**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| STEPHANNIE HUEY, | ) | |
| Employee | ) | OEA Matter No.: 1601-0113-15 |
| | ) | |
| v. | ) | Date of Issuance: November 2, 2015 |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | MONICA DOHNJI, Esq. |
| Agency | ) | Administrative Judge |
| | ) | |

Stephannie Huey, Employee *Pro se*
Lynette Collins, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 27, 2015, Stephannie Huey ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("DCPS" or "Agency") decision to terminate her from her position as a Math Teacher, effective August 7, 2015. On September 2, 2015, Agency filed its Answer to Employee's Petition for Appeal, along with a Motion to Dismiss, alleging that Employee was a probationary employee at the time of her termination and that this Office lacks jurisdiction to hear this matter.[1] On September 24, 2015, Employee filed a Motion to Deny Agency's Motion to Dismiss Employee's Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge ("AJ") on September 25, 2015. Thereafter, on September 25, 2015, Agency submitted a Response to Employee's Opposition to the Agency's Motion to Dismiss. On October 8, 2015, Employee filed a Motion in Response to the Agency's Motion to Dismiss. 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 will be explained below, the jurisdiction of this Office has not been established.

[1] Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal (September 2, 2015).

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In a letter dated May 20, 2014, Agency offered Employee a 10-month full time Teaching position at Cardozo High School ("Cardozo"), with an effective date of August 11, 2014. This letter also stated that Employee's employment status was "probationary for a period of two (2) school years."[2] Subsequently, Employee was served with a notice of Ineffective IMPACT Rating and Termination, with an effective date of August 7, 2015.[3]

***Employee's position***

Employee argues that at no point did Agency convey in the offer letter during the contractual offer of employment that this was a probationary position. Employee further contends that if Agency had disclosed in the offer letter that the position was a probationary position, she would have never jeopardized her full-time vested and tenure position with the Birmingham City Schools. Employee further argues that her position is covered by the Collective Bargaining Agreement ("CBA") between Agency and the Washington Teachers' Union ("WTU"), and Agency violated CBA Articles 6, 7, and 15, in its application of the IMPACT evaluation instrument. Employee additionally, asserts that Agency did not disclose the IMPACT evaluation process in the offer letter. Consequently, Agency's Motion to Dismiss should be denied, and OEA should maintain full jurisdiction over this matter.[4]

In addition, Employee contends that pursuant to section 15.5 of the CBA, "Employees maintain their rights to appeal below average or unsatisfactory performance evaluating [sic] pursuant to Title 5 of the DCMR, Section 1306.8-1306.13." Employee explains that the above referenced section of the CBA preserves the legal rights of all employees to appeal to OEA, in the event a rule was not followed. She further explains that there is no stipulation made as to the status of the employee being probationary or permanent prohibiting the employee from appealing to OEA. She also notes that there is no section in the CBA that addresses the probationary period of an employee.[5]

***Agency's position***

Agency notes in its Answer that a term or an employee removed during a probationary period cannot appeal their removals to OEA. Agency explained that Employee was hired by

[2] Agency's Response to Employee's Opposition to the Agency's Motion to Dismiss (September 25, 2015); See also Employee's Motion to Deny Agency's Motion to Dismiss Employee's Petition for Appeal at Tab 2. (September 24, 2015).
[3] Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal, *supra,* at Tab 1.
[4] Employee's Motion to Deny Agency's Motion to Dismiss Employee's Petition for Appeal, *supra*.
[5] Employee's Motion in Response to the Agency's Motion to Dismiss (October 8, 2015).

DCPS in the ET salary class, with an effective hire date of August 11, 2014. Employee was subsequently terminated effective August 7, 2015, prior to reaching her two (2) years anniversary. Therefore, Employee was still in probationary status when she was terminated. And since OEA does not have jurisdiction to hear appeals by probationary employees, Employee's complaint must be dismissed.[6]

***Analysis***

The threshold issue in this matter is one of jurisdiction. 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] 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 not relevant to this case, of permanent employees in Career and Education Service who are *not serving in a probationary period*, or who have successfully completed their probationary period (emphasis added).

In the current matter, Employee was hired effective August 11, 2014, and terminated effective August 7, 2015. Contrary to Employee's assertion, the offer letter specifically informed Employee that her employment status was "probationary for a period of two (2) school years."[9] August 11, 2014, to August 7, 2015, is less than two (2) years. Additionally, Employee argues that, if Agency disclosed in the offer letter that the position was a probationary position, she would have never jeopardized her full-time vested and tenure position with the Birmingham City Schools. Agency in fact disclosed this information to Employee in the offer letter, and it can be reasonably inferred that as a Teacher, Employee read the offer letter before signing it, and thus, she was aware of the terms of her employment, including the part that highlighted the fact that she would serve as a probationary employee for a period of two (2) school years. Based on the foregoing, I find that Employee was a probationary employee at the time of her termination.

Additionally, Employee contends that section 15.5 of the CBA preserves the legal rights of all employees to appeal to OEA, in the event a rule was not followed. She explains that there is no stipulation made as to the status of the employee being probationary or permanent

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[6] Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal, *supra; See also* Agency's Response to Employee's Opposition to the Agency's Motion to Dismiss.
[7] *See Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[8] *See Brown v. District of Columbia Public. School*, 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] Agency's Response to Employee's Opposition to the Agency's Motion to Dismiss (September 25, 2015); See also Employee's Motion to Deny Agency's Motion to Dismiss Employee's Petition for Appeal at Tab 2. (September 24, 2015).

prohibiting the employee from appealing to OEA. She also explains that the CBA does not address the issue of the probationary period of an employee. As noted above, both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals of permanent employees in Career and Education Service who are *not serving in a probationary period*, or who have successfully completed their probationary period (emphasis added). In the current matter, there is sufficient evidence in the record to highlight that Employee was a probationary employee when she was terminated. She did not complete the two (2) school years probationary period as noted in her offer letter. Moreover, the CBA is a contractual agreement between the WTU and DCPS, and it does not have any bearing on the jurisdictional authority of this Office. And since the CMPA and OPRAA specifically limits this Office's jurisdiction to appeals filed by permanent Career and Education service employees *who are not serving a probationary period*, the CBA between the parties cannot extend the jurisdiction of this Office.

Furthermore, Chapter 8, § 814.3 of the District Personnel Manual ("DPM") states that a termination during the probationary period cannot be appealed to this Office. Moreover, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.[10] Thus, I find that this Office lacks jurisdiction in this matter because the record shows that Employee was still in probationary status at the time of her termination.

In addition, Chapter 5-E of the District of Columbia Municipal Regulations ("DCMR") section 1307.3 provides that, "[a]n initial appointee to the ET salary class shall serve a two (2) year probationary period requirement." Furthermore, 5-E DCMR § 1307.6 states in pertinent part that "Failure to satisfactorily complete the requirements of the probationary period shall result in termination from the position." Pursuant to the aforementioned sections, Educational service employees who are serving in a probationary period are precluded from appealing a removal action to this Office, until their probationary period is over. Employee in the instant matter was hired in the ET salary class. Employee was hired effective August 11, 2014, and terminated effective August 7, 2015. This is less than two (2) years. Accordingly, I find that, Employee was removed from service when she was still within the two (2) years of her probationary period. For these reasons, I conclude that Employee is precluded from appealing her removal to this Office.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 628.1, *id*, as 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." Based on the foregoing, I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

[10] *See, e.g., Day v. Office of the People's Counsel,* OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

ORDER

It is hereby ORDERED that the Petition for Appeal is **DISMISSED** and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge