

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager 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:)	
)	
EMPLOYEE ¹)	OEA Matter No. J-0080-22
)	
v.)	Date of Issuance: December 2, 2022
)	
D.C. DEPARTMENT OF MOTOR VEHICLES,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
Employee, <i>Pro Se</i>		
David Glasser, Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 26, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Motor Vehicles’ (“Agency” or “DMV”) decision to terminate him from his position as a Service Center Manager, effective July 30, 2022. OEA issued a Request for Agency Answer to Petition for Appeal on August 26, 2022. Agency filed its Answer, and Motion for Summary Disposition in Favor of the Department of Motor Vehicles or in the Alternative Dismissal of the Petition based on Lack of Jurisdiction on September 19, 2022. Agency noted therein that Employee was an “at-will” employee, because he was in the Management Supervisory Services (“MSS”) at the time of his termination and therefore, he cannot appeal this termination to OEA. This matter was assigned to the undersigned on October 4, 2022.

Subsequently, I issued an Order on October 5, 2022, requiring Employee to address the jurisdictional issue raised by Agency in its September 19, 2022, Motion. Employee’s brief on jurisdiction was due on or before October 19, 2022. Employee did not comply with the October 5, 2022, Order. Thereafter, on October 20, 2022, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the October 5, 2022, Order. Employee had until November 4, 2022, to respond to the Statement of Good Cause Order. On

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

November 7, 2022, Employee responded to the October 20, 2022, Order. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

As explained below, the jurisdiction of this Office, has not been established pursuant to *D.C. Official Code, § 1-606.03 (2001)*.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.²

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, 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.

ANALYSIS AND CONCLUSIONS OF LAW

Employee’s Position

Employee notes in his November 7, 2022, submission that he received the October 5, 2022, Jurisdiction Order on October 25, 2022, and that is why he did not comply with the terms of the Order. Employee also stated that he only received the Show Cause Order on November 4, 2022. Employee noted that the only information he was provided with as a reason for his termination was that Agency Director “had decided that he wanted to go in a different direction.” Employee did not address the jurisdiction issue in his submission to this Office. He averred that he was not afforded his due process and Agency unjustly terminated him.³ Additionally, Employee stated on Question 12 of his Petition for Appeal filed with OEA that his position was

² OEA Rule § 699.1.

³ Employee’s November 7, 2022, Submission.

under Management Supervisory Service (“MSS”). He also noted that he had an “at-will” appointment. Additionally, in response to Question 14, of the OEA Petition for Appeal form, Employee also provided that “because I am an MSS employee, I was not given a reason as to why I was terminated.”⁴

Agency’s Position

Agency stated in its September 19, 2022, submission, that OEA lacked jurisdiction over this matter because Employee was appointed to an MSS position, he was an at-will employee and could be terminated at any time.⁵

*Analysis*⁶

The threshold issue in this matter is one of 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, of permanent employees in Career and Educational Service who are not serving in a probationary period, or who have successfully completed their probationary period. According to 6-B DCMR § 604.1, 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) Placement on enforced leave for 10 days or more.

As previously noted, OEA Rule 631.2 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

⁴ Employee’s Petition for Appeal (August 26, 2022).

⁵ Agency Answer and Motion for Summary Disposition in Favor of the Department of Motor Vehicles or in the Alternative Dismissal of the Petition based on Lack of Jurisdiction (September 19, 2022).

⁶ 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”).

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

Chapter 16 of the District Personnel Manual (“DPM”) § 1600, affords adverse action protection only to Career and Educational Service Employees. DPM § 1600.2(h) specifically states that employees in the MSS are excluded from coverage. Thus, the procedural protections (notice, hearing and appeal rights) applicable to Career and Educational Service employees are not applicable to MSS employees. Furthermore, D.C. Official Code §1-609.51 provides in pertinent part that, “persons appointed to the Management Supervisory Service are not in the Career... Service.” In addition, DPM § 3801.4 provides that “[p]ersons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Services.” Here, Employee cites in his August 26, 2022, Petition for Appeal that he was an MSS employee at the time of his termination. DPM § 3800.3 highlights that, “[i]n accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54), an appointment to the Management Supervisory Service is an at-will appointment.” Additionally, this Office has consistently held that it lacks jurisdiction over “at-will” employees.⁹ Accordingly, I find that this Office does not have jurisdiction over this appeal since Employee was classified in MSS and not a Career or Educational service employee.

Moreover, it is well established in the District of Columbia that, an employer may discharge an at-will employee “at any time and for any reason, or for no reason at all.”¹⁰ DPM § 3813.1 further notes that “[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.” Based on the record, Employee was issued a notice of termination on July 15, 2022, and the termination was effective on July 30, 2022. Consequently, I conclude that Agency fulfilled its obligation by providing Employee with sufficient written notice of its decision to terminate Employee.

Based on the foregoing, I find that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

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 General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁹ *Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, *Opinion and Order on Petition for Review* (February 10, 2004); *Jenkins v. Department of Public Works*, OEA Matter No. 1601-0037-01, *Opinion and Order on Petition for Review* (April 5, 2006); and *Minter v. D.C. Office of Chief Medical Examiner*, OEA Matter No. J-0116-07, *Opinion and Order on Petition for Review* (July 22, 2009).

¹⁰ *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).

ORDER

It is hereby **ORDERED** that Agency's Motion for Summary Disposition in Favor of the Department of Motor Vehicles or in the Alternative Dismissal of the Petition based on Lack of Jurisdiction is hereby **GRANTED**. It is further **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and

FOR THE OFFICE:

/s/ *Monica N. Dohnji*

MONICA DOHNJI, Esq.

Senior Administrative Judge