THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ALONZO HOLLOWAY,	)	
Employee	)	OEA Matter No. 1601-0057-19
	)	
v.	)	Date of Issuance: January 31, 2020
	)	
D.C. DEPARTMENT OF PARKS & RECREATION,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE

Jacqueline J. Moore, Esq. Employee Representative
Andrea Comentale, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 26, 2019, Alonzo Holloway ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the Department of Parks and Recreation's ("the Agency") action of suspending him for 10 (ten) days; then removing him from service. In response, on July 26, 2019, DPR filed a Motion to Dismiss contending that the OEA lacks jurisdiction to adjudicate this matter. The Undersigned was assigned this matter on November 7, 2019. Consequently, on November 18, 2019, I ordered Employee to submit a written brief regarding the jurisdiction of this Office. Employee complied with this order. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "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.

OEA Rule 628.2 *id.* states:

> 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.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

STATEMENT OF FACTS, ANALYSIS AND CONCLUSION

The proceeding statement of facts, analysis, and conclusions are based on the documents of record as submitted by the Employee.

Management Supervisory Service ("MSS") Employee

At the time of his termination, the Employee was employed with Agency as a Supervisory Recreation Specialist (Roving Leaders) Grade 13. It is uncontroverted that this position was an MSS appointment. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force. . .

D.C. Official Code § 1-609.54 provides further elucidation on the OEA's statutorily mandated jurisdictional limits in the instant matter. It provides in relevant part that:

> Employment-at-will
>
> (a) An appointment to a position in the Management Supervisory Service shall be an *at-will appointment*. Management Supervisory Service employees shall be given a 15-day notice prior to termination... (Emphasis added).

In *Grant v. District of Columbia*, the District of Columbia Court of Appeals held that "while the CMPA and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions (such as notice and hearing rights, and the right to be terminated only for cause), MSS employees are statutorily excluded from the Career Service and thus cannot claim those protections." *Citations omitted.* 908 A.2d 1173, 1178 (D.C. 2006).

Based on the preceding statutes, case law, and regulations, it is plainly evident that the OEA lacks the jurisdictional authority to review adverse action appeals of MSS employees. Since Employee's last position of record was obtained through a MSS appointment, I find that I cannot adjudicate his appeal and it therefore must be dismissed for lack of jurisdiction.[1] I further find that Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate.[2]

ORDER

Based on the foregoing, it is hereby ORDERED that the above-captioned Petition for Appeal be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[1] 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").

[2] Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.