Notice: This decision may be formally revised before publication in the District of Columbia Register. Parties should promptly notify the Administrative Assistant 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:  

ELLIOTT DUVALL  
Employee  

v.  

DEPARTMENT OF  
YOUTH HABILITATION SERVICES  
Agency  

)  
)  
OEA Matter No. J-0008-06  
)  
Date of Issuance: January 24, 2006  
)  
Senior Administrative Judge  
Joseph E. Lim, Esq.  

Frank McDougald, Esq., Agency Representative  
John Carpenter, Esq., Employee Representative

INITIAL DECISION

PROCEDURAL BACKGROUND

Employee was a probationary Correctional Officer with the Department of Youth Habilitation Services. After an alleged incident of physical abuse of a resident, Agency informed Employee that his termination date is June 17, 2005. Employee filed an appeal with the Office of Employee Appeals (OEA) on October 24, 2005 seeking a reversal of Agency’s action.

On January 11, 2006, this matter was assigned to me. At the January 23, 2006 prehearing conference, Employee admitted that he was probationary at the time of the termination. I closed the record after ascertaining that there were no material issues of fact in dispute.

ISSUE

Should this matter be dismissed because Employee was probationary?

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Code Ann. § 1-606.3 (1992).
FINDINGS OF FACT

The following facts are undisputed:

1. Employee applied for employment and was accepted a Correctional Officer with the Department of Youth Habilitation Services on October 17, 2004, subject to a one-year probationary period.

2. After an alleged incident of physical abuse of a resident, Agency informed Employee that his termination date is June 17, 2005. At the time of his dismissal, Employee had been a probationary employee of Agency for ten months.

3. Employee also filed an appeal with the Office of Employee Appeals (OEA) on October 24, 2005 seeking a reversal of Agency’s action.

ANALYSIS AND CONCLUSIONS

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.”

Probationary Employees

Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the Act), pursuant to the D.C. Official Code, § 1-606.03 and OEA Rule 604.2, a D.C. 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 that results in removal, reduction in grade, or suspension for ten (10) days or more; or, (c) A reduction in force.

Effective June 9, 2000, the Council of the District of Columbia adopted amended regulations for the updated implementation of the Act and, at the outset of the new regulations, provided at Chapter 16, § 1600.1, that the newly adopted regulations apply to each employee of the District government in the Career Service, who has completed a probationary period.

(b) Satisfactory completion of the probationary period is required to attain permanent status. See DPM § 813.11, D.C. Official Code § 5-105.04.

Here, Employee position was subject to a one-year probationary period. However, Employee was separated from service on June 17, 2005, ten months after his start date and still within the probationary period. Therefore, I conclude that this Office has no jurisdiction over this appeal, and that it must be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

[Signature]

JOSEPH E. LIM, Esq.
Senior Administrative Judge