

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:)	
)	
YVETTE HOWE,)	
Employee)	OEA Matter No. J-0004-16
)	
v.)	
)	Date of Issuance: April 18, 2017
SUPERIOR COURT OF THE)	
DISTRICT OF COLUMBIA,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Yvette Howe (“Employee”) worked as a Deputy Clerk at the Superior Court of the District of Columbia (“Agency”). On September 1, 2015, Employee received a notice that she would be terminated from Agency. The effective date of her termination was September 11, 2015.¹

On October 7, 2015, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). She asserted that her termination was unwarranted. She also provided that she was harassed and discriminated against while employed at Agency. Further, Employee claimed that Agency used her health issues as the pretext to attack her work performance.

¹ *Petition for Appeal*, p. 5 (October 7, 2015).

Therefore, she requested that she be reinstated with back pay.²

Agency filed its response to Employee's Petition for Appeal on November 9, 2015. It stated that Employee was provided with adequate training and technical assistance to excel in her position, but she was terminated because of her poor work performance and failure to comply with the District of Columbia Courts Comprehensive Personnel Policies ("D.C. Courts Personnel Policies"). Agency explained that the District of Columbia Comprehensive Merit Personnel Act ("CMPA") of 1978 regulations are not applicable to those employed by the D.C. Courts. It argued that D.C. Official Code § 1-602.01(a) stated that it "shall apply to all employees of the District of Columbia, except the Chief Judges and Associate Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the non-judicial personnel of said Courts." Agency contended that the D.C. Courts have authority to implement and enforce its own personnel policies. Accordingly, it requested that OEA dismiss Employee's appeal.³

On January 15, 2015, the OEA Administrative Judge ("AJ") issued her Initial Decision. She agreed with Agency and held that D.C. Official Code § 1-602.01(a) did not apply to Employee. Additionally, the AJ explained that Employee's termination notice included information related to personnel procedures, and it outlined the manner by which she could appeal her termination. Therefore, the AJ dismissed the appeal for lack of jurisdiction.⁴

On February 19, 2016, Employee filed a Petition for Review of the Initial Decision. She states that the AJ failed to address all material issues of law and fact that were raised on appeal. Employee argues that she was not afforded an administrative review of her termination by OEA. Further, she argues that the Initial Decision failed to address the constitutional issues raised.

² *Id at 5.*

³ *Answer to Employee's Petition for Appeal*, p. 1-5 (November 9, 2015).

⁴ *Initial Decision*, p. 1-4 (January 15, 2016).

Employee requests that this Board find that Agency's removal violated the United States Constitution's Fifth and Fourteenth Amendments.⁵

Agency filed its response to Employee's Petition for Review on March 4, 2016. It states that the AJ correctly determined that OEA does not have jurisdiction over D.C. Court employees' personnel appeals. Therefore, OEA cannot address all material issue of law and fact properly raised in the appeal. Moreover, Agency provides that Employee was afforded the right to appeal her termination and address material issues through its internal and statutorily-sanctioned personnel process. It is Agency's position that had Employee acted within a timely manner, her request for an administrative hearing would have been honored. Therefore, Agency requests that the Petition for Review be dismissed.⁶

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. Therefore, if there is substantial evidence to support the AJ's decision that OEA lacks jurisdiction to consider the merits of this case, then this Board must accept it. Based on our review of the record, the AJ's decision was based on substantial evidence.

As the AJ held, OEA is guided by the statutory requirements provided in D.C. Official Code § 1-602.01(a). This section provides that “. . . this chapter shall apply to all employees of the District of Columbia government, *except the Chief Judges and Associate Judges of the*

⁵ *Petition for Review*, p. 1-3 (February 19, 2016).

⁶ *Agency's Answer (Opposition) to Employee's Petition for Review*, p. 1-5 (March 4, 2016).

Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the nonjudicial personnel of said Courts (emphasis added).” The plain language of the statute leaves no room for an alternate interpretation. The right to appeal personnel actions applies to all District government employees except judges and non-judicial personnel of the Superior Court. Per Employee’s Petition for Appeal, she was removed from her position as a Deputy Clerk with the Superior Court of the District of Columbia.⁷ Because she was employed by Superior Court, OEA lacks the requisite jurisdiction to consider her appeal.

Chapter 6B of the District Personal Manual, Section 628.2 provides that “the employee shall have the burden of proof as to issues of jurisdiction” In this matter, Employee has failed to establish OEA’s jurisdiction over her appeal. Absent an establishment of jurisdiction, OEA cannot consider the merits of Employee’s claims. Thus, contrary to Employee’s assertions, the AJ did not err by not addressing her Due Process and Equal Protection claims.⁸ The AJ simply lacked the statutory authority to do so absent the establishment of jurisdiction. Accordingly, this Board must dismiss Employee’s Petition for Review.

⁷ *Petition for Appeal*, p. 1 and 5 (October 7, 2015).

⁸ It should be noted that Employee was accorded an avenue to appeal her termination case. Agency’s termination notice provides that “pursuant to Personnel Policy 1007, you have the right to appeal this decision in writing to the Executive Officer within 15 calendar days from the receipt of this notification.” However, it appears from the record that Employee failed to avail herself the opportunity to appeal.

ORDER

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

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.