

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
REBECCA OWENS)	OEA Matter No. J-0097-03
Employee)	
)	Date of Issuance: January 25, 2006
v.)	
)	
DEPARTMENT OF MENTAL HEALTH)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Rebecca Owens (“Employee”) worked as a Program Support Assistant at the Department of Mental Health (“Agency”). On April 9, 2002, Employee filed a grievance under the collective bargaining agreement with Agency. In the grievance, Employee alleged that her supervisor failed to promote her or compensate her at the level she was performing.¹ Employee requested a promotion to Grade 09 or a desk audit and back pay for acting in the Grade 09 capacity; she appealed this grievance to steps 2 and 3 of the grievance procedure. The following day Employee filed another grievance requesting a

¹ Employee was a DS-07, Step 8. She claims that she was performing duties at a DS-09 level.

classification review of the entire Management Information Systems Branch staff. Similarly, she appealed this grievance to steps 2 and 3 of the grievance procedure.²

On May 8, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) requesting that it address Agency’s failure to promote her in accordance of D.C. Regulations Section 830.1 and 830.2.³ On March 19, 2004, the Administrative Law Judge (“ALJ”) for OEA ordered Employee to address the issue of the office’s jurisdiction to adjudicate her case. Employee argued that according to D.C. Official Code 1-606.02(b) OEA has jurisdiction over grievance matters, and therefore should hear her case.⁴

On April 30, 2004, the ALJ properly ruled in her Initial Decision that OEA lacks the jurisdiction to hear grievance matters. Employee responded to the Initial Decision with a Petition for Review where she argued that the 1991 edition of D.C. Code § 1-606.3 provides that OEA has jurisdiction over final agency decisions resolving a grievance. Employee claimed that because she was a Civil Service employee that she was “grandfathered” under the 1991 version of the code and not the more recent version.⁵

There is no statutory language within the Code that supports Employee’s “grandfather” argument; neither does Employee provide a basis of her argument. Employee blatantly ignored the more recent and applicable version of D.C. Code Ann.

² *Initial Decision*, p. 2 (April 30, 2004).

³ *Petition for Appeal*, p. 3 (May 8, 2003).

⁴ *Employee’s Submission or Response Pursuant to Order Dated March 19, 2004 by Blanca E. Torres, Administrative Law Judge*, p.3 (March 29, 2004).

⁵ *Petition for Review of Initial Decision*, p. 7-8 (June 4, 2004).

§1-606.3(a).⁶ The updated version provides OEA statutory jurisdiction over the following matters:

“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 grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.”

Employee did not raise any of the aforementioned requirements as a basis for her case. She filed a grievance against Agency, and OEA does not have the authority to hear grievance matters. Therefore, this office lacks jurisdiction to grant the relief sought by Employee.

Furthermore, Employee unabashedly misinterpreted D.C. Code § 1-606.02(b).

The statute clearly states:

“Any performance rating, grievance, adverse action or reduction-in-force review, which has been included within a collective bargaining agreement under the provisions of subchapter XVII of this chapter, shall **not** be subject to the provisions of this subchapter.”

Employee filed two separate grievances against Agency under her collective bargaining agreement. It cannot be more clearly proven by applying the facts of this case to the statute that OEA lacks jurisdiction to hear this case.

⁶ The Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA) amended certain sections of the Comprehensive Merit Personnel Act. D.C. Code Ann. § 1-606.3(a) was one of the amended sections that appeared in the 1999 edition of the Code.

Both of Employee's arguments fail to show that OEA has jurisdiction to adjudicate her case. Accordingly, we uphold the Judge's decision and deny Employee's Petition for Review.

ORDER

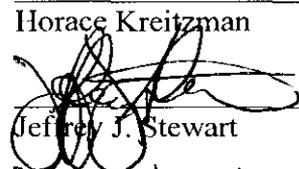
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

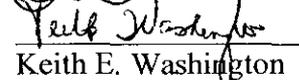


Brian Lederer, Chair

Horace Kreitzman



Jeffrey J. Stewart



Keith E. Washington

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.