

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Syrena Bonds)	Matter No. J-0110-11
Employee)	
)	Date of Issuance:
v.)	January 12, 2012
)	
D.C. Public Schools)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
)	

Bobbie L. Hoye, Esq., Agency Representative
Syrena Bonds, Employee *pro se*

INITIAL DECISION

INTRODUCTION

On May 24, 2011, Employee, a Data Entry Clerk, filed a petition for appeal from Agency's final decision removing her from her position at Langdon Education Campus due to equalization. I issued a Order to Employee on July 21, 2011, to respond to Agency's contention that this Office lacks jurisdiction over this appeal. To date, Employee has not responded. Since a decision could be rendered based on the documents contained in the case file, no proceedings were held. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUES

Whether Employee's appeal should be dismissed for lack of jurisdiction.

STATEMENT OF FACTS

The following facts are not in dispute:

1. Employee was a Data Entry Clerk at Langdon Education Campus.
2. On May 6, 2011, Employee received Agency's notice removing her from the Langdon Education Campus staffing plan for School Year 2011-2012.
3. Agency instructed Employee to find another position within her job title.

4. Agency asserts that Employee is currently employed with Agency.

ANALYSIS AND CONCLUSIONS

Based on a review of the Petition for Appeal, a question arose as to whether this Office has jurisdiction over this matter. An employee has the burden of proof as to issues of jurisdiction. *See* OEA Rule 629.2, 46 D.C. Reg. 9317 (1999).

The D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.01 et seq. (2001), established this Office, which has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Code Ann. § 1-606.03.

Whether Employee's appeal should be dismissed for lack of jurisdiction.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA) amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Code in pertinent part as follows:

(1) D.C. Code § 1-606.3(a) is amended as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force. . . .

Thus, § 101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

- a performance rating that results in removal;
- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or
- a reduction in force

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from grievances. Employee's complaint is a grievance as she has not lost her job with the Agency nor is her situation covered under the above cited § 101(d).

The plain language of OPRAA compels the dismissal of this appeal for lack of

jurisdiction. The starting point in every case involving construction of a statute is the language itself. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language. *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), __ D.C. Reg. __ (); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).

Here, as of October 21, 1998, § 101(d) of OPRAA clearly and unambiguously removed grievance appeals from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving grievances are not within our jurisdiction. *See, e.g., Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), __ D.C. Reg. __ (); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999), D.C. Reg. __ (); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999), __ D.C. Reg. __ ().

Here, Employee is attempting to appeal a grievance. Based on the above statute, her appeal is not within the jurisdiction of this Office. Hence, her petition for appeal must be dismissed.

ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Joseph Lim, Esq.
Senior Administrative Judge