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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CHANTEL HARRIS,)	
Employee)	OEA Matter No. J-0017-18
)	
v.)	Date of Issuance: March 9, 2018
)	
D.C. DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	Arien P. Cannon, Esq.
)	Administrative Judge
_____)	
Michelle Cassorla, Esq., Employee Representative)	
Tiye Kinlow, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 1, 2018, Chantel Harris (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to separate her from her position as a Management Liaison Specialist. This matter was assigned to the undersigned on December 11, 2017.

An Order on Jurisdiction was issued on January 2, 2018, which required Employee to submit a detailed statement for the reasons why she believes this Office may exercise jurisdiction over her appeal. On January 4, 2018, Agency filed a Motion for an Enlargement of Time to File a Response to Employee’s Petition for Appeal. On January 10, 2018, Employee submitted her Brief in Support of OEA’s Jurisdiction and Motion for Summary Reversal on the Pleadings. Employee submitted a Renewed Motion for Judgment on the Pleadings on January 29, 2018.

Agency’s Motion for an Enlargement of Time was granted on February 7, 2018. Along with submitting its Answer, Agency was it was also ordered to respond to Employee’s Brief in Support of OEA Jurisdiction and Motion for Summary Reversal on the Pleadings, on or before February 20, 2018. On February 15, 2018, Agency filed another Motion for an Enlargement of

Time. In an email issued by the undersigned on February 16, 2018, Agency's time to file its Answer and response to Employee's Motion was extended to February 27, 2018. Agency submitted its Answer and its response to Employee's Brief in Support of OEA Jurisdiction on February 27, 2018. The record is now closed.

JURISDICTION

As provided in further detail below, the jurisdiction of this Office has not been established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee has established jurisdiction of this Office.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ "Preponderance of the evidence" shall mean:

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.

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.²

DISCUSSION AND CONCLUSIONS OF LAW

From February 9, 2015, through Friday, August 18, 2017, Employee was employed as a Human Resource Generalist at the District of Columbia Child and Family Services Agency ("CFSA").³ During this tenure, Employee completed her probationary period as reflected in Box 24 of a SF-50 form issued to Employee on September 17, 2016, which designates Employee as a Permanent Employee.⁴

Effective, Sunday, August 20, 2017, Employee became an employee of Agency and reported to work on Monday, August 21, 2017.⁵ The SF-50 issued for Employee by Agency on August 30, 2017, indicates that Employee was appointed to her new position as a Management Liaison Specialist with Agency without a break in service from her previous employment with CFSA.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ See Brief in Support of OEA's Jurisdiction and Motion for Summary Reversal on the Pleadings Exhibits 1, 3,4 (January 10, 2018).

⁴ *Id.*, Exhibit 2.

⁵ *Id.*, Exhibits 3 and 4.

Employee argues that on November 6, 2017, Sonya D. Fox, a Human Resource Officer with Agency, informed her by letter that she was being terminated from Agency, effective November 24, 2017. Employee further argues in her Brief that she was not a probationary employee at Agency, but rather a permanent, non-probationary Career Service employee.⁶ Employee asserts that because she was a permanent Career Service employee, Agency did not afford her due process rights pursuant to Chapter 16 of the District Personnel Manual.

In support of Employee's position that she was a permanent Career Service employee, she cites to Section 813.8 of the District Personnel Regulations⁷ which provides that:

Except when the appointment is effected with a break in service of one (1) workday or more, or as specified in subsection 812.2(a) of this chapter or subsection 813.9 of this section, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.

However, a further reading of DPM § 813 provides exceptions to this general rule. It is not disputed that Employee gained permanent Career Service status during her tenure with CFSA. Agency asserts that the Director of its Office of Human Resources elected to appoint Employee as a probationary employee based on the significant differences in policies and procedures from her previous employing agency, CFSA. Agency highlights DPM § 813.9(c), which provides in pertinent part:

An employee who once satisfactorily completed a probationary period in Career Service shall be required to serve another probationary period when the employee... (c) Is appointed as a result of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee's actual duties and responsibilities.

Agency contends that because its personnel authority (Director of Human Resources, Sonya Fox) determined that Employee's position with Agency was in a different line of work based on the differences of duties and responsibilities from her previous position with CFSA, that Employee was required to serve another probationary period with Agency. In Agency's Brief on Jurisdiction and Response to Motion for Summary Reversal on the Pleadings, it sets forth the distinctions of Employee's former position with CFSA and her position with DYRS. Agency maintains that CFSA is an agency with independent hiring authority, whereas DYRS does not enjoy independent hiring authority. Because DYRS does not have independent hiring authority, all of its hiring documents are required to be routed through the District of Columbia Department of Human Resources ("DCHR") for approval. This requires additional paperwork, knowledge of additional DCHR procedures, and an ability to effectively keep on top of DCHR timelines as it relates to the internal DYRS timeline.

⁶ See Brief in Support of OEA's Jurisdiction and Motion for Summary Reversal on the Pleadings (January 10, 2018).

⁷ Also referred to as the District Personnel Manual ("DPM").

Prior to assuming her position with Agency as a Management Liaison Specialist, Employee worked with CFSA as a Human Resources Generalist. Although both positions are in the human resources field, the Management Liaison Specialist position with Agency requires additional duties and a higher level of complexities than the Human Resources Generalist position at CFSA. It is also noted that the names of Employee's position with CFSA and DYRS differ, where her position with CFSA was a "Generalist" position whereas her position with DYRS was a "Specialist" position. Agency provides the position descriptions of Employee's position with CFSA and her position with Agency, illustrating the differences between the two positions.⁸ Based on the aforementioned, I find that Employee's position with Agency was in a different line of work as contemplated by DPM § 813.9.

Furthermore, I find that Employee's position with Agency was a result of open competition. Open Competition is defined as the use of examination procedures which permit application and consideration of all persons without regard to current or former employment with the District government.⁹ In Employee's offer letter from Agency, issued on August 7, 2017, it provides that Employee was selected under Job Requisition No. JO-1706-9248.¹⁰ In the SF-50 form appointing Employee to her position with Agency, it also provides that her appointment was a result of the same job requisition number.

Agency made clear in its offer letter to Employee, issued on August 7, 2017, that her appointment would be "Probational."¹¹ This indication demonstrates that Agency's personnel authorities determined that the new duties and responsibilities being assumed by Employee required another probationary period as contemplated by DPM § 813.9. As such, I find that Agency was within its authority and right to require Employee to undergo another probationary period as required under DPM § 813.9. Thus, I find that Employee was in a probationary status when she was terminated from Agency, effective November 24, 2017. A termination during a probationary period is not appealable or grievable.¹²

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Motion for Summary Reversal is **DENIED**, and that Employee's Petition for Appeal be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁸ See *Id.*, Tabs 6 and 7.

⁹ See DPM § 899.1.

¹⁰ See Agency's Brief on Jurisdiction and Response to Motion for Summary Reversal on the Pleadings, Tab 3 (February 27, 2018).

¹¹ See *Id.*, Tab 3.

¹² DPM § 814.3.