

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Kyanna Feliciano,) OEA Matter No. J-0014-18
Employee)
) Date of Issuance: January 24, 2018
v.)
) Senior Administrative Judge
Department of Behavioral Health,) Joseph E. Lim, Esq.
Agency)

Charles Tucker, Esq., Employee Representative
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On November 15, 2017, Kyanna Feliciano (“Employee”), a former Forensic Mental Health Coordinator at the District of Columbia Department of Behavioral Health (“Agency”), filed a petition for appeal with the D.C. Office of Employee Appeals (the “OEA” or the “Office”), challenging Agency’s final decision to terminate her employment effective September 30, 2017. This matter was assigned to me on December 11, 2017. On December 15, 2017, Agency filed its Answer to Petition for Appeal and a Request for Dismissal. Agency represented that the Office lacked jurisdiction to further consider this matter, due to Employee’s term employee status.

On December 19, 2017, I ordered the parties to address the issue fully. The parties have complied. Since a decision could be rendered based upon the documents submitted by the parties, pursuant to discretionary authority granted to me by OEA Rule 624.2, 59 DCR 2129 (2012), no further proceedings, including an administrative hearing on the record, are necessary. The record is now closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts were submitted by the parties and are uncontroverted:¹

1. On August 11, 2014, Employee was hired as a Forensic Mental Health Coordinator under a Second Chance Grant to work in the D.C. Jail under a term position.²
2. On October 1, 2015, Employee's term was extended for one year until September 30, 2016.³
3. On September 29, 2016, Employee was hired as a Forensic Mental Health Coordinator at Agency's 35 K Street, NE, Washington, DC location under a term appointment.⁴
4. When accepting the appointment, Employee signed a form entitled "Conditions of Employment under Term Appointment," which noted the expiration date of the appointment as September 30, 2017, and other conditions of employment.⁵
5. On September 22, 2017, Employee was served a Notice of Termination of Term Appointment and Employee signed her acceptance of this notice on the same day.⁶
6. On September 30, 2017, Employee's term appointment as a Forensic Mental Health Coordinator was terminated as per its termination date.⁷

ANALYSIS AND CONCLUSIONS

OEA Rule 628.2, 59 D.C. Reg. 2129 (2012), states: "The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." Thus, Employee has the burden of proving that this Office has jurisdiction over his appeal. According to OEA Rule 629.1, *id*, a party's burden of proof is 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."

An analysis of the basic information presented to me as a part of this record underscores that the irrefutable facts govern the outcome in this matter, which is sufficiently determinative. There is no dispute that Employee accepted a one-year term appointment, effective September

1 Derived from the parties' representations of facts and uncontested documents and exhibits of record.

2 Employee's Response to Agency's Response to Employee's Petition for Appeal (January 16, 2018).

3 *Id*.

4 Agency Exhibit 2, Conditions of Employment under Term Appointment.

5 *Id*.

6 Agency Exhibit 3, Notice of Termination of Term Appointment (September 22, 2017).

7 Agency Exhibit 4, Standard Form 50, Notification of Personnel Action (October 12, 2017).

29, 2016, with a “Not-To-Exceed” date of September 30, 2017.⁸ On September 23, 2017, Agency notified Employee that her contract appointment would be terminated on September 30, 2017.⁹

The dismissal of this appeal matter is based solely upon a determination that the Office lacks subject matter jurisdiction, as both term and temporary employees are specifically excluded from the jurisdictional authority of the OEA.

The D.C. Code and District Personnel Manual

My decision is underscored by both the D.C. Official Code and Chapter Eight of the D.C. Personnel Manual (the “DPM”). Pursuant to the D.C. Official Code, § 1-606.03(a) (2001 Ed.), “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 force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.”¹⁰

None of the above enumerated conditions apply in this case.¹¹

Term Employees

Volume I, DPM, Chapter 8, Part I, addresses Term Appointment, and provides in part:

823.8 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, unless the initial term appointment was through open competition within the Career Service and the employee has satisfied the probationary period.

823.9 Employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier.

At Chapter 8, § 826.1 of the Regulations, it states:

826.1 The employment of an individual under a temporary or term appointment shall end on the expiration date of the appointment, on the expiration date

⁸ See Appointment Letter to Employee dated September 28, 2016.

⁹ *Id.*

¹⁰ Current through January 17, 2018, as per <https://Code.dccouncil.us>.

¹¹ See also OEA Rule 604.1, 59 DCR 2129 (2012), which essentially restates the aforementioned Code.

of the extension granted by the personnel authority, or upon separation prior to the specified expiration date in accordance with this section.

826.5 A temporary appointee may be separated without notice prior to the expiration date of the appointment.

All of the above noted sections are clearly applicable, as Employee, a Forensic Mental Health Coordinator, was on notice that her appointment was a term appointment. The law does not guarantee a Term employee of a permanent position, or any position at all, after the expiration of an appointment. I conclude that OEA has no jurisdiction over Employee's appeal because of her status as a term employee.

In her brief, Employee asserts that she was given verbal assurances by the Director of Forensic Services, Dr. Johnson, that her position was permanent. Employee then acknowledges that the Director informed her that the Human Resources Department ("DCHR") said that for the position to be permanent, it had to be posted as a competitive position. Employee asserts that the position was posted on the DCHR website in March, June, and October of 2017, and that she applied for the position and was interviewed each time but was never given the position. Employee claims that she was misled to believe her position was permanent for well over eight months.

Employee's complaint is more in the nature of a grievance, which is not covered under the OEA's jurisdiction. As noted in the D.C. Official Code § 1-606.03(a) cited above, grievances such as unfulfilled verbal promises are not covered under OEA's purview.

OEA Rule 628.2, 59 D.C. Reg. 2129 (2012), provides that employees have the burden of proving that OEA has jurisdiction to hear and decide their appeals. In the matter at hand, I find that Employee has not met this burden, and conclude, therefore, that OEA does not have subject matter jurisdiction in this matter.

ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge