THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: J-0059-14
SHAVON WALKER,	)	
Employee	)	
	)	Date of Issuance: May 28, 2014
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Sommer J. Murphy, Esq.
	)	Administrative Judge

Shavon Walker, Employee, Pro Se
Sara White, Esq., Agency Representative,

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 6, 2014, Shavon Walker ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Prior to being terminated, Employee worked as a Special Education Teacher at Shaw Middle School with District of Columbia Public Schools ("Agency" or "DCPS"). Employee was terminated after being charged with 1) falsification of official records; and 2) dishonesty. The effective date of Employee's termination was August 30, 2013.

This matter was assigned to me in March of 2014. On March 24, 2014, I issued an Order directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee submitted a response to the Order on April 24, 2014. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (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.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) provides that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue. OEA Rule 628.2 further states that "[t]he employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

In her brief, Employee states the following:

> "My original complaint was not filed because of my termination at all. The appeal was written because of the IMPACT outcome and the impact that the outcome had on my pay grade. Mentioning the termination in previous OEA correspondences…was to show additional adverse actions already performed by the Agency."

By statute, employees are given an option whether to file their complaints with the Office or to pursue a formal grievance with the affected employee's agency. However, once an employee has elected a path to remediation by filing a grievance with the agency, he or she is specifically barred from also filing a Petition for Appeal with this Office.[1]

> (e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the

[1] *See Mayfield v. Department of Health*, OEA Matter No. J-0105-08 (September 4, 2008).

> discretion of the aggrieved employee, be raised either pursuant to § 1-606.03, or the negotiated grievance procedure, but not both.
> (f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first.

In this case, Employee concedes that she filed a Petition for Appeal with OEA on March 6, 2014 for the purpose of contesting her final 2012-2013 IMPACT rating. However, Employee had previously filed an appeal of her rating with the DCPS Chancellor's office. Employee's appeal was denied in a January 24, 2014 letter from the Chancellor Kaya Henderson.[2] Employee's final IMPACT score is not a matter that is appealable to this Office under D.C. Code § 1-606.03 because Employee was not terminated as a result of her IMPACT rating. Employee was terminated as a result of being charged with falsification of official records and dishonesty. The claims that have been raised in Employee's appeal are grievances that fall outside of the scope of this Office's jurisdiction. I therefore find that Employee has failed to meet her jurisdictional burden of proof as required by OEA Rule 628.2. Based on the foregoing, Employee's Petition for Appeal must be dismissed.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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Sommer J. Murphy, Esq.
Administrative Judge

[2] *See* Petition for Appeal (March 6, 2014).