

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CAROLYN JACKSON-KING)	OEA Matter No. J-0052-20
Employee)	
)	Date of Issuance: January 14, 2021
v.)	
)	JOSEPH E. LIM, ESQ.
D.C. PUBLIC SCHOOLS)	Senior Administrative Judge
Agency)	
)	

Carolyn Jackson-King, Employee *Pro se*
Gehrie Belammy, Esq., Agency Representative

INITIAL DECISION¹

INTRODUCTION

On July 20, 2020, Carolyn Jackson-King (“Employee”), a former Elementary School Principal, filed a Petition for Appeal from D.C. Public Schools’ (“Agency”) final decision not to reappoint her to her position as School Principal at Lawrence E. Boone Elementary School. This matter was assigned to me on December 17, 2020. I issued an Order to Employee on December 23, 2020, to respond to Agency’s contention that this Office lacks jurisdiction over this appeal. On January 3, 2021, Employee responded. Since a decision could be rendered based on the documents contained in the case file, I determined that an evidentiary hearing was not warranted for this matter. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether Employee’s appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS

The following facts are not in dispute:

¹ This decision was issued during the District of Columbia’s Covid-19 State of Emergency.

1. Employee was a School Principal at Lawrence E. Boone Elementary School from July 2014 to June 26, 2020.
2. On March 30, 2020, Employee received Agency's notice informing her that she would not be reappointed as School Principal due to her work performance.
3. Agency instructed Employee to exercise her reversion rights.
4. On April 12, 2020, Employee elected to revert back to her Dean of Students position. Agency asserts that Employee is currently employed with Agency.

ANALYSIS AND CONCLUSIONS OF LAW

Whether Employee's appeal should be dismissed for lack of jurisdiction.

Based on a review of the Petition for Appeal, a question arose as to whether this Office has jurisdiction over this matter. An employee has the burden of proof as to issues of jurisdiction. *See* OEA Rule 628.2, 59 D.C. Reg. 2129 (2012). The D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Official Code Ann. § 1-601.01 et seq. (2001), established this Office, which has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Official Code Ann. § 1-606.03.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") states in pertinent part that:

- (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

Thus, § 1-606.03(a) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

- a performance rating that results in removal;
- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more;
- placement on enforced leave for ten days or more; or
- a reduction in force

Further, OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.² Pursuant to OEA Rule 604.1 this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.³

Therefore, this Office no longer has jurisdiction over appeals from grievances. In her brief, Employee characterizes her non-reappointment as a demotion. However, I find that Employee's complaint is a grievance as she has not lost her job with the Agency; that a reappointment is discretionary on the part of management; and that her situation is not covered under the above cited § 1-606.03(a).

The plain language of CMPA and OEA Rules compels the dismissal of this appeal for lack of jurisdiction. The starting point in every case involving construction of a statute is the language itself. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language. *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980). Here, the CMPA clearly and unambiguously removed grievance appeals from the jurisdiction of this Office. Further, this Office has consistently held that appeals involving grievances are not within our jurisdiction. *See, e.g., Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999).

In her brief, Employee argues that her performance evaluation is incorrect, that she was not reappointed because of her complaints about Agency's Relay program, and that Agency's action violates her civil rights. Here, Employee is attempting to appeal a grievance. Based on the above-mentioned statutory provisions, I find that Employee's appeal is not within the jurisdiction of this Office. Accordingly, I find that Employee's Petition for Appeal must be dismissed.

ORDER

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

² 59 DCR 2129 (March 16, 2012).

³ OEA Rule 604, 59 DCR 2129 (March 16, 2012); D.C. Official Code § 1-606.03.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge