

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
WILLIAM TAYLOR	)	OEA Matter No. J-0051-20
Employee	)	
	)	Date of Issuance: January 28, 2021
v.	)	
	)	JOSEPH E. LIM, ESQ.
D.C. PUBLIC SCHOOLS	)	Senior Administrative Judge
Agency	)	
_____	)	
William Taylor, Employee <i>Pro se</i>		
Gehrie Belammy, Esq., Agency Representative		

**INITIAL DECISION<sup>1</sup>**

INTRODUCTION

On July 26, 2020, William Taylor (“Employee”), a former Elementary School Principal, filed a Petition for Appeal from D.C. Public Schools’ (“Agency”) final decision not to reappoint him to his position as School Principal at Burrville 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. When Employee failed to respond, I issued a Show Cause Order on January 5, 2021, ordering him to establish good cause for his failure to abide by the prior Order. To date, Employee has failed to respond. 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:

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

1. Employee was a School Principal at Burrville Elementary School.
2. On March 30, 2020, Employee received Agency's notice informing him that he would not be reappointed as School Principal for the 2020-2021 school year.
3. Agency instructed Employee to exercise his reversion rights.
4. On May 14, 2020, Employee elected to revert back to his Instructional Coach position at the H.D. Cooke Elementary School. 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 § 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 § 1-606.03.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel 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.<sup>2</sup> 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.<sup>3</sup>

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

The plain language of the 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 his Petition for Appeal, Employee argues that his performance evaluation is incorrect and that he was not reappointed because of his complaints about Agency's Relay program. 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.

Alternatively, based on the facts in this matter, this appeal could be dismissed for Employee's failure to prosecute his appeal. In accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to two Orders that I issued. Both had specific time frames and both contained warnings

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<sup>2</sup> 59 DCR 2129 (March 16, 2012).

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

that failures to comply could result in penalties, including the dismissal of the petition. This is additional grounds for dismissing this appeal.

ORDER

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

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.  
Senior Administrative Judge