

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Paula Lagrand)	OEA Matter No. J-0194-12
Employee)	
)	Date of Issuance: February 15, 2013
v.)	
)	Joseph E. Lim, Esq.
Metropolitan Police Department)	Senior Administrative Judge
Agency)	

Paula Lagrand, Employee *pro se*
Teresa Hyden, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 10, 2012, Paula Lagrand (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Metropolitan Police Department’s (“Agency”) action of accepting her resignation.

I was assigned this matter in August of 2012. Agency made a motion for summary judgment, arguing that this Office had no jurisdiction over the appeal. On August 24, 2012, and October 25, 2012, I issued an Order requiring the parties to submit briefs addressing the issue of jurisdiction. Both parties replied to the Order. After reviewing the documents of record, I determined that an Evidentiary Hearing was not warranted in this matter. The record is now closed.

JURISDICTION

As will be discussed, jurisdiction in this matter has not been established.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

The following facts are undisputed:

1. Agency hired Employee on September 27, 1987. (*See* Employee brief, page 1, and Employee Attachment 2).
2. On December 6, 2011, Agency issued a Notice of Proposed Adverse Action to Employee, citing as cause the violation of General Order 120.21, “inefficiency” and “Conduct unbecoming an office.”
3. Employee asked for a reconsideration of the penalty, and in response, Agency convened a hearing before an Adverse Action Panel on March 27, 2012. At the conclusion of the hearing, the Panel found Employee guilty of all charges and recommended termination.
4. On May 8, 2012, Employee submitted a letter of resignation to be effective on June 2, 2012. Her offer of resignation was approved that day. (*See* Agency Exhibit 10, May 8, 2012, Memorandum).
5. On May 25, 2012, Employee submitted a request to withdraw her resignation. Agency immediately denied her request. (*See* Agency Exhibit 11, May 25, 2012, Letter).
6. On May 29, 2012, Agency sent, and Employee received, the denial of her request to withdraw her resignation. In the letter, Agency informed Employee that she has been scheduled to separate from the Department on June 2, 2012. (*See* Employee Attachment 2). The letter does not provide any rationale for the denial.
7. On May 30, 2012, Agency issued a Final Notice of Adverse Action proposing the termination of Employee’s employment.
8. On August 10, 2012, Employee filed this Petition.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] 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 [RIF]. . . .

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) provides that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean “that 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.” OEA Rule 628.2 further states that the employee shall have the burden of proof as to

issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.¹

According to Agency, OEA lacks jurisdiction over Employee's appeal because she elected to resign from her position as a Police Officer in lieu of being terminated after receiving the December 6, 2011, Notice of Proposed Adverse Action.² Agency argues that there was no termination because Employee resigned prior to receiving the final notice of her termination. Agency concludes that OEA has no jurisdiction over this appeal.

Employee argues that because she was hired before October 1, 1987, her D.C. employment is governed by Federal Guidelines. Employee quotes the Code of Federal Regulations for government employees, 5 C.F.R. 715.202(b), as follows, "Withdrawal of resignation. An agency may permit an employee to withdraw his resignation at any time before it becomes effective. An agency may decline a request to withdraw a resignation before its effective date only when the agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason."

Employee then points out that Agency never provided any reason for denying her request to withdraw her resignation. Employee posits that under the Federal Code that she quoted, Agency's rejection of her request is invalid and should be disregarded. Thus, Employee concludes that this Office has jurisdiction over her appeal as Agency had intended to terminate her employment prior to her resignation.

Analysis

Employee is arguing that she was hired with the government on September 27, 1987, and employees hired before October 1, 1987, are governed under federal guidelines. However, she points to no authority for this assertion. While she does point to a Federal Civil Service Regulation regarding her right to withdraw a resignation (*see* 5 C.F.R. § 715.202(b)) and the Agency's required explanation for the denial of the withdrawal, she points to no authority which would substantiate her claim that D.C. employees hired before October 1, 1987 are governed by Federal Civil Service Regulations.

Agency is arguing that the relevant section of the D.C. Official Code repealed certain protections that D.C. employees had under Title 5 of the United States Code. Specifically, it is arguing that D.C. Official Code § 5-105.01 provides that the Mayor may ". . . **prescribe and promote** all officers and members of the Metropolitan Police force; provided that all officers, members, and civilian employees of the force except the Chief of Police, the assistant and deputy chiefs, and inspectors, **shall be appointed and promoted in accordance with**. . . Title 5, United States Code . . ." (Emphasis supplied.) Agency explains that after January 1, 1980, this provision did not apply to police officers pursuant to § 1-632.03(a)(1)(B) in conjunction with § 1-

¹ *Id.*

² Agency's Motion for Summary Disposition.

636.02(m)(4). Further, Agency states that for members of the Metropolitan Police Department who were hired on or after January 1, 1980, Federal Civil Service Regulations did not apply because District employees were governed by provisions of the Comprehensive Merit Personnel Act (“CMPA”) passed in 1980.

Employee’s assertion that she was governed by Federal Civil Service Regulations is not supported. Agency’s assertion regarding D.C. Official Code § 1-632.03(a)(1)(B) in conjunction with § 1-636.02(m)(4) merely tells us that the Mayor **may appoint and promote members of the Metropolitan Police Department** in accordance with law. § 1-632.03(a)(1)(B) states:

(a) The following provisions shall not apply to police officers and fire fighters appointed after the date that this chapter becomes effective as provided in § 1-636.02:

(1)(B) Sections 5-101.02, 5-105.01(a), 5-133.03, 5-133.07, 5-123.01, 5-133.08, and 5-133.10;

§ 1-636.02(m)(4) states:

(m) The provisions of subchapter XXXII of this chapter shall become effective as follows:

(4) Section 1-632.03 shall become effective on January 1, 1980;

Further, § 1-632.03(a)(1)(B) in conjunction with § 1-636.02(m)(4) does not tell us anything about an employee’s right to resign and her right to withdraw a resignation. Therefore, the issues that stand are (1) whether Employee is governed by Federal Civil Service Regulations because she was hired on September 27, 1987, and (2) based on Federal Civil Service Regulations, had a right to an explanation provided for the denial of her request to withdraw her tender of resignation.

D.C. Official Code § 1-204.22 provides that:

The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the Office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding January 2, 1975, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, **until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3) of this section**, continue to be subject to the provisions of acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to

officers and employees of the District government, to § 1-207.13, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order No. 5491 of November 18, 1930, relating to the appointment of District personnel. (Emphasis supplied.)

On October 31, 1978, the Council adopted a new District personnel system: the Comprehensive Merit Personnell Act (“CMPA”). The CMPA became law on March 3, 1979. In *District of Columbia v. Brown*, 739 A.2d 832 (D.C. 1999), the D.C. Court of Appeals, in examining the implementation of the Home Rule Act and the CMPA, found that:

. . . pertinent provisions of the Home Rule Act and the CMPA reflect Congressional and District policies that the District’s personnel system **is to be autonomous and separate from the federal system**, and that **employees who were hired before 1980** could be given only those concrete entitlements or personnel benefits which were available, and to which they were entitled, before 1980. **Congress specifically enacted the Home Rule Act to authorize the District to establish its own personnel system and to supersede federal laws...** (Emphasis supplied.)

Further, in *Dist. of Columbia v. Thompson*, 593 A.2d 621, 634 (D.C. 1991) the Court stated that “. . . the Council ‘plainly intended’ CMPA to create a mechanism for addressing virtually every conceivable personnel issue among the District [and] its employees . . .” This Court also stated that “as a ‘general rule,’ when a public employee initiates a grievance proceeding against the District, “‘the matter will be resolved either under detailed CMPA procedures or under a CMPA-sanctioned collective bargaining agreement.’” (*Id.* at 793, citing *Stockard v. Moss*, 706 A.2d 561, 564 (D.C.1997).

Employee was hired on September 27, 1987. Based on the D.C. Official Code § 1-204.22 and holdings *supra* from the D.C. Court of Appeals, Employee is not governed by Federal Civil Service Regulations because the CMPA was established prior to her hire date. Thus, the CMPA governs employee’s appeal. Since the intent of the CMPA was to “create a mechanism for addressing virtually every conceivable personnel issue among the District [and] its employees” and this is clearly a personnel issue, OEA must defer to the CMPA. Further, since Employee is not governed by Federal Civil Service Regulations regarding personnel, Title 5 of the United States Code does not apply to her.

Conclusion

Employee is not governed by Federal Civil Service Regulations because she was hired after the D.C. Council enacted the CMPA and therefore, she did not have a right to an explanation provided for the denial of her request to withdraw her tender of resignation.

This Office has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴ As noted above, the D.C. Official Code § 1-606.03 enumerates this Office's jurisdiction. The denial of Employee's request to withdraw her resignation is not one of them. Thus, her grievance is not within this Office's jurisdiction.

Accordingly, I conclude that OEA lacks jurisdiction to hear the merits of her case. As such, Agency's motion to dismiss must be granted.

ORDER

It is hereby ORDERED that Employee's Petition for Appeal is DISMISSED.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge

³ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).