

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JAMES W. CLARK)	
Employee)	
)	OEA Matter No. J-0033-02
)	
v.)	Date of Issuance: February 10, 2004
)	
DEPARTMENT OF)	
CORRECTIONS)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Effective August 27, 2000, Employee's position as a Supervisory Correctional Officer was converted from the Career Service to the Management Supervisory Service (MSS). Prior to the conversion Agency gave Employee an opportunity to accept this appointment or to decline it. Agency advised Employee that if he accepted the appointment he would receive a

pay increase but would no longer have Career Service job protection rights. Instead, he would become an at-will employee. If, however, Employee declined the appointment, he was advised that he could be appointed to a Career Service position if one became available. In the event that there was no vacant Career Service position for which Employee was qualified, Agency told Employee that he would then be separated from District government service within 30 days of receiving a notice of separation. On August 21, 2000, Employee accepted the appointment to the MSS position and, as a result, received an increased salary. Two years later, Agency separated Employee from service.

Employee filed a Petition for Appeal from Agency's action. In an Initial Decision issued April 17, 2003, the Administrative Judge held that as an at-will employee, Agency could remove Employee without cause.¹ Because this Office lacks jurisdiction over removals without cause, the Administrative Judge dismissed Employee's appeal for lack of jurisdiction.

Employee has now timely filed a Petition for Review. Essentially, Employee argues that, for several reasons, Agency should not have converted his position to the Management Supervisory Service. Employee's argument is in the nature of a grievance. Pursuant to section 1-606.3 of the D.C. Official Code, this Office's jurisdiction is as follows:

¹ During the course of this appeal, Employee argued that at least two Personnel Form 1s issued to him contained several errors. The Administrative Judge determined that such errors did not change the outcome of his appeal. We recognize, however, that the District's Personnel Form 1 is the official document memorializing a change to an employee's employment status. As such, we caution agencies to take care to accurately characterize any personnel changes.

(a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee. . . [or] an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force

This section makes clear that this Office no longer has jurisdiction to adjudicate grievances.

Moreover, District Personnel Manual § 3802.3 provides that “[u]pon accepting a Management Supervisory Service appointment . . . and thereby becoming eligible for the benefits of the Management Supervisory Service, an employee waives any subsequent legal or equitable claim challenging his or her Management Supervisory Service appointment or status.” Accordingly Employee, who enjoyed the benefits of a higher salary at the MSS level for two years, is now barred from challenging that appointment. For these reasons, we must deny Employee’s Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

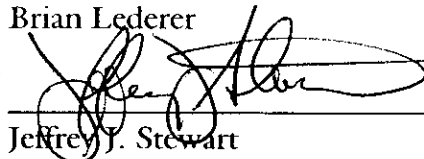


Erias A. Hyman, Chair

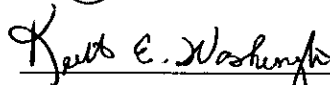
Horace Kreitzman



Brian Lederer



Jeffrey J. Stewart



Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals five days after the issuance date on 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.