

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
MARCUS BIAS,	)	OEA Matter No. J-0069-19
Employee	)	
	)	
v.	)	Date of Issuance: November 12, 2019
	)	
D.C. DEPARTMENT OF CORRECTIONS,	)	JOSEPH E. LIM, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Marcus Bias, Employee <i>pro se</i>		
Jacqueline Johnson, Agency Representative		

**INITIAL DECISION**

**PROCEDURAL HISTORY**

On July 23, 2019, Marcus Bias (“Employee”) filed a petition for appeal with this Office (“OEA”) from D.C. Department of Corrections (“Agency”) final decision terminating him from his position as a Correctional Officer during his probationary period. The matter was assigned to the undersigned on August 6, 2019. After Agency responded by pointing out that Employee was probationary, I issued an Order directing Employee to respond by August 16, 2019. When Employee failed to comply, I issued a Show Cause Order to Employee to respond by October 22, 2019.

Despite prior warnings that failure to comply could result in sanctions, including dismissal, Employee again failed to respond. On November 4, 2019, Employee submitted his new address but still failed to comply with the directive. Nonetheless, based on the documents previously submitted by the parties, this matter can be decided on its merits. The record is closed.

**JURISDICTION**

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

**ISSUE**

Whether this Office has jurisdiction over Employee’s appeal.

**FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW**

The following facts are undisputed:

1. Employee was hired as a Correctional Officer at Agency. The position was subject to the satisfactory completion of a year probationary period. In his appeal form, Employee identified his status as probationary.
2. On July 24, 2019, Agency notified Employee that he would be separated from employment effective immediately.

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") § 604.1,<sup>1</sup> 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) 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.<sup>2</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>3</sup>

In the instant matter, the undersigned agrees that OEA does not have jurisdiction over this matter. Both Employee and Agency concur that Employee's employment status was probationary at the time of his dismissal. Pursuant to Chapter 8, Section 813.2 (a) of the District Personnel Manual ("DPM"), "[a] person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall be required to serve a probationary period of one (1) year, *except in the case of individuals appointed on or after the effective date of this provision to the positions listed in paragraphs (a) through (d) of this subsection below, who shall serve a probationary period of eighteen (18) months:*(b) *Individuals hired into entry-level Correctional Officer positions in the Department of Corrections* (Emphasis Added)."<sup>4</sup>

---

<sup>1</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>2</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order on Petition for Review (September 30, 1992).

<sup>3</sup> 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).

<sup>4</sup> Chapter 8, Section 813.2 (b) of the District Personnel Manual

In the instant matter, it is undisputed that Employee had not completed his probationary term.<sup>5</sup> Employee failed to provide tangible evidence that he had completed his probationary period. Further, Employee failed to respond to any orders issued by this Office and thus failed to diligently prosecute his appeal. Based on the aforementioned, I find that Employee did not meet the burden of proof regarding jurisdiction and that he was still in probationary status at the time of termination. This Office has consistently held that an appeal to OEA by an employee serving in probationary status must be dismissed for lack of jurisdiction.<sup>6</sup> For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.  
Senior Administrative Judge

---

<sup>5</sup> See Agency Letter (July 24, 2019) and Employee's appeal form (July 23, 2019).

<sup>6</sup> *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, Opinion and Order on Petition for Review (August 19, 1991).