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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
DEMETRA RHONE, Employee	OEA Matter No. 1601-0099-13
v.	Date of Issuance: August 7, 2013
OFFICE OF THE CHIEF FINANCIAL OFFICER, Agency	MONICA DOHNJI, Esq. Administrative Judge

Demetra Rhone, Employee *Pro Se*
Clarene Martin, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 10, 2013, Demetra Rhone ("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 her position as an Account Technician effective May 10, 2013. On June 25, 2013, Agency filed a Motion to Dismiss noting that OEA lacked jurisdiction in this matter.

I was assigned this matter on or around July 8, 2013. Thereafter, I issued an Order requiring Employee to submit a written brief addressing the jurisdiction issue in this matter by July 19, 2013. Subsequently, Employee submitted a request for extension of time to file her brief. In an Order dated July 19, 2013, the undersigned granted Employee's request for extension. According to this Order, Employee had until July 29, 2013, to submit her brief, and Agency had until August 5, 2013, 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 June 25, 2013, Motion to Dismiss, Agency notes that OEA lacks jurisdiction to hear Employee's appeal in this matter. Employee, on the other hand, states that she was covered by two Union contracts. She explains that as an employee in the District of Columbia, she is protected by Union contracts. Employee further notes that she was not an "at-will" employee because she did not sign any agreement and as such OEA has jurisdiction over her appeal. She maintains that she served under an implied contract for other than "at-will". She notes that she was given oral assurance by her supervisor, and this rose to an implied contract. Employee also contends that "there was never a time that the employees of the OCFO were not told there was no contract for employment ...we served as employees protected by a contract and felt no threat by "at-will" guidelines or tenants." In support of her position, Employee also included several cases and statutory provisions which are irrelevant to the current matter.[1] Additionally, Employee requests an evidentiary hearing in this matter.

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 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

[1] *See* Brief of Appellant (July 29, 2013).

> 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.[2] 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).[3] 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 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.[4]

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.)

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[2] 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.

[3] 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.

[4] 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".

> 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.[5]

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. Accordingly, I hereby adopt Agency's aforementioned arguments as my own. I find that at the time of the discharge, Employee served at the pleasure of the Chief Financial Officer. Therefore, I further find that OEA lacks the authority to exercise jurisdiction over Employee's Petition for Appeal.

Evidentiary Hearing (Oral Argument)

Employee also requests that an Evidentiary Hearing be held in this matter. OEA Rule 619.2(e)[6] states in part that, an Administrative Judge ("AJ") can "require an evidentiary hearing, if appropriate." Additionally, OEA Rule 624.2 indicates that, it is within the discretion of the AJ to either grant or deny a request for an evidentiary hearing based on whether or not the AJ believes that an evidentiary hearing is necessary.[7] After reviewing the record, the undersigned has determined that there are no material facts in dispute. Consequently, I conclude that a hearing is not warranted.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

[5] *See* Employer's Motion to Dismiss for lack of Jurisdiction (June 25, 2013), at 1-3.
[6] 59 DCR 2129 (March 16, 2012).
[7] *See Gray-Avent v. D.C. Department of Human Resources*, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2010).