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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ABRAHAM SHARPE,)	
Employee)	OEA Matter No. J-0002-18
)	
v.)	Date of Issuance: April 4, 2018
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	Arien P. Cannon, Esq.
)	Administrative Judge
)	
_____)	
Jimi Kolawole, Esq., Employee Representative)	
Hillary Hoffman-Peak, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 2, 2017, Abraham Sharp (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of State Superintendent of Education’s (“Agency” or “OSSE”) decision to impose a reduction-in-grade from a Motor Vehicle Operator to a Bus Attendant. This matter was assigned to the undersigned on October 23, 2017.

Agency filed its Answer to the Petition for Appeal on November 1, 2017. An Order on Jurisdiction was issued on October 25, 2017, which required Employee to submit a statement as to the reasons why he believed this Office may exercise jurisdiction over his appeal. Employee submitted his response to the Order on Jurisdiction on November 7, 2017. Based on Employee’s response, it was determined that a Prehearing Conference was necessary. After a continuance was granted for the originally scheduled January 10, 2017, Prehearing Conference, the conference was subsequently held on January 26, 2018. Based upon the representations by the parties at the Prehearing Conference, and upon review of the record, it was determined that an Evidentiary Hearing was warranted to address the factual disputes in regards to jurisdiction. As such, an Evidentiary Hearing was convened on March 12, 2018. Both parties presented

testimonial and documentary evidence at the Evidentiary Hearing. The record is now closed.

JURISDICTION

As provided in further detail below, the jurisdiction of this Office has not been established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee has established jurisdiction of this Office.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “Preponderance of the evidence” shall mean:

That 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.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.²

SUMMARY OF TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding.³

Employee’s Case-in-Chief

Abraham Sharpe (“Employee”) Tr.9-38

Employee testified that on February 24, 2017, he was instructed to go see Ms. Vivian Joseph, an Employee Relations Specialist with Agency. When he arrived to speak with Ms. Joseph, Employee’s Union Representative was also present, Tesfu Teckle. Employee was presented the Notice of Final Decision on Proposed Reduction-in-Grade from Vivian Joseph, which he signed. Employee further testified that he did not recollect receiving a copy of the OEA Appeal Form and the OEA Rules. Employee only recalled receiving a copy of the document he signed—the Final Notice of Proposed Reduction-in-Grade.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ Quiyana Hall testified for Agency; however, I did not find her testimony probative to the issue determining whether Employee received a copy of the OEA Appeal Forms and OEA Regulations. Thus, a summary of her testimony is not included in this decision.

After Employee signed the document, he and Mr. Teckle left Ms. Joseph's office and Teckle told Employee that as his union representative, he was going to appeal the case.

On cross-examination, Employee acknowledged that receiving the final decision regarding his demotion was a stressful situation. Employee also acknowledged that he signed the "Acknowledge of Receipt" part of the Final Notice which states that Employee accepted service of "the Notice of Final Decision on Proposed Reduction-In-Grade, OEA Appeal Form and OEA Regulations by hand delivery on the date below."

Tesfu Teckle ("Teckle") Tr. 87-96

Teckle is employed by Agency as a bus driver, and also serves as a union representative for Employee's union. Teckle was with Employee when he received both his Advance Written Notice and Final Notice regarding Employee's reduction-in-grade. Teckle did not remember whether Employee had received any other documents on February 24, 2017, other than the Final Notice of Proposed Reduction-in-Grade.

Teckle testified that he has seen Employee's Exhibit 3 and 4, which are the OEA Petition for Appeal Form and OEA Rules, respectively. He further stated that Agency usually hand these forms to employees subject to discipline informing them of their right to appeal with the union or to OEA.

Agency's Case-in-Chief

Vivian Joseph ("Joseph") Tr. 96-113

Ms. Joseph is employed with Agency as an Employee Relations Specialist where she handles Employee discipline, FMLA matters, Workers' Compensation, and any issues that relate to its employees. Joseph served Employee his Final Notice in the instant matter regarding his reduction-in-grade.

Joseph has served in her current capacity for nearly six (6) years and serves approximately two to three adverse actions to Agency employees a month. In preparation for meeting with employees who are subject to adverse action, Joseph prepares the notice with the deciding official's signature and all pertinent documents such as the OEA appeal form and OEA regulations, which she provides employees upon meeting with them to serve an adverse action. Joseph testified that she followed the same process in the instant matter.

Joseph stated that she provided Employee the Final Notice, OEA appeal form, OEA regulations, and then read the letter out loud to Employee.

DISCUSSION AND CONCLUSIONS OF LAW

On February 24, 2017, Employee was issued a Notice of Final Decision on Proposed Reduction-in-Grade, reducing his grade for cause from a Motor Vehicle Operator, Grade 7/Step 10, to a Bus Attendant Grade 3/Step 10. Employee's reduction-in-grade became effective on

Sunday, March 5, 2017.⁴ Employee filed a Petition for Appeal with this Office on October 2, 2017, nearly seven months after the effective date of the adverse action. Upon initial review, it appeared that OEA may not exercise jurisdiction over Employee's appeal because of the thirty (30) day time limit prescribed in OEA Rule 604.2, 59 DCR 2129 (March 16, 2012).⁵

Employee argued in his response to the Order on Jurisdiction that Agency did not provide a copy of the OEA rules and regulations, thereby it failed to "stringently comply with OEA Rule 605.1(b)..." Employee further cites *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, Opinion and Order on Petition for Review (June 27, 2008), in support of his position that Agency was required to stringently comply with OEA Rule 605.1(b). Agency asserts that it provided Employee all of the OEA forms and rules and regulations and satisfied all of the requirements under OEA Rule 605.1.

First, the undersigned takes note of Employee's signature under the "Acknowledgement of Receipt" portion of the Final Decision, issued on February 24, 2017. The "Acknowledgement of Receipt" provides that Employee "accepted service of the Notice of Final Decision on Proposed Reduction-In-Grade, OEA Appeal Form, and OEA Regulations by hand delivery on the date below." Employee dated his signature for February 24, 2017. Employee does not dispute that he signed the "Acknowledgement of Receipt." At the Evidentiary Hearing, Employee asserted that despite being in a stressful situation while receiving a demotion, he signed the Acknowledgement of Receipt. Employee argued that although he signed the "Acknowledgement of Receipt," he did not actually receive all of the forms and documents as required under OEA Rule 605.

Here, there were three eyewitnesses to Employee being served his Final Notice demoting him: Employee, Vivian Joseph ("Joseph"), an Employee Relations Specialist, and Tesfu Teckle ("Teckle"), Employee's Union Representation. Teckle testified that he could not remember whether Employee was served with the required OEA forms and regulations. Teckle further stated that Agency usually hands employees who are subject to discipline the OEA appeal forms and regulations.

Joseph testified that she typically serves one or two adverse actions a month to Agency employees, and that when she served Employee his demotion letter, all of the required documents were with the Final Notice.

The issue of whether Employee received the OEA appeal forms and regulations comes down to the credibility of Employee and Joseph, the only two eyewitnesses that spoke directly to whether or not Employee received these documents. I found Joseph's testimony to be very credible and forthright. I do not find that Joseph had any incentive to fabricate her firsthand account of serving Employee his Final Notice regarding his demotion, the OEA appeal forms, and OEA regulations. Joseph thoroughly explained the process she follows in serving employees subject to adverse action and she explained that she did not deviate from that process in the instant matter. Joseph testified that she read Employee his Final Notice on Reduction-in-Grade

⁴ See Petition for Appeal, Attachments (October 2, 2017).

⁵ See also D.C. Code § 1-606.03.

out loud, including the “Acknowledgement of Receipt” portion, signed by Employee. This was corroborated by Teckle who was also present at the time Employee received his Final Notice. I further find that Joseph’s testimony was more credible than Employee, based on the demeanor of Employee and Joseph. At times, Employee seemed a bit confused on straightforward questions, undermining his credibility regarding his meeting with Joseph.

As such, I find that Employee was properly served his Final Notice on Proposed Reduction-in-Grade, the OEA Appeal Forms, and OEA Regulations on February 24, 2017.

ORDER

Accordingly, it is hereby **ORDERED** that Employee’s Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge