THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CARLO BRENT,	)	
Employee	)	OEA Matter No. 1601-0031-15
	)	
v.	)	Date of Issuance: April 14, 2015
	)	
OFFICE OF THE	)	
CHIEF FINANCIAL OFFICER,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Stephen White, Employee's Representative
Treva Saunders, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 16, 2015, Carlo Brent ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Office of the Chief Financial Officer's ("Agency" or "OCFO") decision to terminate his position as a Support Services Assistant effective December 19, 2014. I was assigned this matter on or around January 4, 2015. Subsequently, on January 22, 2015, Agency filed a Motion to Dismiss noting that OEA lacked jurisdiction in this matter.

Thereafter, I issued an Order requiring Employee to submit a written brief addressing the jurisdiction issue in this matter by March 10, 2015. Subsequently, Employee submitted a request for extension of time to file his brief. In an Order dated March 13, 2015, the undersigned granted Employee's request for extension. According to this Order, Employee had until March 24, 2015, to submit his brief, and Agency had until April 3, 2015, to submit a reply brief if it chose to do so. Both parties have timely filed their respective briefs. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

In its January 22, 2015, Motion to Dismiss, Agency notes that OEA lacks jurisdiction to hear Employee's appeal in this matter because OCFO is an independent personnel authority and is expressly exempt from the Comprehensive Merit Personnel Act ("CMPA"). Employee, on the other hand highlights that he is a member of the AFSMCE Local 1200 and pursuant to his union contract, he could file an appeal with OEA or grieve his termination through the negotiated grievance procedure, but not both. Employee also included several cases and statutory provisions which are irrelevant to the current matter.[1] In its April 3, 2015 brief on jurisdiction Agency however contends that although the Collective Bargaining Agreement ("CBA") applicable to Employee provides that covered employees may grieve actions through the negotiated grievance procedure or OEA, the CBA does not, and cannot enlarge OEA's statutory authority to include OCFO employees who are not covered by CPMA or Title 1, Chapter 6. Agency maintains that employees at OCFO are 'at-will' employees and not covered by the CMPA, and therefore, Employee was an at-will employee not covered by the CMPA.

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to Title 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[2], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) Placement on enforced leave for 10 days or more days.

The following excerpt from Agency's Motion to Dismiss adequately defines Agency's position:

> For the reasons discussed below, OEA lacks statutory authority to assert jurisdiction in personnel matters involving the Office of the Chief Financial Officer (hereafter, "OCFO").
>
> It is recognized that OEA has appellate jurisdiction over certain employee claims against the District of Columbia government arising under the

[1] *See* Employee's March 24, 2015 Brief.
[2] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

Comprehensive Merit Personnel Act (hereafter, "CMPA"), (See D.C. Official Code 2-606.03 and Grillo v. District of Columbia, 731 A.2d 384).

However, the OCFO is an independent personnel authority and is expressly exempt from the CMPA. In this regards, Congress amended the District of Columbia Home Rule Act in Section 202 of the 2005 District of Columbia Omnibus Authorization Act approved October 16, 2006 (P.L. 109-356) to state in pertinent part as follows:

> "… not withstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia…shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978, except that nothing in this section may be constructed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer." [Emphasis added.]

See also D.C. Official Code 1-204.25(a) wherein it specifically states that OCFO employees "shall be considered at-will employees not covered by Chapter 6 of this title."

This recent Congressional amendment gives permanency to what had been heretofore yearly legislative measures that OEA has previously considered in making its determination that employees of the OCFO are not entitled to the notice and just cause provisions of the CMPA based upon, at that time, an implied repeal of those provisions under Section 152(a) of the 1996 District of Columbia Appropriations Act ("DCAA") and subsequent Congressional legislation.[3] See Initial Decision, Leonard et al. v. Office of the Chief Financial Officer, OEA Matter No. 1601-0241-96 (February 5, 1997) (Judge Hollis) (holding that the CFO held legal authority to terminate employees without cause and opportunity to respond).[4] Judge Hollis' decision was upheld on appeal before the Superior Court of the District of Columbia and the Court of Appeals for the District of Columbia

[3] The Omnibus Consolidated Rescission and Appropriation Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-102 (1996), as amended and extended , (hereinafter "OCRA Act") at § 152, expands the authority of the Chief Financial Officer (CFO) of the District of Columbia by transferring all budget, accounting, and financial management personnel in the executive branch of the District government from the Mayor's authority to the CFO's authority. It also provides, at § 152 (a), that employees in these financial offices shall be appointed by, and shall serve at the pleasure of, the CFO.

[4] Judge Hollis issued identical decisions on February 13 and 24, 1997 in Gains v. OCFO, OEA Matter No. 1601-0265-96, and D. Jackson v. OCFO, OEA Matter No. 1601-0242-96.

> in Leonard v. District of Columbia, 794 A.2d 618, 626 (2002). Section 152 effectively removed employees of the OCFO from any protection afforded by the CMPA and these employees can be terminated without cause.[5]
>
> The OCFO is a signatory to the 2006 collective bargaining agreement (hereafter "AFSCME Agreement") between the District of Columbia and AFSCME, District Council 20, AFL-CIO which states that "discipline shall be imposed for cause, as approved in the DC Official Code § 1-616.51 (2001 ed.)." Petitioner is a member of District Council 20. The agreement states that covered employees receive notice and a hearing prior to any action taken and subsequently "may grieve actions through the negotiated grievance procedure, or appeal to the Office of Employee Appeals in accordance with OEA regulation but not both." (See: Master Agreement, Article 7, Section 13.)
>
> Notwithstanding, the OCFO's signature on the Agreement does not and cannot enlarge OEA's statutory authority to include OCFO employees who are not covered by the CPMA or Title 1, Chapter 6. In this regard, in the matter of Sharon Bartee et. al. v. OCFO, Office of Tax and Revenue, OEA Matter Nos. 1601-0034-09 et. Seq. (October 2, 2009) (Judge Robinson), it was held that OEA lacks the authority to exercise jurisdiction over OCFO employees. On appeal, in Sharon Bartee et. al. v. OCFO, Office of Tax and Revenue, Sup. Ct. Case No. 2009 CA 8105 P(MPA) (March 1, 2010) (Judge Irvin), the Court dismissed the case on procedural grounds, but noted that the OEA correctly determined that it does not have jurisdiction over employees that are not covered by the CMPA, including employees of the OCFO.[6]

Upon thoughtful consideration of the parties' respective positions, I find that Agency's analysis of the applicable laws in this matter is thorough and accurate. Moreover, Employee does not dispute that he was an 'at-will' employee serving at the pleasure of the Chief Financial Officer at the time of his termination. Accordingly, I find that at the time of the discharge, Employee's status was 'at-will' and he served at the pleasure of the Chief Financial Officer. Consequently, I further find that OEA lacks the authority to exercise jurisdiction over Employee's Petition for Appeal.

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[5] In the Leonard case, appellants sued the District of Columbia for unlawful termination, alleging that they were career civil service employees who had been terminated from their employment without cause, prior notice or due process and in violation of the CMPA. Leonard held that the OCRA Act "implicitly repealed appellants' career service status and converted them to "at-will" employees subject to discharge without the benefit of the procedures specified in the CMPA [Act]……., thereby, divesting employees of any pre-termination procedural rights or rights to be terminated only for cause under the CMPA".

[6] *See* Employer's Motion to Dismiss for lack of Jurisdiction at pages 1-3 (January 22, 2015).

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.
Administrative Judge