personnel Manual ("DPM") § 402. Employee's argument is deficient. The DPM does not preclude an Agency from conducting a subsequent suitability determination despite a determination being previously made for a different position. Agency acknowledges that Employee was deemed suitable for employment with the District government in June 2016. However, this suitability screening was a result of Employee's participation with the Marion Barry Summer Youth Employment Program ("SYEP"). Employee underwent another suitability screening when she became an intern with Agency's LEAP Program.

6B DCMR § 403.2 provides that "[u]pon completing a general suitability screening in accordance with Subsection 403.1, the personnel authority shall inform the agency of the results, and may make a determination that an appointee is not suitable for employment..." Here, as part of the General Suitability Screening, Agency determined that Employee was terminated from the District of Columbia Public Schools System in 2014. Based on this information, Agency determined that Employee was currently ineligible for hire with Agency's LEAP program. Because Employee was occupying a temporary, term position at the time, she was terminated from the LEAP Program at Agency's discretion, effective September 16, 2016. As such, Employee has failed to meet her burden that this Office may exercise jurisdiction over her appeal as a term employee.

Employee's term appointment makes clear that this Office lacks jurisdiction over her appeal since she is not a permanent employee serving in the career or educational services.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's petition is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁹ *Smith v. D.C. Department of Parks and Recreation*, Opinion and Order on Petition for Review, OEA Matter J-0103-08 (May 23, 2011); *See also Carolynn Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, Opinion and Order on Petition for Review, (July 30, 2010).