

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:	)	
EMPLOYEE <sup>1</sup> ,	)	OEA Matter No. J-0013-23
	)	
v.	)	Date of Issuance: January 25, 2023
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF CORRECTIONS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	
Employee, <i>Pro Se</i>	)	
Felix Nnumolu, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On November 9, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Corrections’ (“Agency” or “DOC”) decision to terminate her from her position as a Correction Officer, effective November 8, 2022. OEA issued a Request for Agency Answer to Petition for Appeal on August 26, 2022. On November 9, 2022, Agency filed its Motion to Dismiss Employee’s Petition for Appeal, stating that Employee was still in her probationary period at the time of her termination and as such, OEA lacked jurisdiction over this matter.

I was assigned this matter on December 2, 2022. Thereafter, I issued an Order on December 7, 2022, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee’s brief on jurisdiction was due on or before December 21, 2022, and Agency had the option to file a sur-reply brief on or before January 3, 2023. On January 3, 2023, Employee responded to the December 7, 2022, Order noting that OEA had jurisdiction over this matter because she was a DOC employee at the time of her termination, and she was not terminated for cause. As of the date of this decision, Agency has not submitted a sur-reply

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

brief. Because I determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

### JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

### ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

### BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.<sup>2</sup>

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

#### ***Employee’s position***

Employee asserts in her January 3, 2023, submission that she was a DOC employee at the time of her termination, and she was not terminated for cause.<sup>3</sup> Additionally, Employee highlights on Question 13 of her Petition for Appeal filed with OEA that she had a PROBATIONARY appointment.”<sup>4</sup>

#### ***Agency’s position***

Agency states in its Motion to Dismiss that an employee removed during a probationary period cannot appeal their removal to OEA. Agency explains that Employee was hired by DOC on July 7, 2021, on an eighteen (18) month probationary period which began on July 19, 2021.

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<sup>2</sup> OEA Rule § 699.1.

<sup>3</sup> See Employee’s January 3, 2023, submission.

<sup>4</sup> Employee’s Petition for Appeal (December 9, 2022).

Agency asserts that Employee was subsequently terminated effective November 8, 2022. Therefore, Employee was still in her probationary period when she was terminated. It explains that OEA does not have jurisdiction to hear appeals from probationary employees. As such, Employee's complaint must be dismissed.<sup>5</sup>

### *Analysis*<sup>6</sup>

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.<sup>7</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>8</sup> This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in Career and Education Service who are *not serving in a probationary period*, or who have successfully completed their probationary period (emphasis added).

Chapter 2, § 227.4 of the District Personnel Manual ("DPM") states that a termination during an employee's probationary period cannot be appealed to this Office. Additionally, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.<sup>9</sup> Employee acknowledged in her Petition for Appeal to OEA that she had a "PROBATIONARY" appointment at the time of her termination. She also did not dispute Agency's assertion that she was required to serve an eighteen (18) month probationary period, nor did she dispute Agency's statement that she was hired effective July 7, 2021, and was terminated effective November 8, 2022. Agency also attached a copy of Employee's Offer letter with an effective start date of July 19, 2021. This letter informed Employee that her position was a "Probational Career appointment" with an eighteen (18) months probationary period.<sup>10</sup> Furthermore, Career service employees who are serving in a probationary period are precluded from appealing a removal action to this Office until their probationary period is over. The record shows that Employee was hired effective July 19, 2021, and terminated effective November 8, 2022.<sup>11</sup> July 19, 2021, to November 8, 2022, is less than eighteen (18) months. Consequently, I find that Employee was removed from service when she

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<sup>5</sup> Agency's Motion to Dismiss (November 22, 2022).

<sup>6</sup> Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

<sup>7</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>8</sup> See *Brown v. District of Columbia Public School*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>9</sup> See, e.g., *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

<sup>10</sup> Agency's Motion to Dismiss, *supra*, at Tab 4.

<sup>11</sup> Agency's Motion to Dismiss (November 22, 2022).

was still within her probationary period. For these reasons, I conclude that Employee is precluded from appealing her removal to this Office, as OEA lacks jurisdiction in this matter.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.<sup>12</sup> Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, *id*, 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.” Employee noted in her Petition for Appeal to OEA that she had Probationary appointment and the record further reflect that Employee had not completed her eighteen-month probationary period at the time of her termination. Based on the foregoing, I conclude that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

### ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency’s Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.  
Senior Administrative Judge

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<sup>12</sup>59 DCR 2129 (March 16, 2012).