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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
RICKY GARRETT,	)	
Employee	)	OEA Matter No. J-0013-12
	)	
v.	)	Date of Issuance: February 7, 2012
	)	
D.C. DEPARTMENT OF PUBLIC WORKS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Ricky Garrett, Employee <i>Pro Se</i>		
Andrea G. Commentale, Esq., Agency's Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On October 28, 2011, Ricky Garrett (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Public Works’ (“DPW” or “Agency”) decision to terminate him from his position as a Material Handler, effective September 30, 2011. On November 30, 2011, Agency filed an Answer to Employee’s appeal noting that Employee was a Term Employee, and as such, the matter should be dismissed for lack of jurisdiction.

This matter was assigned to me on or around December 12, 2011. Subsequently, I issued an Order on December 28, 2011, wherein I required Employee to address whether OEA may exercise jurisdiction over this matter because Employee was a Term employee when he was terminated. Employee had until January 16, 2012, to respond. And Agency had until January 31, 2012, to submit a response to Employee’s reply. Both parties have complied. The record is now closed.

**JURISDICTION**

As will be explained below, the jurisdiction of this Office has not been established.

**ISSUE**

Whether this Office may exercise jurisdiction over this matter.

**FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW**

There is a question as to whether OEA has jurisdiction over this appeal. This Office has no authority to review issues beyond its jurisdiction.<sup>1</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>2</sup> Employee was hired as a Term employee effective October 15, 2007, not to exceed (NTE) January 18, 2008.<sup>3</sup> Employee's Term appointment was extended several times. The last extension to Employee's appointment was effective March 2, 2011, NTE September 30, 2011.<sup>4</sup> On September 19, 2011, Employee received a Notice of Termination upon Expiration of Term Appointment. According to this Notice, Employee's Term appointment which was set to expire on September 30, 2011, would not be extended, and therefore Employee would be terminated effective close of business September 30, 2011. The Notice further states that Employee's termination is not appealable or grievable. In his written brief to this Office dated January 23, 2012, Employee notes that, because he is a Career service employee, he is entitled to challenge his termination in this Office. Employee further asserts that he was terminated without just cause or due process. In its response to Employee's brief, Agency concedes that Employee is in fact a Career service employee, but argues that OEA lacks jurisdiction to entertain Employee's appeal pursuant to D.C. Official Code § 1-606.03. Agency specifically notes that Employee was not removed prior to the expiration of his Term appointment, but that instead, Employee's employment ended automatically upon the expiration of his Term appointment.<sup>5</sup> In addition, Agency maintains that Employee has no statutorily protected right or expectation to continued employment beyond the expiration date of his Term appointment.

OEA Rule 629.2, 46 D.C. Reg. 9317 (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 burden of proof is by a preponderance of the evidence which is defined 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."

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

The Omnibus Personnel Reform Amendment Act (OPRAA), which amended the CMPA in 1998 authorizes OEA to hear appeals of permanent employees in the Career and Education services who have successfully completed their probationary period. Based on the record, Employee was a

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<sup>1</sup> See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>2</sup> See *Brown v. District of Columbia Public. School*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>3</sup> See Tab 2 of Agency's Answer.

<sup>4</sup> See Tab 9 of Agency's Answer.

<sup>5</sup> Agency's response to Employee's brief regarding jurisdiction dated January 31, 2012.

Career service employee who had completed his probationary period. However, Employee's Personnel Action from the date he was hired to when he was terminated identifies Employee's appointment as a Term appointment, NTE... Furthermore, in his petition for review submitted to this Office, Employee selected "TERM" to a question pertaining to his appointment type. These facts support the conclusion that Employee was not in permanent status upon his removal and as such, his appeal cannot be heard by this Office.

Employee further argues that he "should have only been Term for a max 2 years and then converted from Term to Permanent."<sup>6</sup> This assertion is incorrect. District Personnel Manual ("DPM") § 823.7, provides that an employee serving under a Term appointment shall not acquire permanent status on the basis of the Term appointment, and shall not be converted to a regular Career service appointment without further competition, unless eligible for reinstatement. Here, Employee was hired as a Term employee, and although his appointment was extended several times, there is nothing in the record showing that Employee's appointment was ever converted from Term to permanent status. Thus, he never acquired permanent status.

Additionally, Employee contends that because he was a Career service employee at the time of his termination, Chapter 16 of the DPM pertaining to employee discipline applies to his case. He further notes that, because Agency terminated him without cause, it violated his due process rights. Again, Employee's assertion is flawed. DPM §826.1 provides that, the employment of an individual under a temporary or term appointment shall end on the expiration date of the appointment, on the expiration date of an extension granted by the personnel authority, or upon separation prior to the specified expiration date in accordance with this section. Because Employee's termination occurred on the expiration date of the last extension granted by Agency's personnel authority, and not prior to any specific expiration date, Chapter 16 of the DPM does not apply. Moreover, DPM § 823.8 provides that, employment under a Term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier. In this case, because Agency did not extend his Term appointment, Employee's appointment automatically ended on September 30, 2011.

Based on the foregoing, I conclude that Employee has not met his burden of proof on the issue of jurisdiction, and as such, this petition should be dismissed for lack of jurisdiction.

### **ORDER**

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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<sup>6</sup> Employee's Petition for Appeal, page 4.