

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

<u>In the Matters of:</u>)	
Cynthia Washington,)	OEA Matter Number: 1601-0035-08 C12C12
Employees,)	
)	Joseph E. Lim, Esq.
v.)	Senior Administrative Judge
)	
Department of Corrections)	Date of Issuance: November 2, 2012
<u>Agency</u>)	

Kevin J. Turner, Esq., Ross Buchholz, Esq., Agency Representatives
J. Michael Hannon, Esq., Employee Representatives

2nd ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On January 14, 2008, Employee, along with other employees, appealed from Agency's ("Department of Corrections" or "DOC") final decision, effective December 17, 2007, removing them from their positions as Correctional Officers at the D.C. Jail for "negligence," or "malfeasance." Employee was accused of negligently allowing two prison inmates to escape. Employee denied doing anything improper, and asserted that she followed standard operating procedures. After a hearing on December 8, 10, and 12, 2008, I issued an Initial Decision (ID) on June 22, 2009. I upheld Agency's removal of two employees, but reversed Agency's removal of seven employees, including Cynthia Washington.

Shortly thereafter, Agency filed a petition for review of the ID with the OEA Board. On October 25, 2010, the Board issued an Opinion and Order on Petition for Review ("O&O") in which it upheld the ID. On November 29, 2010, Agency appealed the decision to the Superior Court of the District of Columbia where it was docketed as 2010-CA-009140. On November 14, 2011, the Superior Court of the District of Columbia denied Agency's appeal.

Shortly thereafter, Employees made a complaint that Agency had still not fully complied with the ID. On December 14, 2011, Agency noted an appeal of the Superior Court decision to the District of Columbia Court of Appeals. At that point, the parties began settlement discussions. On March 30, 2012, Agency submitted a signed letter indicating that the aforementioned employees had been reinstated and that the parties have settled all issues regarding these employees. I then issued the first Addendum Decision on Compliance on April 9, 2012, wherein I indicated that the parties had settled their dispute.

On August 28, 2012, Employee submitted a Motion to Enforce Final Decision. Agency responded to this motion on September 14, 2012. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

It is undisputed that the parties have settled the matter on March 30, 2012. Now Employee is alleging that Agency violated said settlement agreement. Agency asserts that it had complied with the settlement agreement. Employee disputes the net back pay she was paid due to the deduction of unemployment benefits from her gross back pay.

OEA Rule 629.2, 46 D.C. Reg. at 9317, reads as follows: “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” 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.” As will now be discussed, Employee has failed to meet her burden of proof as to the issue of jurisdiction.

This Office was established by the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.1 *et seq.* (1999 repl.) and has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Code Ann. § 1-606.3. Here, Employee is attempting have this Office resolve an alleged breach of a settlement agreement. A settlement agreement is a private contract between the parties to a lawsuit.¹ As will now be discussed, this Office lacks jurisdiction over this contract dispute.

OEA’s authority was established by D.C. Official Code §1-606.03(a). It provides that:

“[a]n 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 XXIV 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.

¹ See *Rucker v. D.C. Fire and Emergency Medical Services Dep’t*, OEA Matter No. 1601-0070-93, *Opinion and Order on Petition for Review* (July 7, 1995) at 2.

Any appeal shall be filed within 30 days of the effective date of the appealed agency action.”

Therefore, OEA can only consider adverse actions that result in removal, reductions-in- grade, suspensions of 10 days or more, or reductions-in-force.

Moreover, District Personnel Regulations and OEA Rules sections 604.1 and 604.3 provide the following regarding OEA’s jurisdiction:

604.1 Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.1 et seq. or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

OEA’s jurisdiction changed on October 21, 1998. According to OEA Rule 604.3, the agency only had jurisdiction over grievances if the appeal was filed with the Office *before* October 21, 1998. Employee’s Petition for Appeal was filed on January 14, 2008, nearly 10 years after the deadline. This Office has consistently held that OEA lacks jurisdiction to consider those matters.²

Employee’s breach of contract grievance clearly falls outside the scope of this Office’s jurisdiction. Since a settlement agreement constitutes a private contract, and this Office lacks the authority to resolve private contract disputes, this Office does not have jurisdiction over a dispute arising under a settlement agreement.³ Because this Office does not have jurisdiction over the Employee’s grievance, Employee’s motion for enforcement of the agreement is dismissed.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for lack of jurisdiction.

² *Rebecca Owens v. Department of Mental Health*, OEA Matter No. J-0097-03, *Opinion and Order on Petition for Review* (January 25, 2006); *Lillian Randolph v. District of Columbia. Water and Sewer Authority*, OEA Matter No. 2401-0085-02, *Opinion and Order on Petition for Review* (July 16, 2006); and *Mark James v. Office of the Chief Technology Officer*, OEA Matter No. J-0003-08, *Opinion and Order on Petition for Review* (November 23, 2009).

³ *Rucker*, *supra* at 3.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge