

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
STEPHANIE JACKSON) OEA Matter No. 1601-0146-08
Employee)
) Date of Issuance: February 25, 2009
)
v.) Sheryl Sears, Esq.
) Administrative Judge
)
D.C. PUBLIC SCHOOLS)
Agency)

Stephanie Jackson, Employee, *Pro Se*
Harriet E. Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Stephanie Jackson (“Employee”) was a Teacher for the D.C. Public Schools (“Agency”). Agency removed her effective on August 1, 2008, for failure gain full certification and licensing for her position. On August 11, 2008, Employee filed an appeal with the D.C. Office of Employee Appeals (“the Office”). She acknowledged that she has not met the requirements for certification. She sought more time to complete the process.

By order issued on January 27, 2009, this Judge directed Employee to submit, in writing, a statement addressing the following questions: 1) Did you have full credentials at the time of the separation (so as to be able to claim that you were a “career service employee” with full rights and not an “at will” employee)? 2) If not, on what law, rule or regulation do you rely in claiming that this Office has jurisdiction over your appeal? Employee did not respond.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. This decision is based upon the record of documentary evidence and written legal arguments by the parties. The record is now closed.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .” Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is by a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat 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.” Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over her appeal.

JURISDICTION

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

Chapter 16 of the District Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees “of the District government *in the Career Service.*” (Emphasis added.) In accordance with §1601.1, no career service employee may be “officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force] of these regulations.”

Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from at will employees. It states that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). An at will employee may be terminated at any time and “for any reason at all.” *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ ().

The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.” However, that review is only afforded to employees who have a right to challenge their removals. In the matter of *Williamson v. D.C. Public Schools* (April 25, 2008), ___ D.C. Reg. ___ (), this Judge held that a teacher without full licensure did not meet all of the requirements of her contractual agreement with the agency. Therefore, she never achieved career status. Instead, she was an “at will” employee subject to removal at any time. Her removal was upheld.

Employee was required to have certain credentials for her position. It is undisputed that, at the time of the separation, she did not have them. For that reason, instead of holding "career" status, she was an "at will" employee and subject to removal by the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this appeal must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.