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**THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
STEPHANIE STEELE-BRAXTON,	)	
Employee	)	
	)	OEA Matter No. J-0024-16
v.	)	
	)	Date of Issuance: May 31, 2016
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF PUBLIC WORKS,	)	
Agency	)	
_____	)	
	)	Michelle R. Harris, Esq.
	)	Administrative Judge
Johnnie Louis Johnson, III, Esq., Employee Representative		
Andrea Comentale, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On February 11, 2016, Stephanie Steele-Braxton (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Works’ (“Agency” or “DPW”) decision to terminate her. On March 17, 2016, Agency filed its Answer to Employee’s Petition for Appeal.

I was assigned this matter on February 17, 2016. Agency asserted in its Answer that OEA does not have jurisdiction over this appeal because Employee’s position was a Management Supervisory Service (“MSS”) appointment. Consequently, on March 22, 2016, I issued an Order directing Employee to address whether OEA has jurisdiction over this matter. On April 7, 2016, Employee filed a Request to File a Late Brief. I issued an Order granting this Motion on April 8, 2016. Employee’s brief on jurisdiction was now due on or before April 18, 2016. Employee filed her brief in accordance with the prescribed deadline.<sup>1</sup> Agency had the option to submit a response on or before April 28, 2016. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

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<sup>1</sup> It should be noted that Employee also filed a Memorandum on Jurisdiction on April 26, 2016. It was similar to the previously filed document; however, this document appeared to be sent in error as it contained information regarding an unnamed Employee party to this appeal.

## JURISDICTION

The jurisdiction of this Office has not been established.

## ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

## FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Supervisory Parking Enforcement Officer, MSS, since 2007.<sup>2</sup> In a notice dated January 4, 2016, Employee was notified that “in accordance with section 3813 of Chapter 38 of the D.C. personnel regulations, Management Supervisory Service” that this letter was a fifteen (15) day notice of the termination of her MSS appointment. The letter stipulated that the termination would be effective January 19, 2016. Further, the letter indicated that MSS appointments are ‘at-will’ and that this termination was neither appealable nor grievable.<sup>3</sup>

### ***Employee’s Position***

Employee asserts that she has been a good employee and that all her evaluations reflected that her performance was “excellent/highly effective.”<sup>4</sup> In her Memorandum on Jurisdiction, Employee argues that she was subject to disparate treatment by Agency in that the “Department of Public Works treated its male employees across the board much better than it treated its female employees.”<sup>5</sup> Further, Employee asserts that because of these alleged actions of discrimination by Agency, she is a whistle blower, and that OEA has jurisdiction because she is afforded protections under the Whistle Blower Protection Amendment Act of 2009.<sup>6</sup> Additionally, Employee argues that Agency failed to address discrimination and that the whistle blower status is an affirmative defense applicable in her appeal.<sup>7</sup>

### ***Agency’s position***

Agency asserts in its Answer to Employee’s Petition for Appeal that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee’s position as a Supervisory Parking Enforcement Officer is a MSS appointment, and as such is ‘at-will’, and not subject to OEA jurisdiction.<sup>8</sup> Agency provides that Employee was converted from Career Service to MSS on June 24, 2007.<sup>9</sup> Agency further notes that at the time of Employee’s conversion, she signed a letter indicating that she “understood the implication of accepting a MSS appointment, namely that she would not have Career Service job protection rights and could be terminated from service with

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<sup>2</sup> Employee’s Petition for Appeal (February 11, 2016). It should be noted that Employee indicates that she has been in her position “since 2008”; however her SF-50 reflects that her MSS appointment was effective as of June 2007. (See Also Agency’s Answer to Employee’s Petition for Appeal at Tab 1).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at Page 4.

<sup>5</sup> Employee’s Memorandum on Jurisdiction (April 18, 2016).

<sup>6</sup> *Id.* at Page 3.

<sup>7</sup> *Id.* at Page 6.

<sup>8</sup> Agency Answer to Employee’s Petition for Appeal (March 17, 2016).

<sup>9</sup> *Id.* at Tab 3.

District government with a fifteen (15) day notice.”<sup>10</sup> Agency also asserts that Employee’s termination notice dated January 4, 2016, indicated that because her MSS position was ‘at-will’, it was neither appealable nor grievable. Agency maintains that since Employee’s position was a MSS appointment, OEA lacks jurisdiction over this matter.

### ***Jurisdiction***

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. According to 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1<sup>11</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the 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.” This Office has no authority to review issues beyond its jurisdiction.<sup>12</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>13</sup> Employees have the burden of proof for issues regarding jurisdiction and must prove jurisdiction by a preponderance of evidence.

In the instant matter, I agree with Agency’s assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Answer to Employee’s Petition for Appeal, that Employee’s position was a MSS appointment, and as such, she was classified as an ‘at-will’ employee. The D.C. Personnel Regulations, Chapter 38, § 3813.1, provides that “*an appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination (Emphasis Added).*” Further, D.C. Personnel Regulations Chapter 38, § 3813.7 indicates that “terminations from an MSS appointment are not subject to administrative appeals.” Here, Employee’s appointment to the MSS Supervisory Parking Enforcement Officer

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<sup>10</sup> *Id.*

<sup>11</sup> See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

<sup>12</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>13</sup> See *Brown v. District of Columbia Public Schools*, 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).

position was made effective on June 24, 2007.<sup>14</sup> Employee does not dispute her MSS status in her Petition for Appeal, and her Standard Form 50 (SF-50) reflects her MSS status at the time of termination.<sup>15</sup>

This Office has held that while there are procedural protections afforded to Career service employees, MSS employees are excluded from those protections.<sup>16</sup> Moreover, D.C. Official Code § 1-609.05 (2001), provides that “at-will employees do not have any job protection or tenure.” It is well established in the District of Columbia that “an employer may discharge an ‘at-will’ employee for any reason or no reason at all.”<sup>17</sup> In the instant matter, Employee was provided a fifteen (15) day notice of her termination as required by the District Personnel Regulations. Additionally, this notice also included a statement indicating that her termination was neither appealable or grievable.<sup>18</sup>

In her Memorandum on Jurisdiction dated April 18, 2016, Employee asserts that during her tenure with Agency, she was subject to disparate treatment based on her gender, and argues that she should be treated as a whistle blower, therefore giving OEA jurisdiction over this matter.<sup>19</sup> However, I find that Employee’s status as a MSS, ‘at-will’ employee at the time of her termination preemptively precludes this Office from any further review of the merits of this case, as this Office lacks the jurisdictional authority to do so. Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a “preponderance of evidence.” I have determined that Employee did not meet this burden. For these reasons, I find that OEA lacks jurisdiction to adjudicate this matter.

#### ORDER

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

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge

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<sup>14</sup> Agency’s Answer to Employees Petition for Appeal (March 17, 2016).

<sup>15</sup> Agency Answer to Employee’s Petition for Appeal at Tab 1 (March 17, 2016).

<sup>16</sup> *Charlotte Richardson v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0013-14 (January 9, 2014).

<sup>17</sup> *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.* 597 A.2d 28, 30 (D.C. 1991).

<sup>18</sup> Employee’s Petition for Appeal (February 11, 2016).

<sup>19</sup> Employee’s Memorandum on Jurisdiction at Page 3 (April 18, 2016).