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

_____	)	
In the Matter of:	)	
	)	
MICHAEL CHARLES,	)	
Employee	)	OEA Matter No. J-0078-16
	)	
v.	)	Date of Issuance: November 23, 2016
	)	
D.C. WASHINGTON	)	
CONVENTION	)	
CENTER,	)	
Agency	)	ERIC T. ROBINSON, Esq.
_____	)	Senior Administrative Judge
Johnnie Louis Johnson, III, Esq., Employee Representative		
Jocelyn Cuttino, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 15, 2016, Michael Charles (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Washington Convention Center’s (“Events DC” or “the Agency”) action of terminating him from his last position of record (Meeting Services Associate). In its letter to Employee dated September 30, 2014, Events DC informed Employee that he was being terminated from service and that pursuant to D.C. Official Code § 10-1202-02 et seq., his employment was at-will. As part of its Answer to Employee’s Petition for Appeal, Events DC filed a Motion to Dismiss arguing that OEA cannot exercise jurisdiction over adverse personnel actions from Events DC. This matter was assigned to the Undersigned on October 4, 2016. Thereafter, on October 14, 2016, the Undersigned issued an Order requiring Employee to respond to Events DC Motion to Dismiss. Employee, through counsel, filed his response. After careful review of the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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

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.

OEA Rule 628.2 *id.* states:

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.

### JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

### ANALYSIS AND CONCLUSION

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter “CMPA”), sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) states in pertinent part that:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career service rights conferred by the CMPA may be exercised by aggrieved career and educational service District government employees. However, D.C. Official Code § 10-1202.16 provides, in relevant part, that “Chapter 6 of Title 1 shall not apply to employees of [DC Events]....” Employee counters this provision with the following:

D.C. Official Code § 10-1202.03

In addition to the general delegation of powers contained in § 10-1202.09 and subject to the limitations contained in § 10-1202.04, the Authority shall possess the following powers:

(1) To sue and be sued, including the power to bring actions, complaints, and implead in any judicial, administrative, arbitrational, or other action or proceeding and, to the extent permitted by law, to have actions brought against it, and to be impleaded and to defend in these proceedings...

Employee contends that D.C. Official Code § 10-1202.03 would allow for the Office to review the instant matter in spite of the fact that broad swaths of the CMPA are not applicable to Events DC employees pursuant to D.C. Official Code § 10-1202.16.

I find that Employee's arguments are unpersuasive. I note that D.C. Official Code § 10-1202.03 does not prevent Employee from seeking redress for a perceived wrong; however, D.C. Official Code § 10-1202.16 prevents the OEA, a quasi-judicial forum, from reviewing the instant matter. Despite Employee's contention to the contrary, I find that D.C. Official Code § 10-1202.16 precludes OEA from exercising jurisdiction over the instant matter.

#### Conclusion

Based on the preceding statutes, it is plainly evident that the OEA lacks the authority to review adverse action appeals of employees of DC Events. Since Employee is appealing his removal from DC Events, I find that I lack the authority to adjudicate the instant appeal. Consequently, I CONCLUDE that this matter must be dismissed for lack of jurisdiction.

#### ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.<sup>1</sup>

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Senior Administrative Judge

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<sup>1</sup> Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that Employee noted in his petition for appeal.