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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Yetevear Jackson)	OEA Matter No. J-0067-07
Employee)	
)	Date of Issuance: October 5, 2007
v.)	
)	Sheryl Sears, Esq.
)	Administrative Judge
D.C. Public Schools)	
Agency)	

Yetevear Jackson, Employee, *Pro Se*
Harriet E. Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Employee was a Motor Vehicle Operator (Bus Driver) for the Department of Transportation (DOT) of the D.C. Public Schools. By letter dated October 19, 2006, David Gilmore, the Transportation Administrator, advised Employee of her removal as follows:

This letter is to inform you of your removal, effective immediately, from the position of Motor Vehicle Operator, within the Division of Transportation during your probationary period.

Please be advised that as a probationary employee, this action may not be appealed. You must return any and all DOT property (i.e., ID badge, cellular phone, etc.) to Keith Pettigrew, Director of Operations/Human Resources, Mr. Pettigrew is located at the Penn Center, 1709 3rd Street, N.E., 2nd Floor. He may be reached on (202) 576-5533.

On April 12, 2007, Employee filed an appeal with the Office of Employee Appeals (“the Office” or OEA). She noted that she had been employed by Agency for three months. This appeal presents an issue of jurisdiction that will be decided on the record. The record is closed.

JURISDICTION

This Office does not have jurisdiction over this appeal.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction. . .” Accordingly, Employee has the burden of proving that this Office has jurisdiction over her appeal.

ANALYSIS AND CONCLUSIONS

The Office of Employee Appeals was established by the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-601.01 *et seq.* Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended some sections of the CMPA. Section 101(d) of OPRAA amended § 1-606.03 of the Code to provide as follows:

- (a) An employee may appeal a final agency decision effecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force.

According to Chapter 16, § 1600.1, those regulations apply “to each employee of the District government in the Career Service who has completed a probationary period.”

The District Personnel Manual (DPM), 813.2, provides that “[a]n employee who is appointed to a Career Appointment (Probational), including initial appointment with the District government in a supervisory position, shall be required to serve a probationary period of one (1) year. . .” Employee, having served only three months at the time of Agency’s action, was a probationary employee. As such, she was not covered by the provisions that afford appeal rights to career service employees. This Office does not have jurisdiction over this appeal from a probationary employee and it must be dismissed.

ORDER

It is hereby ORDERED that this petition for appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE