

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
MARGUERITE L. KING)	OEA Matter No. J-0049-09
Employee)	
)	Date of Issuance: May 7, 2009
v.)	
)	Rohulamin Quander, Esq.
DISTRICT OF COLUMBIA)	Senior Administrative Judge
DEPT. OF PARKS AND RECREATION)	
Agency)	
)	

Marguerite L. King, *pro se*, Employee
Marie Claire Brown, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND

On November 25, 2008, Employee filed a Petition for Appeal, contesting what she considered as Agency's decision to terminate her from her employment position as an Educational Technician with the D.C. Department of Parks and Recreation (the "Agency"). Attached to Employee's appeal was a letter from Richelle Marshall, Agency's Chief Administrative Officer, dated November 18, 2008, which directed that effective immediately, Employee was being placed into an administrative leave with pay duty status. The underlying reason for this immediate summarily enforced status was Employee's failure to pass an unannounced drug test. Employee attributed her drug test failure to the continuing effects of certain prescription medications that she was taking for an illness sustained in the prior week.

The Office of Employee's Appeals (the "Office") reviewed the record, consisting only of the appeal and attached documents filed by Employee. The record reflected that, beyond the notice of suspension during the investigation, there was no final agency action letter submitted with the appeal. This circumstance raised the question of whether the Office had jurisdiction to consider this matter. On December 2, 2008, the Office issued a letter to Agency, directing that Agency submit an Answer to the appeal within 30 days. When no Answer was filed, this matter was assigned to this administrative judge (the "AJ") on March 16, 2009. On that same date, I issued an *Order to Show Cause*, directing Agency to file a *Statement of Good Cause* addressing the question of why no Answer was filed, and directing Agency to also file an *Answer* by March 25, 2009.

Agency replied, acknowledging receipt of the December 2, 2008, letter from the Office and its enclosed Petition for Appeal, but noting that initially Agency did not consider a response

to be necessary. Agency proffered that after the investigation was completed, the issue was resolved and Employee was reinstated to her position with no loss in pay or benefits. Agency also requested that the appeal be dismissed, as moot, as there was no final Agency action that terminated Employee from her position.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) states that the employee filing the petition has the “burden of proof as to issues of jurisdiction, including timeliness of filing”. According to OEA Rule 629.1, *id* , the burden must be met by a “preponderance of the evidence,” which is defined 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.”

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether Employee’s appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The Office of Employee Appeals is an independent agency of the District of Columbia government created by the *D.C. Government Comprehensive Merit Personnel Act* (“CMPA”) of 1978, *D.C. Official Code* § 1-601.01 *et seq.* The authority to hear appeals of District of Columbia employees is defined in the *Code* at § 1-606.03, which states in part:

(a) An employee may appeal a **final agency decision** affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. [Emphasis added.]

Employee filed her appeal based upon a notice from Agency that, effective immediately (November 14, 2008), she was being placed on administrative leave with pay duty status, while an investigation into alleged illegal drug use was conducted. The investigation satisfactorily confirmed Employee’s argument in this dispute, i.e., that certain controlled substances detected in her body system during the random, unannounced test, were the remnants of prescription medication that she was taking for the effects of an illness sustained shortly before the test. The investigation completed, Employee was reinstated. As her suspension letter advised, she was placed into a “with pay duty status. Therefore, she sustained no loss of salary or benefits during the investigation, and was not terminated from employment.

Agency asserted that its action of placing Employee into this duty status was a routine action and standard procedure in accordance with the *Child and Youth Health and Safety Omnibus Act of 2004*, D.C. Law 15-353, codified at *D.C. Official Code* § 1-620.31 *et seq.*, 2001 ed., which provides for random drug and alcohol testing to be administered by the D.C. Department of Human Resources. Further, the handling of the suspension in the manner as noted is dictated by the fact that Employee's position is a safety-sensitive position, dealing with youth, which also demands the maintenance of a drug free work environment. See *Agency Exhib. No. 1*.

On December 1, 2008, Agency was notified that the matter had been successfully resolved, and Employee was returned to work the following day, December 2, 2008. As such, there was neither a termination from employment nor other final agency action taken for cause. If anything, the final agency action was the Employee's return to duty status immediately upon completion of the investigation. Agency concluded its position by requesting that the appeal be dismissed for lack of jurisdiction. Having assessed how this matter developed, including the final and favorable outcome to the Employee's benefit, I find that no final Agency action was taken to separate her from her job. Rather, the final outcome was full reinstatement. I conclude that Employee did not meet the burden of proof on this issue, and therefore she did not establish that this Office has jurisdiction to consider her appeal.

ORDER

The matter having been considered, it is hereby,

ORDERED that Agency's Motion to Dismiss Employee's appeal is GRANTED; and it is

FURTHER ORDERED, that Employee's Petition for Appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge