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

_____)	
In the Matter of:)	
)	
BRENDA WADE,)	
Employee)	
)	OEA Matter No. J-0040-16
v.)	
)	Date of Issuance: May 20, 2016
D.C. DEPARTMENT OF CONSUMER)	
AND REGULATORY AFFAIRS,)	
Agency)	
_____)	Michelle R. Harris, Esq.
)	Administrative Judge
Brenda Wade, Employee, <i>Pro Se</i>		
Adrienne Lord-Sorensen, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 31, 2016, Brenda Wade (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Consumer and Regulatory Affairs’ (“Agency” or “DCRA”) proposed removal. On April 8, 2016, Agency filed its Motion to Dismiss Employee’s Petition for Appeal.

I was assigned this matter on April 8, 2016. Agency noted in its Motion to Dismiss that OEA does not have jurisdiction over this appeal because Employee is not appealing a final agency decision. Consequently, on April 11, 2016, I issued an Order directing Employee to address whether OEA has jurisdiction over this matter. Employee’s response was due on or before April 25, 2016. Agency’s response was due on or before May 9, 2016. Employee did not submit a response by the deadline as required by the Order. On May 2, 2016, I issued an Order to Show Cause. Employee had until May 13, 2016, to file her brief on jurisdiction and a statement of good cause for her failure to submit a response to the April 11, 2016, Order. Employee submitted a response on May 13, 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.

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 works for Agency as a Program Support Assistant. In an Advance Notice of Proposed Removal dated March 22, 2016, Employee was notified that in accordance with Section 1618 of the District Personnel Manual (“DPM”), this was a thirty (30) day proposed removal action based on the charge of theft.¹

Employee’s Position

Employee concedes and takes responsibility for the actions as indicated in the Advance Notice.² Employee asserts that she has emotional and substance abuse issues.³ Employee indicates that she is in therapy and that she would like another opportunity to prove that she is capable of being trustworthy.

Agency’s position

Agency asserts that OEA does not have jurisdiction over this matter. Agency argues that Employee is appealing an Advance Notice of Proposed Removal, which is not a “final agency action” appealable to this Office.⁴ Agency asserts that the Advance Notice alleged that Employee violated §§ 1607.2(a)(4) and § 1607.2(b)(2) of the DPM. Additionally, Agency asserts that the Advance Notice placed Employee on administrative leave with pay, and advised Employee of her right to an administrative review by a hearing officer.⁵ Agency argues that as of the date of the filing of its Motion to Dismiss, that a final agency decision had not been rendered. Agency argues that in accordance with OEA Rule 604.1, OEA’s jurisdiction only extends to a final agency decision. Further, Agency asserts that because this appeal involves an advance notice of proposed removal, Employee’s Petition for Appeal with OEA is premature, and as such, it should be dismissed for lack of jurisdiction.

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”) § 604.1⁶, 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

¹ Employee’s Petition for Appeal, Notice Letter (March 31, 2016).

² *Id.* at Page 4 (March 31, 2016).

³ Employee’s Response on Jurisdiction (May 13, 2016).

⁴ Agency’s Motion to Dismiss at Page 2 (April 8, 2016).

⁵ *Id.*

⁶ *See also*, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

(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.⁷ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁸

In the instant matter, I agree with Agency’s assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Motion to Dismiss that Employee has only received an Advance Notice of Proposed Removal and as such, has prematurely filed a Petition for Appeal with OEA. As previously cited, this Office’s jurisdiction is limited to appeals related to performance ratings that result in removals, an adverse action that causes removal or suspension of ten (10) days or more, a reduction in force or grade, and enforced leave of ten (10) days or more. Here, Employee submitted the Advance Notice of Proposed Removal as the cause of action in her appeal. Additionally, while Agency reviews this matter, Employee has been placed on administrative leave with pay.

To date, there is no evidence in the record to suggest that Employee has been suspended for ten (10) days or more, removed from her position or otherwise subject to an adverse action that is appealable to OEA. This Office has consistently held that appeals must be filed following a final agency decision.⁹ Additionally, Employee is on administrative leave with pay, and as such, is still employed by Agency at this time. 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. Consequently, I find that Employee has prematurely filed her Petition for Appeal. For this reason, I find that this Office does not have jurisdiction over this current appeal. Accordingly, I find that OEA lacks jurisdiction to adjudicate this matter.

ORDER

It is hereby **ORDERED** that Agency’s Motion to Dismiss is **GRANTED**, and the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge

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

⁸ 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).

⁹ *Roland Tyler v. District of Columbia Department of Transportation*, OEA Matter No. J-0048-15 (March 17, 2015).