

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
Everett Porter	)	OEA Matter No. 1601-0282-10
Employee	)	
	)	
	)	Date of Issuance: May 12, 2011
v.	)	
	)	
	)	Joseph Lim, Esq.
	)	Senior Administrative Judge
Office of The Chief Financial Officer	)	
Agency	)	
_____	)	
Everett Porter, <i>pro se</i>	)	
Clarene Martin, Esq., Agency Representative	)	

**INITIAL DECISION**

INTRODUCTION

On March 15, 2010, Employee, a Payroll Technician, pay grade 9-3, filed a petition for appeal from the action of the Chief Financial Officer of the District of Columbia (CFO) removing him from his position, effective December 15, 2009. On April 14, 2010, Agency submitted a Motion to Dismiss. Employee submitted his response on March 7, 2011.

This matter was assigned to me on April 14, 2011. Since the matter could be decided based on the documents of record, no proceedings were held. The record is closed.

JURISDICTION

In accordance with *Leonard* and its progeny, which will be discussed *infra*, the Office has jurisdiction in this matter.

ISSUE

Whether the CFO acted within the scope of his personnel authority in removing this employee.

SUMMARY OF FACTS, ANALYSIS AND CONCLUSIONS

It is uncontroverted that on December 15, 2009, the Human Resources Director, LaSharn Moreland, delivered to Employee a notice that his employment was being terminated. In pertinent part, that notice reads as follows:

Pursuant to the authority vested in the Chief Financial Officer of the District of Columbia by Section 424 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Code § 47-317), as amended by Section 201 of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. 109-356; 120 Stat. 2029), this correspondence is to inform you that it is necessary to discontinue your employment with the Office of the Chief Financial Officer (OCFO) of the District of Columbia. This separation action precludes you from further employment within the Office of the Chief Financial Officer.

....

If you wish to contest this action, you may prepare a written statement, which sets forth the basis for your appeal, and submit it within ten (10) days of receipt of this letter to: the Executive Director of the Office of Management and Administration, 941 North Capitol Street N.E., Washington, DC 20002.

In accordance with the final paragraph of the above separation notice, on December 29, 2009, Employee contested his separation. According to Employee, she never received the Director's response, if any, to Employee's appeal. Following his termination, Employee filed the instant appeal with this Office.

On February 5, 1997, Senior Administrative Judge Daryl J. Hollis issued an Initial Decision in *J. David Leonard et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0241-96 *et al.* Like the employee in the instant matter, the employees in *Leonard* were summarily removed from their positions by the CFO. In *Leonard*, Judge Hollis held that: 1) this Office had jurisdiction over the employees' appeals; 2) Section 152(a) of the District of Columbia Appropriations Act of 1996 (DCAA-96)<sup>1</sup> repealed § 1601(b) of the Comprehensive

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<sup>1</sup> Section 152(a), effective April 26, 1996, reads in part as follows:

**Sec. 152.** Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997 --

(a) the heads and all personnel of the following offices, together with all other District of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:

[1] The Office of the Treasurer.

[2] The Controller of the District of Columbia.

Merit Personnel Act (CMPA), thereby converting the status of the employees to “at-will”, and thereby divesting them of the due process protection of the CMPA; and 3) the CFO acted within the scope of § 152(a) in removing the employees without cause and an opportunity to respond. In *Avis Bachman-Dewel et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0006-97 *et al.*, issued on May 15, 1997, Judge Hollis noted that § 142(a) of DCAA-97, effective September 9, 1996, expanded the time periods during which the CFO could exercise his authority, and also expanded the scope of the CFO’s authority to include “financial personnel” in independent agencies. Other than the expansion of authority and operable time periods, § 142(a) is identical to § 152(a).<sup>2</sup> Further, the CFO’s personnel authority as originally set forth in §§ 152 and 142 has been continued without interruption since the passage of those sections.<sup>3</sup> This authority was most recently continued by virtue of § 202 of the 2005 District of Columbia Omnibus Authorization Act approved October 16, 2006, Pub. L. 109-356. P.L. 109-356, 2006 HR 3508, § 424(a) states in pertinent part as follows: “Notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia, including personnel described in subsection (b),

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[3] The Office of the Budget.

[4] The Office of Financial Information Services.

[5] The Department of Finance and Revenue.

<sup>2</sup> The holdings in *Leonard* and *Bachman-Dewel* have been consistently applied by this Office. See *Beatrice W. Gaines v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0265-96 (February 13, 1997), \_\_\_ D.C. Reg. ( ); *David B. Jackson v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0242-96 (February 24, 1997), D.C. Reg. \_\_\_ ( ); *Azra Qutb v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0043-97 (June 19, 1997), \_\_\_ D.C. Reg. \_\_\_ ( ); *Herbert Ogu et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0108-97 *et al.* (July 28, 1997), \_\_\_ D.C. Reg. \_\_\_ ( ); *Christopher T. Pyne v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0007-98 (February 23, 1998), \_\_\_ D.C. Reg. \_\_\_ ( ); *Douglas Foster v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0009-98 (March 4, 1998), \_\_\_ D.C. Reg. \_\_\_ ( ); *Nemat Hassan-Zadeh v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0015-98 (May 8, 1998), \_\_\_ D.C. Reg. \_\_\_ ( ); *Annie Daniels v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0013-98 (October 27, 2000), \_\_\_ D.C. Reg. ( ); *Josiah Akinunso v. Office of the Chief Financial Officer*, OEA Matter No. 2401-0033-01 (April 30, 2001), D.C. Reg. \_\_\_ ( ); *Anthony Henderson v. Office of the Chief Financial Officer*; OEA Matter No. 1601-0001-02 (July 26, 2002), \_\_\_ D.C. Reg. \_\_\_ ( ); *Ethelean Flood v. Office of the Chief Financial Officer*, OEA Matter No. 2401-0094-02 (August 6, 2002), \_\_\_ D.C. Reg. \_\_\_ ( ). See also *Opinions and Orders on Petitions for Review* issued by the OEA Board on October 10, 1997, involving Employees Rosa Anderson (one of the members of the *Leonard* group), Azra Qutb, Herbert Ogu, and several members of the *Ogu* group.

Further, the decision in *Leonard* was appealed to the Superior Court of the District of Columbia. In *Leonard v. District of Columbia*, C.A. No. 96-9962 (July 28, 1997), Judge Frederick Weisberg upheld the decision. Judge Weisberg’s decision was appealed to the D.C. Court of Appeals. In *Leonard et al v. District of Columbia*, 794 A.2d 618 (D.C. 2002), the Court upheld the finding that § 152 converted the appellants’ employment status to “at-will”. See 794 A.2d at 625-627. Additionally, on July 29, 1997, Judge Emmet Sullivan of the United States District Court for the District of Columbia issued a decision concluding that § 152 converted the subject employees’ status to at-will. See *American Federation of State, County and Municipal Employees v. District of Columbia*, C.A. No. 97-0185 (D.D.C. July 29, 1997).

<sup>3</sup> See, e.g., § 111(c) of the District of Columbia Appropriations Act of 2002, Pub. L. 107-96 and § 409 of the 2002 Supplemental Appropriations Act, Pub. L. 107-206.

shall be appointed by, shall *serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978*, except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.” [Emphasis added.]

In addition, D.C. Official Code 2001 Edition, Authority of Chief Financial Officer over Personnel of Office and Other Financial Personnel § 1-204.25(a) specifically states that Agency employees “shall be considered at-will employees not covered by Chapter 6 of this title.” Because Employee’s removal was effected during the 2010 fiscal year, the CFO’s authority over him is pursuant to § 424.

As set forth in *Leonard* and its progeny, § 152(a) of DCAA-96, § 142(a) of DCAA-97 and the laws that followed converted the status of all employees under the control of the CFO to “at-will”. It is clear that Employee is similarly situated to the employees in *Leonard* and its progeny. Thus, I conclude that the decisions in *Leonard* and its progeny apply to him. Accordingly, I further conclude that at the time of his removal, Employee was an at-will employee who could be removed from his position “for any reason or no reason at all”. *Rosa Anderson v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0301-96, *Opinion and Order on Petition for Review* (October 10, 1997), \_ D.C. Reg. \_\_ ( ), slip op. at 3.<sup>4</sup>

Therefore, I conclude that the CFO acted within the scope of his authority in removing Employee.

### ORDER

It is hereby ORDERED that Agency’s action removing Employee is UPHeld.

FOR THE OFFICE:

Joseph E. Lim, Esq.  
Senior Administrative Judge

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<sup>4</sup> Additionally, in the October 10, 1997 *Opinion and Order* issued in *Anderson*, the OEA Board held:

By law, the CFO has the authority to terminate Employee without reasonable notice and without just cause. Therefore, even if Employee could demonstrate that the CFO’s decision to terminate her was completely unwarranted, that fact would be immaterial because it would not affect the outcome of her case. OEA rules do not require the [Administrative Judge] or the Board to address immaterial issues.

*Anderson*, slip op. at 3. Given the Board’s holding, it is unnecessary to discuss Employee’s arguments as set forth in her response entitled, “Re: Appeal Jurisdiction.”