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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
KENNETH BUTLER)	OEA Matter No. J-0038-06
Employee)	
)	Date of Issuance: April 24, 2006
vs.)	
)	Joseph E. Lim, Esq.
DEPARTMENT OF PUBLIC WORKS)	Senior Administrative Judge
Agency)	

Christine Davis, Esq., Agency Representative
Kenneth Butler, Employee Pro se

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On March 2, 2006, Employee, a former Motor Vehicle Operator RW 7/1 with the Solid Waste Management Administration, filed a petition for appeal from Agency's final decision to allow his term appointment to expire on January 8, 2006. This matter was assigned to me on April 4, 2006. I convened a jurisdictional conference on April 21, 2006, to discuss with the parties whether the Office had jurisdiction over this matter. I received oral argument on Agency's Motion and Employee's opposition thereto, and took both positions under advisement.

Since a decision could be rendered based upon the documents contained in the case file and oral arguments presented 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.

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 January 9, 2004, through January 8, 2005. His term appointment was renewed for an additional year, January 9, 2005, through January 8, 2006. Coming back from a work injury, Employee was informed that his term appointment would end on January 8, 2006.

Term Employees

My decision is underscored by both the D.C. Official Code and the D.C. Personnel Regulations (the Regulations). Pursuant to the D.C. Official Code, § 1-606.03(a), 2001:

An employee may appeal 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.

None of the above enumerated conditions apply in this case. Volume I, DPM, Chapter 8, Part I, 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.

All three of the above noted sections are clearly applicable, as Employee was on notice that his four year term of appointment expired on January 8, 2006, pursuant to a Conditions of Employment Under Term Appointment form that he executed.

OEA Rule 629.2, 46 D.C. Reg. at 9317, 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

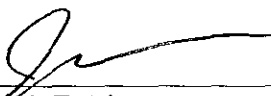
Employee has not met this burden, and conclude, therefore, that I lack subject matter jurisdiction, and cannot grant Employee any of the relief sought in his petition.

Having previously found, above, that OEA does not have subject matter jurisdiction in this case, OEA cannot now grant Employee any relief at this time.

ORDER

It is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:



Joseph E. Lim, Esq.
Senior Administrative Judge