THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. J-0023-25
	)	
v.	)	Date of Issuance: August 25, 2025
	)	
D.C. COMMISSION ON JUDICIAL DISABILITIES AND TENURE,	)	MONICA DOHNJI, ESQ.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Michele McGee, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 18, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Commission on Judicial Disabilities and Tenure's ("Agency" or "CJDT") decision to terminate her from her position as an Administrative Officer ("AO"), effective January 15, 2025. OEA issued a Request for Agency Answer to Petition for Appeal on February 18, 2025. Thereafter, on March 20, 2025, Agency filed its Answer and Motion to Dismiss stating that Employee was in her probationary period at the time of her termination and as such, OEA lacked jurisdiction over this matter.

I was assigned this matter on March 20, 2025. Thereafter, I issued an Order on March 24, 2025, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee's brief on jurisdiction was due on or before April 8, 2025, and Agency had the option to file a reply brief on or before April 22, 2025. Employee filed her brief on April 8, 2025, noting that OEA had jurisdiction over this matter because she was a permanent career service employee who had completed her probationary period. On April 22, 2025, and again on May 6, 2025, Agency filed motions for Extension of Time to File its brief. On May 9, 2025, Agency filed its Brief Regarding Jurisdiction. Thereafter, on May 23, 2025, Employee filed a Jurisdiction Brief in support of Reversal and Reinstatement. On May 27, 2025, the undersigned issued an Order requiring Agency to submit additional documentation by June 10, 2025. Subsequently, on June 5, 2025, Agency filed a

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

Motion to Extend time to file its Supplemental Brief. The undersigned issued an Order on June 9, 2025, granting Agency's Motion, and extended Agency's filing deadline to July 1, 2025. Subsequently, on July 1, 2025, Agency filed another Motion to Extend time to file its Supplemental Brief, citing that it would submit its brief by July 15, 2025. Following Agency's failure to submit its brief by the July 15, 2025, deadline as stated in its July 1, 2025, Motion, the undersigned issued an Order for Statement of Good Cause to Agency on July 17, 2025. The undersigned required Agency to submit its supplemental brief and a Statement of Good Cause by July 31, 2025. Agency timely filed its supplemental brief and response to the Statement of Good Cause. Subsequently, Employee filed a Motion to Strike Agency's Untimely Filing and Request for Sanctions.[2] Because I determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

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

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.[3]

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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee's position

Employee asserts in her Petition for Appeal that she has been employed with the District of Columbia Government for over twelve (12) years without a break in service.[4] Additionally,

[2] This Motion is hereby DENIED.
[3] OEA Rule § 699.1.

Employee states in her brief that she is a permanent career service employee who was summarily terminated under the pretext of probationary status.[5] Employee reiterates that she has been a permanent career service employee with no break in service since August 14, 2012.[6] Employee cites that Agency's assertion that she is a probationary employee is factually false, legally incorrect, contradicted by her personnel record, and the circumstances of her appointment and service.[7] Employee explains that she completed a twelve (12) month probationary period after her appointment in 2012, followed by an eighteen (18) month probationary period in 2014.

According to Employee, her appointment with Agency in 2024, was a Career Service Promotion, as stated in the first paragraph of her offer letter and pursuant to the District Personnel Manual ("DPM") Section 234.1.[8] Employee asserts that her Standard Form 50 ("SF-50") dated April 12, 2024, and January 15, 2025, both listed her 'tenure code' as '1' under block '24', thus affirming her permanent career service status and refuting Agency's probationary status claims. Employee explains that pursuant to DPM Chapter 24, section 2413.3, which governs Reduction-in-Force ("RIF"), "Tenure Group 1 shall include each employee who is not serving a probationary period." Thus, her inclusion in Tenure Group 1 confirms her status as a permanent employee with full employment rights and protection. Employee also highlights that the SF-50 is the official and legal binding personnel record that determines tenure status and all associated employment protection and benefits. Employee states that Agency's assertion that she was required to serve a probationary period based on a pre-employment and conditional offer letter is legally flawed and unsupported.[9]

Employee further argues that pre-employment language does not supersede or override official personnel records or DCHR regulations. Employee highlights that the term 'generally' as used in 6-B District of Columbia Municipal Regulations ("DCMR") section 223.2 which Agency relied on, "demonstrates that the rule is not absolute." Employee notes that DCHR regulations "make clear that tenure status is governed by official appointment documentation – not discretionary or conditional pre-employment statements."[10]

Employee also cites that the language in her offer letter signed on March 14, 2024, explicitly states that her position with Agency was a Career Service Promotion and not a probationary or conditional appointment. Employee explains that pursuant to DPM section 234.1, "a promotion occurs when an employee is permanently appointed to a position at a higher equivalent grade or to a position with additional promotion potential."[11] Employee further states that the former Agency Executive Director did not present her with a waiver of her rights to a permanent career service promotion in compliance with DPM sections 237.2 and 237.4. Thus, "any attempt to diminish or disregard my rights as a permanent career service employee lacks legal authority."[12]

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[4] *See.* Employee's Petition for Appeal at pg. 32 (February 18, 2025). *See also*. Employee's Response to Establish Jurisdiction (April 8, 2025).
[5] Employee's Response to Establish Jurisdiction (April 8, 2025).
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.

On May 23, 2025, Employee filed a Brief on Jurisdiction in Support of Reversal and Reinstatement.[13] Employee asserts in this brief that Agency's justification for her termination has shifted multiple times. She states that her termination was pretextual and retaliatory. Employee's May 23, 2025, brief reiterates her arguments as presented in her April 8, 2025, brief. Employee also cites that Agency cannot retroactively invoke statutory exemption. Employee avers that while D.C. Code § 1-204.31(d) applies to appointments, it is silent on terminations and provides no exemption on rules governing adverse actions if appointed under the authority of the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"). Employee also argues that unlike other independent agencies within the District of Columbia, CJDT has no codified personnel rules or policies in the DCMR, thereby, rendering Agency's claim to independent personnel authority functionally and legally meaningless. Additionally, Employee states that Agency selectively invoked the DPM to justify termination, while simultaneously denying its application to her appointment.[14]

Employee argues in her Motion to Strike Agency's Untimely Filing and Request for Sanctions that Agency conceded that Employee's current position (Administrative Officer) did not require a different educational requirement, licensure or certification. Employee cites that Agency is attempting to "stretch the 'other similar requirement' clause" and this interpretation is "inconsistent with both the text and purpose of [6B DCMR] 226.2: …" Employee asserts that complexity of duties or volume of work is not similar to an education, license or certificate requirement "because it does not reflect an objective, pre-hire qualification that must be met before appointment." Employee contends that complexity is not a probation trigger. She explains that "if mere claims of "more complex duties" qualify as: ["]similar requirements," any agency could circumvent 226.2 protections simply by asserting that the new role was "more complex" than the prior one. This would render the regulations meaningless."[15] Additionally, Employee argues that her salary is not relevant to 6B DCMR § 226.2. She notes that the regulation makes no reference to salary as a factor in determining probationary status.[16]

Employee provides a comparison of her prior job duties at DOES and her current job duties at Agency. Employee avers that she completed her probationary period in 2013 in the GS-0300 series and subsequently served several years in the GS-0340 Program Management Series, a higher-level classification than Agency's GS-0341 Administrative Officer role. Employee explains that the GS-0340 Program Management Series "… involves directing and managing programs (Records, Fleets and Risk Management) requiring executive-level decision-making. The GS-0341 Administrative Officer role is a support/management service position. Serving successfully for years in the higher 0340 classification inherently meets or exceeds the AO's qualification." Thus, Employee cites that no statutory trigger exists for a second probationary period and Agency's imposition of one is unlawful.[17]

Employee states that the CMPA applies to all District government employees unless expressly exempted. Employee notes that D.C. Code 1-604.06(b) and 1-602.03 lists personnel authority exemption, and CJDT is not listed. Employee cites that pursuant to D.C. Code 1-603.01(14), the Mayor and their designee are the personnel authority for CJDT's career service

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[13] Employee did not seek the undersigned's approval to submit additional brief. Employee already submitted her brief on Jurisdiction on April 8, 2025, in compliance with the undersigned's March 24, 2025, Order.
[14] *Id*.
[15] Motion to Strike Agency's Untimely Filing and Request for Sanctions (August 14, 2025).
[16] *Id*.
[17] *Id*.

employees. Citing to case law,[18] Employee asserts that the D.C. Court of Appeals "clarified that an agency's administrative independence does not grant it autonomy over employment decisions." Employee states that the D.C. Court of Appeals in *Sims* opined that "Personnel authority is conferred by statue – not by title or agency independence." She cites that the *Sims* Court held that "an agency cannot unilaterally exempt a Career Service employee from Career Service protections, even if it has independent authority under a separate statute."[19]

Employee asserts that Agency's reliance on D.C. Code 11-1525(b) is misplaced. She cites that Agency's argument collapses under the plain language of D.C. Code 11-1525(d). She avers that her salary was determined by the Director of the District of Columbia Department of Human Resources ("DCHR") as evinced in the justification letter.[20] Employee contends that she was hired as a career service transfer under DCHR PeopleSoft and not as an "independent contract appointment." She further notes that Agency sought a pay exception from DCHR, the District's designated personnel authority.[21] Employee contends that CJDT does not have clear and explicit language in any statute granting personnel and independent authority, and that there is no reference to exemption from and independence of the Mayor's personnel system.[22]

Agency's position

Agency states in its Answer and Motion to Dismiss that Employee was terminated during her one-year probationary period. Agency explains that on February 23, 2024, it formally offered Employee a career service position (Administrative Officer CS-0341-15/00) with a start date of March 10, 2024, and a requirement to satisfactorily complete a one-year probationary period, beginning March 10, 2024. Agency avers that Employee's start date was delayed until April 7, 2024, and on March 14, 2024, Employee was issued a second offer letter, with the same terms and conditions as the February 23, 2024, letter, but with a start date of April 7, 2024. This second offer letter also required Employee to complete a one-year probationary period beginning April 7, 2024, and ending April 7, 2025.[23] Agency notes that to memorialize these terms and conditions, it issued an SF-50 dated April 7, 2024, which noted that Employee "was hired into career service on probation."[24] Agency asserts that Employee was terminated effective January 29, 2025, while she was still serving her probationary period, and that an SF-50 was issued to Employee citing that she was terminated during her probationary period.[25]

Agency contends that OEA lacks jurisdiction over appeals filed by probationary employees. Agency maintains that OEA was established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001) and later amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, and both the CMPA and the OPRAA conferred limited jurisdiction on OEA to hear certain appeals from employees in Career and Education Service who are not serving in a probationary period. Citing to

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[18] *Nathaniel Sims v. District of Columbia*, 64 A.3d 127(D.C. 2013).
[19] Motion to Strike Agency's Untimely Filing and Request for Sanctions, *supra*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] Agency's Answer and Motion to Dismiss (March 20, 2025). *See also*. Agency's Brief Regarding Jurisdiction (May 9, 2025).
[24] *Id*. at Exhibit 5.
[25] *Id*. at Exhibit 7.

case law and 6-B DCMR section 227.4, Agency avers that D.C. government employees serving probationary periods have no right to appeal their separation to OEA.[26] Agency asserts that Employee was aware that she was required to serve a one-year probationary period beginning April 7, 2024, ending April 7, 2025, because it was clearly stated in both the February 23, 2024, and March 14, 2024, offer letters.[27]

Agency cites in its Brief on Jurisdiction that it is an independent agency with its own personnel authority, and not subject to the administrative control of the mayor. Agency claims that Employee's employment was with CJDT, and not with a mayoral agency whose personnel authority is subject to the DPM.[28] Citing to D.C. Code § 11-1525(b), Agency asserts that the Reorganization Act makes it clear that CJDT "is authorized, without regards to the provisions governing appointment and classification of District of Columbia Employees." Agency maintains that as an independent Agency, it is not bound by provisions in the D.C. Code or regulations governing appointment and classification of District of Columbia employees. "Therefore, it may appoint and fix compensation for employees as it sees fit. That authority includes the probationary "classification" that Employee now challenges." Agency cites that it was well within its statutory authority to hire Employee to a probationary term, thus, Employee's appeal should be dismissed for lack of jurisdiction.[29]

Additionally, Agency asserts that Employee was not reassigned to CJDT at the District's discretion. Instead, she applied for a new probationary position; was interviewed and selected for the position and received a considerably higher salary. Agency cites that Employee voluntarily and knowingly pursued a position with less job security, in exchange for a greater financial potential. Agency notes that it offered Employee a salary that was $46,650, more than what Employee was making at D.C. Department of Employment Services ("DOES"). Agency states that it is not its "fault that Employee is now unhappy with the deal that she voluntarily and knowingly made." Agency also highlights that if Employee's "interpretation was that her prior probationary status with DOES rendered her immune to at-will firing by CJDT, that interpretation was certainly never discussed with CJDT (to, at least, give CJDT an opportunity to correct her misconception)."[30]

Agency argues that assuming it did not have independent personnel authority, Employee's voluntary and knowing agreement to Agency's offer letter which provided for a one-year probationary period would control. Agency states that Employee was not promoted within DOES nor was she reassigned or transferred. She applied for a new position on her own terms. Agency further notes that even if the conditions of Employee's employment with Agency were subject to the terms of the DPM, they would be outside the bounds of DPM §§ 237.2 and 237.4.[31]

Agency reiterates in its Supplemental Brief that CJDT is an independent agency with its own personnel authority and therefore not bound by provisions in the D.C. Code, or regulations governing appointment and classification of District Government employees. It argues that the Reorganization Act provides that CJDT "is authorized, without regard to the provisions governing appointments and classification of District of Columbia employee to *appoint and fix the compensation of, or to contract*

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[26] *Id*.
[27] *Id*. at Exhibits 1, 2, 3, and 4.
[28] Agency's Brief Regarding Jurisdiction (May 9, 2025).
[29] *Id*.
[30] *Id*.
[31] *Id*.

for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties."[32]

Agency avers that it is a small independent agency without a dedicated HR staff member. Therefore, to obtain HR services, it has a Memorandum of Understanding ("MOU") with DCHR to handle its HR functions such as drafting of position description, job posting, collecting applications, pre-employment screening, hiring and employee onboarding. Agency notes that throughout Employee's hiring process, it remained an independent agency making its own personnel decision to include classifying Employee as a probationary employee. Agency further argues that 6-B DCMR 226.2 does not apply to CJDT because it is an independent agency with its own hiring authority, and therefore not subject to rules regarding probationary periods.[33]

According to Agency, Employee's AO position at CJDT was unlike her prior position within the District government. Agency contends that the AO position was sufficiently distinct from Employee's prior position to justify a new probationary period. Agency notes that while the AO position did not require Employee to obtain different licensure or certification, Employee was paid substantially higher ($46,650) to perform more complex job and involved duties. Agency avers that this raise was justified by the unique nature of the AO position and many expectations and responsibilities on the AO. Agency cites that unlike Employee's previous position as a Program Manager at DOES, the AO position required more than simple administrative support and contract procurement. Agency highlights that "Employee's position with CJDT required her to conduct studies and complete projects related to administrative management." Agency also states that the AO position "required Employee to analyze policies, practices, organizational directives and business practices as well as to recommend new and revised policies. Employee's role in budget and financial management was also more extensive at CJDT than at her prior agency. In the AO position, Employee compiled and analyzed budget data, manage expenditure, and maintained records… as an AO with CJDT, Employee was responsible for property and space management, tasks which were not part of her prior job." Agency maintains that Employee's AO position at CJDT was substantially different because it required Employee to perform more complex duties than her prior position, thereby warranting a new probationary period. Agency cites that because Employee was terminated during her probationary period, OEA lacks jurisdiction over Employee's appeal.[34]

Analysis[35]

Independent Agency

Agency argues in its submissions to this Office that CJDT is an independent agency with its own personnel authority, and not subject to the administrative control of the mayor. Agency claims that Employee's employment was with CJDT, and not with a mayoral agency whose personnel authority is subject to the DPM. Citing to D.C. Code § 11-1525(b), Agency asserts that the Reorganization Act makes it clear that CJDT is authorized, without regard to the provisions

[32] Agency's Supplemental Brief (July 31, 2025).
[33] *Id*.
[34] *Id*.
[35] 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").

governing appointment and classification of District of Columbia Employees to *appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties*. Agency maintains that as an independent Agency, it is not bound by provisions in the D.C. Code or regulations governing appointment and classification of District of Columbia employees. "Therefore, it may appoint and fix compensation for employees as it sees fit. That authority includes the probationary "classification" that Employee now challenges."

Employee however argues that Agency cannot retroactively invoke statutory exemption. She avers that while D.C. Code § 1-204.31(d) applies to appointments, it is silent on termination and provides no exemption on rules governing adverse actions if appointed under the authority of the District of Columbia CMPA. Employee states that the CMPA applies to all District government employees unless expressly exempted. Employee notes that D.C. Code 1-604.06(b) and 1-602.03 lists personnel authority exemption, and CJDT is not listed. She cites that unlike other independent agencies within the District of Columbia, CJDT has no codified personnel rules or policies in the DCMR. Thereby, rendering Agency's claim to independent personnel authority functionally and legally meaningless. Employee avers that pursuant to D.C. Code 1-603.01(14), the Mayor and their designee are the personnel authority for CJDT's career service employees. She asserts that Agency selectively invoked the DPM to justify termination, while simultaneously denying its application to her appointment.

The CJDT is a District of Columbia agency under the Judicial Branch. CDJT was created by the District of Columbia Court Reorganization Act of July 29, 1970, and not subject to the administrative control of the mayor. Pursuant to D.C. Code § 11-1525(a), "…the Commission *shall be deemed an independent agency* as defined in section 3(5) of that Act (D.C. Official Code, sec. 2-502)." (Emphasis added). D.C. Code § 11-1525(b) further provides that "the Commission is authorized, *without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties*." Based on the above provisions, I find that CJDT is an independent agency with its own personnel authority and not subject to the administrative control of the mayor.

Moreover, DPM sections 100.3-4 provide that: (3) "The Mayor has "personnel authority" over District government *subordinate agencies* under his or her direct administrative control, and may delegate that personnel authority… (4) Other District agencies have been established as "*independent agencies" and have "independent personnel authority" separate and apart from the Mayor*…." (Emphasis added). As noted above, CJDT is not a subordinate agency under the Mayor's administrative control, but rather, it was created as an independent agency with its own personnel authority. Therefore, I agree with Agency's assertion that it is not bound by the provisions in the D.C. Code or regulations governing appointment and classification of District of Columbia employees. Accordingly, I find that as an independent agency with its own personnel authority, CJDT may appoint, classify and fix compensation for employees as it sees fit. As such, I conclude that CJDT was within its rights to require Employee to complete a one (1) year probationary period and to classify Employee as a 'Career -Probation' employee when she was hired as an AO.

Assuming *arguendo* that CJDT was not an independent agency and was subject to the personnel authority of the mayor, I find that Employee was a probationary employee at the time of

her termination, and this Office has no authority to review issues beyond its jurisdiction.[36] Issues regarding jurisdiction may be raised at any time during the course of the proceeding.[37] 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).

Chapter 2, § 227.4 of the DPM states that a termination during an employee's probationary period cannot be appealed to this Office. Additionally, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.[38] While Agency asserts that Employee was a probationary employee at the time of her termination, Employee on the other hand argues that she was not a probationary employee at the time of her termination.

Agency attached Employee's initial offer letter and the updated offer letter both signed by Employee acknowledging that Employee was required to serve a one-year probationary period effective April 7, 2024. Employee asserts that pre-employment language does not supersede or override official personnel records or DCHR regulations. Employee states that the SF-50 is the official and legal binding personnel record that determines tenure status and all associated employment protection and benefits. I agree with this assertion. Agency submitted an SF-50 dated April 7, 2024, which notes that Employee was hired into career service on *probation*. (Emphasis added). The record shows that Employee was hired effective April 7, 2024, and terminated effective January 29, 2025.[39]

Employee maintains that she had already completed her probationary periods during her tenure with the District of Columbia government which began in 2014 and ended in 2025. She also argues that her appointment to CJDT was a permanent career service promotion with no break in service, therefore, she was not required to serve another probationary period with CJDT. Agency however notes that it was well within its statutory authority to hire Employee to a probationary term. It avers that Employee was not reassigned to CJDT at the District's discretion nor was she reassigned or transferred within her former Agency - DOES. Instead, Employee applied for a new probationary position on her own terms; she was interviewed and selected for the position, and she received a considerably higher salary. Agency also argues that Employee's AO position at CJDT was substantially different because it required Employee to perform more complex duties than her prior position, thereby warranting a probationary period.

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

[37] *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).

[38] *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).

[39] Agency's termination notice to Employee dated January 15, 2025, stated that Employee's termination was effective immediately. However, Agency placed Employee on paid administrative leave for ten (10) days. Therefore, the undersigned will reference January 29, 2025, as the effective date of Employee's termination.

Pursuant to DPM § 226.1, "except when the appointment is affected with a break in service of three (3) days or more, or as otherwise specified in this chapter, *an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period*." (Emphasis added). Relying on the reasoning in DPM § 226.1, above, I agree that Employee was not required to serve another probationary period because she had already done so when she was initially hired in 2012. However, DPM § 226.2 further provides that "an employee who once satisfactorily completed a probationary period in the Career Service *shall be required to serve another probationary period when the employee*: … or *(c) Is appointed through open competition to a position with different licensure, certification, or other similar requirements*. (Emphasis added). Employee did not have a break in service of three (3) business days or more between her resignation from DOES and the start of her position with CJDT. This noted, for the reasons that will be explained below, I find that Employee was subject to a new probationary period as noted in DPM §226.2(c).

Open Competition

Open Competition is defined as a hiring process that considers all applicants within an area of consideration for a given job.[40] Pursuant to the record, the AO position was open to the public. Agency asserts, and Employee does not dispute that she applied for the AO position at CJDT, interviewed for, and was selected for the position. Therefore, I conclude that Employee was hired through open competition.

Different Licensure, Certification Other Similar Requirements

Both parties concede that Employee's AO position with Agency did not require Employee to obtain different licensure or certification. However, Agency asserts that the AO position at CJDT was substantially different than Employee's previous position at DOES, thus a new probationary period was warranted. Agency cites that unlike Employee's previous position as a Program Manager at DOES, the AO position required more than simple administrative support and contract procurement. Employee on the other hand avers that complexity is not a probation trigger. She maintains that if mere claims of "more complex duties" qualify as: ["]similar requirements," any agency could circumvent [§] 226.2 protections simply by asserting that the new role was "more complex" than the prior one. This would render the regulations meaningless."

The undersigned finds that while neither position requires different licensure or certification the other requirements for each of these positions are substantially different. Employee does not deny Agency's assertion that in her AO position she was required: to conduct studies and complete projects related to administrative management; analyze policies, practices, organizational directives and business practices, and recommend new and revised policies. Agency also notes that Employee was responsible for property and space management, tasks which were not part of her prior job. Per Agency, Employee's duties as an AO also include compiling and analyzing budget data, managing expenditure, and maintaining records. Agency cites that Employee's role in budget and financial management was more extensive as an AO at CJDT than at her prior position at DOES. Employee argues that her position at DOES involved directing and managing programs requiring executive-level decision-making. She states that contrary to Agency's assertion, property and space management were core functions of her previous position with DOES. Employee provides a

[40] DPM § 299.1.

comparison of her duties at DOES and her duties at CJDT, which highlights that the two (2) positions had different requirements. She further cites that her prior position at DOES was in a different job series (GS-0340 Program Manager), than her position at CJDT (GS-0341 Administrative Officer). Based on Employee's own assertion that the positions were in different series, I find that there were differences between the two (2) positions. Also, because of the specific nature of each respective position, the undersigned finds that the differences between the requirements of each position are substantial enough to meet DPM §226.2(c), which authorizes a new probationary period if the new position has different licensure, certification, *or other similar requirements*. (Emphasis added). As such, the undersigned finds that Agency was permitted to authorize a new probationary period.

Employee was hired effective April 7, 2024, and she was terminated effective January 29, 2025. The undersigned finds that pursuant to DPM §226.2(c), Employee was required to serve a second probationary period when she was hired by CJDT. According to the updated offer letter Employee, was aware that she was required to serve a one-year probationary period effective April 7, 2024. The undersigned finds that the time period between April 7, 2024, to January 29, 2025, is less than one (1) year. Therefore, Employee was still in her probationary period at the time of her termination from Agency. Employee's SF-50 dated April 7, 2024, also notes that Employee was hired into career service on *probation*. (Emphasis added). Career 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. Consequently, I conclude that because Employee was removed from service when she was still within her probationary period, Employee is precluded from appealing her removal to this Office, as OEA lacks jurisdiction in this matter.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *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 required 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.

ORDER

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

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge