THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT MAYFIELD	)	OEA Matter No. J-0105-08
Appellant/Employee	)	
	)	Date of Issuance: September 4, 2008
v.	)	
	)	Rohulamin Quander, Esq.
	)	Senior Administrative Judge
D.C. DEPARTMENT OF HEALTH	)	
Respondent/Agency	)	

Robert Mayfield, *pro se,* Employee
Carlos E. Cano, M.D., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On July 2, 2008, Employee, a former Public Affairs Specialist, DS-12-1, with the D.C. Department of Health (the "Agency"), filed a Petition for Appeal (the "petition") with the D.C. Office of Employee Appeals (the "Office").The petition challenged Agency's final action and decision, effective on June 6, 2008, which allowed his term appointment to expire on that date. This matter was assigned to me on August 20, 2008. Employee asserted in an attachment to his petition that, on or about October 26, 2007, Agency issued to him an incomplete D.C. Government Form SF 50 ("SF 50"), Notice of Personnel Action, purporting to notify him of a change in his job status from term employee status to career appointment status. However, as Employee does admit, the Agency never issued a properly completed SF 50, as the document provided to Employee was both undated and unsigned.

Since a decision could be rendered based upon the contents of the documents contained in the case file, and pursuant to discretionary authority granted to me by OEA Rule 625.2 and the D.C. Personnel Regulations, no further proceedings, including an administrative hearing on the record, are necessary. The record is now closed.

JURISDICTION

The jurisdiction of this Office is established by the *D.C. Official Code* (the *Code*) § 1-606.03 (2001 ed.) As will be explained in detail below, the Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

An analysis of the basic information presented to the AJ as a part of this record underscores that two irrefutable facts govern the outcome in this matter, either one of which, standing alone, is sufficiently determinative. First, there is no dispute that Employee accepted a term appointment that contained a not-to-exceed date of June 6, 2008. *Employee Exhibit #1* Second, Employee voluntarily elected to protest his being separated from his employment by filing a grievance with the Agency when his term appointment expired. Pursuant to the *Code,* §§ 1-616.52(e) and (f), Employee has elected to seek a redress via an alternate remediation path. Therefore, he is statutorily precluded from additionally filing a Petition for Appeal with this Office.

Term Employees

Employee was advised by a letter dated May 30, 2008, from Carlos E. Cano, M.D., Senior Deputy Director, that effective June 6, 2008, his term appointment would expire on the previously established not-to-exceed date. *Employee Exhibit #1* Although Employee asserted in his petition that he was told on or about October 14, 2007, that effective October 26, 2007, his term appointment was going to be converted to a permanent employment status, he has presented no document(s) to indicate that such a change occurred. The long established and official method to effectuate a change in D.C. personnel status is through the proper documentation. The only exception to this general rule is when the employee can demonstrate that the government had a mandatory duty to appoint him or her to a position. Beyond any indication that a change in job status is forthcoming, whether said notice was given orally or in writing, this process generally includes the preparation of three documents. Each document has to be properly completed, verified, dated as to the effective date of the action, and then duly executed by a person with proper authority to sign off on personnel matters.

In the matter at hand, neither the first document (the SF 52, Request for Personnel Action) nor the third document (SF 1, Personnel Action) was presented for my consideration, giving rise to the presumption that neither document was ever prepared. Further, the second document in the process, Notice of Personnel Action, SF 50, was incomplete, being both undated and unexecuted. This situation lead to only one conclusion, i.e., that there was never a conversion from term to permanent status.

Nothing in Chapter 8 of the DPM (also generically known as the D.C. Personnel Regulations)

imposes upon the District of Columbia a mandatory rule to convert term or temporary employees to permanent status, based upon a promise, written or oral, to do so.[1] Further, Employee has not cited any applicable law, rule, or regulation that imposes any mandatory duty on Agency to do so. Therefore, I conclude that Employee has no valid claim to conversion to permanent status, and the Office has no jurisdiction to order him appointed to a permanent position. As such, this matter should be dismissed for lack of jurisdiction.

My decision is further underscored by both the *Code* and the D.C. Personnel Regulations (the Regulations). Pursuant to the *Code* § 1-606.03(a), 2001:

> 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.

None of the above enumerated conditions apply in this case. In addition, Volume I, DPM, Chapter 8, Part I, 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 was on notice that his term appointment was not to exceed June 6, 2008, and it officially ended and expired on that date. Although not presented for my inspection, there is, in all likelihood, a Conditions of Employment Under Term Appointment form[2] in the Employee's personnel file, which he executed on the date of his term appointment. This form specifically recites that a term appointment is for a defined period of time, and, in Employee's case, not to exceed June 6, 2008.

As well, although Employee's termination notice was dated May 30, 2008, advising him of

---

[1] See *Calhoun v. Department of Public Works*, OEA Matter No. J-0001-98R01, (Apr. 12, 2001), _ D.C. Reg._ ( ).

[2] The official SF form number is not known to this AJ.

the forthcoming end of his term appointment, there was no apparent adversity in the termination, and nothing presented to the record that suggests or indicates that he was terminated for cause.

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, and cannot grant Employee any of the relief sought in his petition.

Election of Remedies

Were this AJ to have found that Employee was not a term employee, but rather had attained a permanent career status, the Office would further lack jurisdiction to consider Employee's petition. Faced with the expiration of his term appointment, Employee, a union member with AFGE, Local # 2978, elected to file a grievance with the Agency on June 13, 2008, approximately three weeks before he likewise filed his petition with the Office. 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, and in the matter at hand, by filing a grievance with the Agency, he or she is specifically barred from also filing a Petition for Appeal with this Office.

The *Code* at § 1-616.52(e), is dispositive of this complaint, and states:

> Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to § 1-606.03, or the negotiated grievance procedure, *but not both.* [emphasis added by this AJ]

Second, the *Code* at § 1-616.52(f), states:

> 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 time files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first.

Having found that there was no subject matter jurisdiction, and that Agency fully compensated Employee through June 6, 2008, the last day of his term appointment, I find that it is unnecessary to further address the question of election of remedies.

Having previously found, above, that the Office does not have subject matter jurisdiction in this case, the Office 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