

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
REBECCA OWENS-WILLIAMS,)	OEA Matter No. J-0128-09
Employee)	
)	Date of Issuance: March 15, 2011
)	
)	
DEPARTMENT OF MENTAL HEALTH,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Rebecca Owens-Williams (“Employee”) worked as a Program Support Assistant with the Department of Mental Health (“Agency”). While still employed as a Program Support Assistant, Employee applied for an Inventory Management Specialist position. She was not selected for that position and filed a grievance with Agency in February of 2009. Agency denied her grievance. Thereafter, Employee appealed her decision to the Office of Employee Appeals (“OEA”).

In her Petition for Appeal, Employee argued that Agency violated Chapter 16 of the District Personnel Manual regarding grievance procedures. Additionally, she provided that Chapters 3 and 8 of the District Personnel Manual and D.C. Official Code § 1-615.51 were

violated.¹ Accordingly, Employee requested that OEA promote her to the grade identified in Inventory Management Specialist's position vacancy. She also sought back pay from the time the Agency allegedly pre-selected the candidate chosen for the position.²

On September 30, 2009, the OEA Administrative Judge ("AJ") issued her Initial Decision in this matter. She held that OEA lacked jurisdiction over the case. The AJ reasoned that D.C. Official Code § 1-606.03 did not list grievances among the matters over which OEA has jurisdiction. As a result, Employee's Petition for Appeal was dismissed.³

Employee disagreed with the AJ's finding and filed a Petition for Review with the OEA Board. She provided that because she began service prior to the enactment of the Omnibus Personnel Reform Amendment Act of 1998, she could retain her existing rights and benefits as provided in the Comprehensive Merit Personnel Act of 1978, Title II, Sections 204 and 3602. Employee reasoned that the CMPA of 1978 provided that OEA has jurisdiction over grievance matters.⁴

As it pertains to grievances, the OEA Board has consistently held that OEA lacks jurisdiction to consider those matters.⁵ OEA's authority was established by D.C. Official Code §1-606.03(a). It provides that:

¹ Employee argued that the position was pre-selected for an employee named Stanley Williams. She provided that she informed Agency that Mr. Williams was not a District resident. However, Agency ignored her statements. Finally, she presented that she was a witness to a legal matter involving one of the members of the interview panel for the position.

² *Petition for Appeal*, p. 1 and 5 (June 11, 2009).

³ *Initial Decision*, p. 2 (September 30, 2009).

⁴ *Petition for Review*, p. 1-2 (November 5, 2009).

⁵ *Rebecca Owens v. Department of Mental Health*, OEA Matter No. J-0097-03, Opinion and Order on Petition for Review (January 25, 2006), ___ D.C. Reg. ___; *Lillian Randolph v. District of Columbia. Water and Sewer Authority*, OEA Matter No. 2401-0085-02, Opinion and Order on Petition for Review (July 16, 2006), ___ D.C. Reg. ___; and *Mark James v. Office of the Chief Technology Officer*, OEA Matter No. J-0003-08, Opinion and Order on Petition for Review (November 23, 2009), ___ D.C. Reg. ____.

“[a]n 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 grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which 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.”

Therefore, OEA can only consider adverse actions that result in removal, reductions-in- grade, suspensions of 10 days or more, or reductions-in-force.

Moreover, District Personnel Regulations and OEA Rules sections 604.1 and 604.3 provide the following regarding OEA’s jurisdiction:

604.1

Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.1 et seq. or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for ten (10) days or more; or
- (c) A reduction-in-force.

604.3

The Office shall exercise jurisdiction over appeals filed with the Office before October 21, 1998 by an employee appealing a final agency decision that:

- (a) Denies his or her appeal of a performance evaluation;
- (b) Effects an adverse action against him or her;
- (c) Releases him or her through reduction-in-force procedures;
- (d) Resolves a grievance;
- (e) Refuses to grant a waiver of the District's claim for an erroneous overpayment to an employee;
- (f) Denies his or her appeal regarding records management and privacy

of records; or
(g) Denies his or her classification appeal.

OEA's jurisdiction changed on October 21, 1998. According to OEA Rule 604.3, the agency only had jurisdiction over grievances if the appeal was filed with the Office *before* October 21, 1998. Employee's Petition for Appeal was filed in June of 2009, nearly 11 years after the deadline. Employee improperly asserts that the CMPA of 1978 provided that OEA has jurisdiction over grievance matters. As a result of the above-mentioned rules and regulations, Employee's argument must fail.

Employee's grievance clearly falls outside the scope of this Office's jurisdiction. Because this Office does not have jurisdiction over the Employee's grievance, we cannot consider the merits of her claims. Thus, Employee's Petition for Review is **DISMISSED**.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is
DISMISSED.

FOR THE BOARD:

Clarence Labor, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.