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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DONNA WILLIAMSON)	OEA Matter No. 1601-0097-07
Employee)	
)	Date of Issuance: April 25, 2008
v.)	
)	Sheryl Sears, Esq.
DISTRICT OF COLUMBIA)	Administrative Judge
PUBLIC SCHOOLS)	
Agency)	
_____)	

Donna Williamson, Employee, *Pro Se*
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Employee was a Classroom Teacher, ET-15 at Anthony Bowen Elementary School. By letter dated June 30, 2005, from Agency’s Executive Director, Employee was notified that she was “on record as not being licensed to practice.” The letter further stated that, for Employee to remain employed with the D.C. Public Schools after June, 2006, she would have to show proof of licensure by June 30, 2006. Employee was also given a timeline of milestones to be completed by March, 2006 as follows:

1. Passed the PRAXIS Reading, Writing & Math assessments
2. Passed the PRAXIS II subject assessment for content knowledge of certification sought
3. Admitted into a state-approved teacher preparation program at an accredited college/university and passed at least 6 credit hours of applicable coursework.

The Director warned Employee that failure to produce a license or show successful programs would result in her termination at the conclusion of the 2005-2006 school year.

On July 5, 2007, employee was notified that she would be removed effective on July 6, 2007, “due to invalid/expired certification.” On July 16, 2007, Employee filed a timely petition for appeal with this Office. On March 3, 2008, this Judge ordered Employee to show cause why her appeal should not be dismissed for lack of jurisdiction. Employee was informed that her failure to make the submission in a timely fashion or to demonstrate that this Office has jurisdiction would result in the dismissal of her appeal. The deadline for that response was March 14, 2008. Employee did not make any submission.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. This decision is based upon the record of documentary evidence and written legal arguments by the parties

JURISDICTION

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

ISSUES

- I. Whether this Office has jurisdiction over Employee’s appeal.
- II. If so, whether Employee was lawfully removed.
- III. If not, whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat 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.” Accordingly, Agency has the burden of proving, by a preponderance of the evidence, that the separation of Employee was legal.

ANALYSIS AND CONCLUSION

Employee was notified that she was subject to removal because she did not have proper licensure for her position. Due to Employee’s status, at the time of the separation, this appeal presents a threshold question of jurisdiction. As a teacher with only provisional licensing, Employee did not meet all of the requirements of her contractual agreement with Agency. Therefore, she never achieved career status. Instead, she was an “at will” employee. Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from others by stating that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be

subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). Accordingly, an at will employee does not have the right to the same protections as their career service counterparts. It is, in fact, well-established that at will employees may be terminated “for any reason at all.” *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ ().

The law that establishes the jurisdiction of this Office is also clear in limiting the right of appeal to career service employees. The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.” Chapter 16 of the District Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees “of the District government *in the Career Service*.” (Emphasis added.) In accordance with §1601.1, no career service employee may be “officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force] of these regulations.”

Employee was required to have proper licensing for her position. But she did not. She was subject to removal at the will of the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, the instant appeal must be dismissed.

ORDER

It is hereby ordered that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE