

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
BRUCE KING)	OEA Matter No. J-0145-09
Employee)	
)	Date of Issuance: February 24, 2010
v.)	
)	Rohulamin Quander, Esq.
DISTRICT OF COLUMBIA)	Senior Administrative Judge
DEPARTMENT OF CORRECTIONS)	
Agency)	

Bruce King, Employee, *pro se*
Mitchell Franks, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On June 26, 2009, Employee, a former DS 6, Step 10 Correctional Officer with the D.C. Department of Corrections (the “Agency”), filed a petition for appeal with the D.C. Office of Employee Appeals (the “OEA” or the “Office”), challenging Agency’s final decision to allow his term appointment to expire effective June 22, 2009. This matter was assigned to me on January 11, 2010. On June 30, 2009, Agency was advised of Employee’s having appealed his termination. Agency responded, and filed *Agency’s Pre-hearing Statement and Supporting Documents*, with 10 attached Exhibit Tabs. Asserting that the Office lacked jurisdiction to further consider this matter, due to Employee’s term employee status, Agency’s statement included a Motion to Dismiss.

I convened a jurisdictional Status Conference on February 23, 2010, to allow the parties to discuss whether the Office had jurisdiction over this matter. Employee appeared *pro se*. Agency appeared and was represented by Mitchell Franks, Esq. I received oral argument on Agency’s Motion and Employee’s opposition thereto, and allowed Employee to set forth his position, including noting that during some portion of his term appointment, he was away from the job site due to an on-the-job-injury sustained as a result of an inmate-inflicted altercation.

Acknowledging that Employee had a good performance record and had been a valuable employee during his most recent tenure as a Correctional Officer, Agency relied upon management’s

authority over personnel, and underscored that term appointments are for a defined period of time, and when the appointment expires, that is the official end of an employee's tenure.

Employee advised the AJ that he was confused by an additional element in this matter. A few days prior to his appearing before me, he was informed by his union that efforts were being made to have him "reinstated" and that perhaps he should consider withdrawing his appeal before OEA. Understanding that an eligible employee can pursue an appeal either through OEA or pursuant to the terms of a qualified collective bargaining agreement, but not both, Employee expressed some concern about whether he might jeopardize the union's efforts on his behalf, if he chose not to withdraw the matter now pending at OEA.

Since a decision could be rendered based upon the documents contained in the case file, which included extracts from the current *District Personnel Manual*, and oral arguments presented by the parties, pursuant to discretionary authority granted to me by OEA Rule 625.2, no further proceedings, including an administrative hearing on the record, are necessary. The record is now closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

An analysis of the basic information presented to the AJ as a part of this record underscores that the irrefutable facts govern the outcome in this matter, which is sufficiently determinative. There is no dispute that Employee accepted a less than one-year term appointment, effective September 22, 2007, with a "Not-To-Exceed" date of June 23, 2008. Subsequently, the term appointment was briefly extended, with continuing expiration dates of October 24, 2008, December 22, 2008, March 22, 2009, and finally on June 22, 2009. From all appearances, Employee's term appointment was being renewed on a quarterly basis, and eventually expired on June 22, 2009, without being awarded another short-term renewal.

With regard to Employee possibly being "reinstated" to his position as a Correction Officer, it needs to be underscored that Employee was a term employee, that his term expired, and there was simply nothing to be "reinstated" to. On the other hand, Employee left his position in good standing, and is most probably eligible for appointment to another position, either term or otherwise, provided he can meet all of the employment preconditions. This would not be a "reinstatement," but rather a new appointment. There is no conflict or possible jeopardy to be incurred by allowing OEA to render a decision in this matter now before this Office. The dismissal of this appeal matter is based solely upon a determination that the Office lacks subject matter jurisdiction, as term employees are

specifically excluded from the jurisdictional authority of OEA.

The District Personnel Manual

My decision is underscored by both the *D.C. Official Code* and Chapter Eight of the D.C. Personnel Manual (the “DPM”). Pursuant to the *D.C. Official Code*, § 1-606.03(a), 2001, an 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 10 days or more; or
- (c) A reduction in force.

None of the above enumerated conditions apply in this case.

Term Employees

Volume I, DPM, Chapter 8, Part I, addresses Term Appointment, and provides in part:

- 823.7 A term employee shall not acquire permanent status on the basis of his or her term appointment, and shall not be converted to a regular Career Service appointment without further competition . . .
- 823.8 The employment of a term employee shall end automatically on the expiration of his or her term appointment unless he or she has been separated earlier.

At Chapter 8, § 826.1 of the Regulations, it states:

- 826.1 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 the extension granted by the personnel authority, or upon separation prior to the specified expiration date.

All three of the above noted sections are clearly applicable, as Employee herein was on notice that his term of appointment was due to expire. Although neither side produced a document, one of the standard forms that term employees complete is the *Conditions of Employment Under Term Appointment* form, which makes it clear that a term employee does not acquire Career status and the benefits that such a status confers.

OEA Rule 629.2, 46 D.C. Reg. at 9317, provides that employees have the burden of proving that OEA has jurisdiction to hear and decide their appeals. In the matter at hand, I find that Employee has not met this burden, and conclude, therefore, that I lack subject matter jurisdiction. I cannot grant Employee any of the relief sought in his petition. Having previously found, above, that OEA does not

have subject matter jurisdiction in this case, OEA cannot now grant Employee any relief at this time.

ORDER

It is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:

/ s /
Rohulamin Quander, Esq.
Senior Administrative Judge