

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager 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:)	
)	
ROXANNE SMITH,)	OEA Matter No. J-0103-08
Employee)	
)	Date of Issuance: May 23, 2011
)	
)	
D.C. DEPARTMENT OF PARKS AND)	
RECREATION,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Roxanne Smith (“Employee”) worked as a Staff Assistant at the D.C. Department of Parks and Recreation (“Agency”). On May 16, 2008, Agency provided Employee with a notice separating her from her position due to the expiration of her term appointment on May 30, 2008.¹ In response to the notice, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”).

Employee argued that as a result of her father’s illness, she took leave from her position in February of 2008. She alleged that she remained in touch with Agency’s timekeeper to keep

¹ The notice was incorrectly dated March 16, 2008, but both parties concede that the notice should have read May 16, 2008.

them abreast of her father's status and continued leave requests. During March 2008, Employee expended all of her available leave time. Thereafter, she informed the timekeeper to process her leave as "leave without pay." At a later date, Employee requested information from Agency regarding the Family Medical Leave Act requirements. She contended that the information was faxed to her by Agency, but it did not include specific department procedures. In March 2008, Employee stated that Agency provided her with a notice of removal charging her with absence without leave ("AWOL"). However, Agency did not move forward with removing her at the time. Instead, it provided the May 16, 2008, notice providing that she would be terminated at the end of her term appointment. Accordingly, Employee appealed the March notice to terminate her for AWOL and Agency's decision not to renew her term appointment.²

On October 5, 2009, the OEA Administrative Judge ("AJ") issued an Initial Decision in this matter. She held that OEA has jurisdiction over permanent employees who are serving in career or education services and have successfully completed their probationary periods. The AJ relied on D.C. Personnel Regulations section 823.8 which provides that term employees can be separated at the end of their term unless they are separated earlier. She reasoned that because Employee held a term appointment at the time she was separated from service, OEA lacks jurisdiction to consider her appeal.³

On November 10, 2009, Employee filed a Petition for Review with the OEA Board. She asserted that the AJ erroneously ruled that she was not terminated because Agency did not

² *Petition for Appeal*, p. 8-10 (June 30, 2008).

³ The AJ also provided that although Agency initially issued an AWOL removal notice to Employee, it took no further action on the proposed removal. Alternatively, it decided to notify her on May 16, 2008, that her term appointment would expire. Because OEA lacks jurisdiction over term appointment matters, the AJ ruled that the matter be dismissed because Employee failed to meet her burden of proof regarding the office's jurisdiction. *Initial Decision* (October 5, 2009).

complete the termination process. Employee provides that she was not allowed to return to work and received no compensation from March 24, 2008 until the end of her term.⁴ Thus, she requested restoration of her salary and benefits from her removal until her term ended.⁵

In accordance with OEA Rule § 629.2 “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”⁶ In her Petition for Review, Employee does not argue that she was not a term employee. Agency’s notice to Employee clearly provides that it was separating her from her position due to the expiration of her term appointment on May 30, 2008.

Because Employee is a term employee, OEA is required to follow District Personnel Regulations § 823.7. This section provides that “an employee serving under a term appointment shall not acquire permanent status on the basis of the term appointment, and shall not be converted to a regular Career Service appointment without further competition, unless eligible for reinstatement.” District Personnel Regulation § 823.8 goes on to note that “employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier.” Thus, Employee’s employment with Agency could have ended at the end of her term or earlier. In accordance with the District Personnel Regulations, Employee was properly removed from employment on May 30, 2008. Her term

⁴ Employee’s counsel provides in the *Petition for Review* and in *Employee’s Response to Agency’s Reply to Submission* that on April 9, 2008, he sent a notice to Agency requesting that she not be summarily removed but be returned to work because her father was readmitted to the hospital. However, counsel cannot locate the original letter mailed to Agency.

⁵ *Petition for Review* (November 10, 2009).

⁶ OEA Rule 629.1 provides that preponderance of the evidence is the standard by which the burden of proof is met. The rule defines preponderance of the evidence as “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.”

ended on that date, and Agency had no obligation to reappoint her. This Board has held that OEA lacks jurisdiction over term employees.⁷ Consequently, Employee's Petition for Review must be denied.

⁷ *Carolynn Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, *Opinion and Order on Petition for Review* (July 30, 2010).

ORDER

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

FOR THE BOARD:

Clarence Labor, Jr., Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of 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.