THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SUBRATA SANYAL,	)	OEA Matter No. J-0070-08
Employee	)	
	)	Date of Issuance: January 25, 2010
	)	
	)	
DISTRICT OF COLUMBIA OFFICE OF	)	
THE CHIEF TECHNOLOGY OFFICER,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mr. Subrata Sanyal ("Employee") worked as program manager with the District of Columbia Office of the Chief Technology Officer ("Agency"). On March 28, 2008, Employee received a termination notice from Agency. The notice provided that he would be separated on April 12, 2008. It also stated that because Employee was a Management Supervisory Service ("MSS") employee, he could not file a grievance or appeal his termination.[1]

Days after his separation from Agency, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He argued that he was unaware that his MSS

[1] *Petition for Appeal*, p. 9-10 (April 17, 2008).

position was an at-will position; he thought that the position was permanent. Therefore, it was his belief that he was wrongfully terminated. Accordingly, he requested to work with a different agency at the same salary; compensation for mental stress and harassment; a positive recommendation letter from Agency's Director; a memo from Agency's Director to all District government agencies to retract the statements defaming his character; and all legal fees.

The Administrative Judge ("AJ") ordered Employee to submit a brief supporting his position that OEA had jurisdiction to consider his appeal. Employee argued that Agency was deceitful because he was not aware that his position was at will. He explained what took place during his hiring process, and he provided that Agency did not verbally or contractually inform him that his position was at will. He asserted, again, that it was his understanding that the position was permanent and full-time. Employee provided that the vacancy announcement listed the Program Manager position as a term appointment. Finally, he contended that he did not know what "MS/15" meant on his conditional appointment letter.[2]

The AJ issued her Initial Decision on June 23, 2008. She held that OEA's jurisdiction was not established by Employee. She found that in accordance with D.C. Official Code § 1-609.54, an appointment to a MSS position is an at-will appointment. She held that MSS employees are statutorily excluded from Career Service appointment protections. Therefore, Employee did not have to be terminated for cause. Furthermore, the AJ reasoned that Employee was aware that the Program Manager position was a MSS

[2] *Employee's Brief on OEA's Jurisdiction*, p. 1-3 (June 18, 2008).

position at the time that he was hired, although he did not question the designation on his conditional offer letter. Consequently, the AJ dismissed the case for lack of jurisdiction.[3]

Employee filed a Petition for Review with the OEA Board. He asserted the same arguments that were raised in his brief on jurisdiction. He also requested that Board focus on the illegality of his termination.[4]

The AJ correctly provided that in accordance with D.C. Official Code §1-609.54(a):

> "an appointment to a position in the Management Supervisory Service shall be an at-will appointment. Management Supervisory Service employees shall be given a 15-day notice prior to termination. . . ."

OEA has consistently held that it lacks jurisdiction over at-will employees.[5] As the AJ provided, the D.C. Court of Appeals in *Grant v. District of Columbia,* 908 A.2d 1173 (D.C. 2006) held that procedural protections are afforded to Career Service employees. However, MSS employees are statutorily excluded from Career service protections.

Furthermore, the Court in *Evans v. District of Columbia*, 391 F. Supp. 2d 160 (2005), reasoned that because MSS employees serve at-will, they have no property interest in their employment because there is no objective basis for believing that they will continue to be employed indefinitely. The Court provided that the only rights enjoyed by MSS employees are the "right to 15 days' notice before termination; a separate notice in the event of termination for disciplinary reasons describing the reason

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[3] *Initial Decision,* p. 2 (June 23, 2008).
[4] *Petition for Review* (July 22, 2008).
[5] *Hodge v. Department of Human Services,* OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections,* OEA Matter No. J-0033-02, Opinion and Order on Petition for Review (February 10, 2004); *Jenkins v. Department of Public Works,* OEA Matter No. 1601-0037-01, Opinion and Order on Petition for Review (April 5, 2006); and *Minter v. D.C. Office of Chief Medical Examiner,* OEA Matter No. J-0116-07, Opinion and Order on Petition for Review (July 22, 2009).

for termination; and if the employee requests in writing, a final administrative decision on the issue of severance pay by the personnel authority."[6] Applying this reasoning to the present case, Agency clearly fulfilled its obligation by providing Employee with a written notice of his impending termination. A separate notice describing the reason for Employee's termination was not required because he was not terminated for disciplinary reasons. Finally, Employee presented no arguments regarding severance payments. Accordingly, Employee's Petition for Review is denied.

[6] *Evans v. District of Columbia*, p. 166 (2005).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED.**

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

_____
Richard F. Johns

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Hilary Cairns

_____
Clarence Labor, Jr.

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.