

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Richard Troen)	OEA Matter No. 1601-0313-10
Employee)	
)	Date of Issuance: November 30, 2012
v.)	
)	Joseph E. Lim, Esq.
Metropolitan Police Department)	Senior Administrative Judge
Agency)	
_____)	
Marc Wilhite, Esq., Employee Representative)	
Brenda Wilmore, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION

On May 21, 2010, Employee, a former PS 1, Step 5 Senior Police Officer with the D.C. Metropolitan Police Department (the “Agency”), filed a petition for appeal with the D.C. Office of Employee Appeals (the “OEA” or the “Office”), challenging Agency’s final decision to terminate his employment effective April 26, 2010. This matter was assigned to me on July 10, 2012. On June 29, 2012, Agency filed its Motion for Summary Disposition. Agency represented that the Office lacked jurisdiction to further consider this matter, due to Employee’s term employee status.

On August 14, 2012, I ordered the parties to address the issue fully. The parties have complied. Since a decision could be rendered based upon the documents submitted by the parties, pursuant to discretionary authority granted to me by OEA Rule 625.2, no further proceedings, including an administrative hearing on the record, are necessary. The record is now closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS

An analysis of the basic information presented to the AJ as a part of this record underscores that the irrefutable facts govern the outcome in this matter, which is sufficiently determinative. There is no dispute that Employee accepted a one-year term appointment, effective July 26, 2004, with a “Not-To-Exceed” date of July 26, 2005.¹ Subsequently, the term appointment was extended through a date not to exceed January 31, 2011.² On April 26, 2010, Agency notified Employee that his contract appointment would be terminated that day.³

The dismissal of this appeal matter is based solely upon a determination that the Office lacks subject matter jurisdiction, as both term and temporary employees are specifically excluded from the jurisdictional authority of the OEA.

The D.C. Code and District Personnel Manual

My decision is underscored by both the *D.C. Official Code* and Chapter Eight of the D.C. Personnel Manual (the “DPM”). Pursuant to the *D.C. Official Code*, § 1-606.03(a), (2001), an employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause that results in removal, reduction in grade, placement on enforced leave, or suspension for 10 days or more; or
- (c) A reduction in force.

None of the above enumerated conditions apply in this case.

D.C. Official Code § 5-761(a) establishes that the position of Senior Police Officer is a *temporary* position:

- (a) Except for a disability annuitant, a police officer retired from the Metropolitan Police Department shall be eligible for rehire at the discretion of the Chief of the Metropolitan Police Department as a fully sworn *temporary* full-time or *temporary* part-time police officer without jeopardy to the retirement benefits of the police officer. (Emphasis added.)

The Retired Police Officer Redeployment Amendment Act of 1992 (D.C. Law 9-163), as implemented through Title 6A DCMR Chapter 1 (Organization of the Metropolitan Police Department), establishes the temporary career service position of a Senior Police Officer. 6A DCMR § 105.1, Establishment of Temporary Career Service Position of “Senior Police Officer,” states as follows:⁴

1 See Employee’s Personnel Action Form 1 dated August 5, 2004.

2 See Employee’s Notification of Personnel Action Form 50 dated December 1, 2009.

3 See undated Human Resource Management Division Director Walton’s letter to Employee.

4 See Agency Exhibit 2.

Pursuant to D.C. Law 9-163, the Retired Police Officer Redeployment Amendment Act of 1992 (hereafter “Redeployment Act”), D.C. Official Code § 5-761 (2001), there is hereby established within the Metropolitan Police Department the *temporary* full-time or part-time position of “Senior Police Officer” subject to the rules of the *Career* Service of the District of Columbia Government except as specified in these rules or otherwise required by law or regulation. (Emphasis added.)

Term Employees

Volume I, DPM, Chapter 8, Part I, addresses Term Appointment, and 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.
- 826.5 A temporary appointee may be separated without notice prior to the expiration date of the appointment.

All of the above noted sections are clearly applicable, as Employee, a Senior Police Officer herein, was on notice that his appointment was a term appointment.

In his brief, Employee cites *Keegan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0044-08, *Opinion and Order on Petition for Review* (May 24, 2010) to bolster his argument that since he was career-service, then this Office has jurisdiction over this appeal. However, that decision does not apply here. In *Keegan*, the appeal involved a police officer’s demotion from Inspector to Captain. Unlike Employee herein, *Keegan* was not a term or temporary employee.

Employee’s final argument that since he was a career service employee, albeit a term or temporary one, then he enjoys the same career service protections afforded permanent career-service employees. Unfortunately for him, the applicable above cited statutes and regulations clearly state otherwise.

OEA Rule 628.2, 59 D.C. Reg. 2129 (2012), 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 OEA does not have subject matter jurisdiction in this matter.

ORDER

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

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge