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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| ANDEBRHAN BERHE, |) | OEA Matter No. 1601-0161-08 |
| Employee |) | |
| |) | Date of Issuance: July 30, 2010 |
| |) | |
| DISTRICT OF COLUMBIA |) | |
| PUBLIC SCHOOLS, |) | |
| Agency |) | |
| _____ |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Andebrhan Berhe (“Employee”) worked as a teacher for the District of Columbia Public Schools (“Agency”). On July 11, 2008, Employee received a separation letter from Agency. Agency contended that Employee was separated because of his failure to obtain a teaching certification. Employee was separated from his position on August 1, 2008.¹

¹ *Petition for Appeal*, p. 3 (September 2, 2008).

On September 2, 2008, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He argued that the separation was wrongful and was the result of him having filed a discrimination charge against DCPS. Therefore, he requested to be reinstated.²

On January 27, 2009, the Administrative Judge (“AJ”) requested that Employee submit a statement regarding his credentials at the time of separation and the rule or regulation on which he relied.³ Employee admitted to not having a teaching certificate. However, he contended that he was in compliance with the District of Columbia Municipal Regulations (“DCMR”) §1601.3. Employee submitted that this section references teacher’s certification requirements and proves that he achieved “career service” status. *Id.*

The AJ found that Employee’s argument of improper separation was void because Agency was within its discretion to require certification in order to comply with the *No Child Left Behind Act of 2001*. She reasoned that Employee was required to have a license to teach and without it he was an “at-will employee.” Moreover, the AJ held that OEA’s jurisdiction did not extend to at-will employees based on the District Personal Manual (“DPM”) and D.C. Official Code § 1-606.03 (2001). Therefore, the AJ dismissed the case.⁴

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on February 25, 2009. He asserted that the Board should review the AJ’s decision in light of the new and material evidence. Employee argues that there are ninety-five Agency employees who are unlicensed but have maintained their employment by having submitted an action plan. Employee believes that this new and material evidence supports his contention that he was wrongfully separated from his job based on an action of retaliation for filing

² *Petition for Appeal*, p. 3 (September 2, 2008).

³ *Initial Decision*, p.1 (February 25, 2009).

⁴ *Initial Decision*, p.3 (February 25, 2009).

discrimination charges against Agency. Additionally, he contends that he is a career service employee based on §1601.1 and §1613.1 of the DCMR.

There are two jurisdictional issues before the Board. The first jurisdictional issue is whether Employee was a career service or an at-will employee at the time of termination. If Employee is found to be at-will, the second issue is whether the OEA has jurisdiction over the termination of an at-will employee.

Employee was not a career service employee with Agency at the time of his termination. Notwithstanding Employee's argument of his career service status based on DCMR §1600.1, the pertinent parts of that regulation provide that "[a]ll persons who desire a teaching certificate from the District of Columbia shall satisfy the following requirements: . . . (b) Completion of appropriate tests as mandated by the Board of Education."⁵ Employee cannot satisfy the requirements of §1600.1 DCMR because he has not completed all the appropriate tests on the Praxis.⁶ Employee does not meet all of the certification qualifications of this section completely, as required.

Despite the claim of new and material evidence, Employee did not overcome the jurisdictional hurdle of at-will employment. OEA has previously held that a teacher who has not gained full certification cannot achieve career status.⁷ In *Williamson v. D.C. Public Schools*, OEA Matter No. 1601-0097-07 (April 25, 2008), __D.C. Reg.__(), the AJ held that "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." Thus, her removal was upheld.⁸ Likewise, in *Foster v. D.C. Public Schools*, OEA Matter No. 1601-0133-08 (December 24, 2008), __D.C.

⁵ The DCMR Section §1600 General Education Requirements.

⁶ *Initial Decision*, p.2 (February 25, 2009).

⁷ *Ennis v. D.C. Public Schools*, OEA Matter No. 1601-0034-07 (April 2, 2008) _D.C. Reg._(); *Foster v. D.C. Public Schools*, OEA Matter No. 1601-0133-08 (December 24, 2008) _D.C. Reg._().

⁸ *Williamson v. D.C. Public Schools*, OEA Matter No. 1601-0097-07 (April 25, 2008), __D.C. Reg.__().

Reg. ___ (), the AJ held that employee was in an at-will status prior to being terminated, and she had not yet attained the mandated credentials to be certified by the Agency. Additionally, “[a]ny promise that may have been made to employee . . . did not have the force of law. Employee was required to have proper licensing for her position.”⁹ Notwithstanding the action plan submitted by Employee, he remained an at-will employee at the time of separation.

An at-will employee may be terminated at any time.¹⁰ The office does not have jurisdiction over an appeal filed by an at-will employee, according to the applicable laws, rules, and regulations.¹¹ The Board has found previously that “[i]n order for this Office to consider Employee’s appeal, she must first establish this Office’s jurisdiction by showing that she was a permanent employee of Agency.”¹² Employee has failed to provide that he was a permanent employee of the Agency. Accordingly, this petition for review must be denied.

⁹ *Ennis v. D.C. Public Schools*, OEA Matter No. 1601-0034-07, (April 2, 2008) _D.C. Reg._().

¹⁰ *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, Opinion and Order for Review (July 10, 1995), _D.C. Reg._().

¹¹ *Vaughn v. D.C. Public Schools*, OEA Matter No. 1601-0100-08 (November 26, 2008) _D.C. Reg._ (); *Kposowa v. D.C. Public Schools*, OEA Matter No. 1601-0147-08 (February 25, 2009) _D.C. Reg._ (); *Ennis v. D.C. Public Schools*, OEA Matter No. 1601-0034-07 (April 2, 2008) _D.C. Reg._ (); *Foster v. D.C. Public Schools*, OEA Matter No. 1601-0133-08 (December 24, 2008) _D.C. Reg._ (); *Williamson v. D.C. Public Schools*, OEA Matter No. 1601-0097-07 (April 25, 2008) _D.C. Reg._ ().

¹² *Blackwell v. D.C. Public Schools*, OEA Matter No. 1601-0100-07 (November 23, 2009) _D.C. Reg._ ().

ORDER

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

FOR THE BOARD:

Clarence Labor, Jr., Chair

Barbara D. Morgan

Richard F. Johns

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.