THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
CURTIS EDWARDS Employee	OEA Matter No. J-0033-12
v.	Date of Issuance: April 11, 2011
DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES Agency	Lois Hochhauser, Esq. Administrative Judge

Curtis Edwards, Employee, *Pro Se*
Tonya Sapp, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Curtis Edwards, Employee herein, filed a petition for appeal with the Office of Employee Appeals (OEA) on November 18, 2011, appealing the final decision issued by the D.C. Department of Employment Services, Agency herein, to terminate his employment, effective November 4, 2011. At the time he was removed, Employee was a Supervisory IT Specialist, Specialist, MS-2210-14. On December 14, 2011, Agency filed a motion to dismiss based on lack of jurisdiction. Agency argues that this Office lacks jurisdiction because Employee was in the Management Supervisory Service (MSS) at the time he was terminated and that therefore OEA cannot hear his appeal.

After assignment of the matter to me on December 16, 2011, I determined that this Office's jurisdiction was at issue, and I issued an Order directing Employee to respond to Agency's motion and to submit legal and/or factual argument to support his position regarding this Office's jurisdiction. Employee filed a timely response and the record is now closed.

JURISDICTION

This Office's jurisdiction was not established.

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The threshold issue in this matter is one of jurisdiction. 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); and amended by the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124. 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 the Career or Education Service who are not serving in a probationary period.

Section 1-609.54 of the D.C. Official Code provides that an appointment to a position in the Management Supervisory Service "shall be an at-will appointment." The District Personnel Manual (DPM) mirrors this language at Chapter 38, § 3819.1:

> An appointment to the Management Supervisory Service [MSS] shall be an at-will appointment. A person appointed to a position in the Management Supervisory Service shall not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at anytime.

Employee does not dispute that he was an MSS employee at the time his employment was terminated. He contends that his termination was "unfair" and that holding an "'at will' position does not absolve the employer from unfair practices and behavior". Employee maintains that he was an exemplary employee who had never been disciplined, and he asserts he was terminated after an article appeared in "Loose Lips" stating that several employees had been terminated for misusing government property by engaging in sexual activity on government property. Employee maintains that although he was not named in the article, his name was mentioned in blogs. He contends that this Office should take jurisdiction because of the high quality of his job performance and because there is an "implied contract exception" to "at will" employment in the District of Columbia.

In *Grant v. District of Columbia*, 908 A2d 1173, 1178 (D.C. 2006), the District of Columbia Court of Appeals concluded that "MSS employees are statutorily excluded from the Career Service and thus cannot claim [the] protections" afforded to Career Service employees who are subject to adverse employment actions, such as notice, hearing rights, and the right to be terminated only for cause. An at-will employee can be discharged "at any time and for any reason, or for no reason at all". *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). *See also, Bowie v.*

Gonzalez, 433 F.Supp.2nd 24 (DCDC 2006). As an at-will employee, Employee lacked job tenure and protection from removal. *See* D.C Code § 1-609.05 (2001). In sum, as an MSS employee, in at-will status, Employee has no right to appeal his removal to this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991). *See also, Leonard, et al v. Office of Chief Financial Officer*, OEA Matter Nos. 1601-0241-96 *et al.* (February 5, 1997), _____ D.C. Reg. _____ ( ). Neither the high quality of his performance nor any inaccuracy of the accusations, are relevant because they do not create jurisdiction, where none exists. For these reasons, Employee's arguments must fail.[1]

Pursuant to OEA Rule 629.2, 46, D.C. Reg. 9317 (1999), Employee has the burden of proof on all issues of jurisdiction. He must carry this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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". After carefully reviewing the arguments and the applicable laws, rules and regulations, the Administrative Judge concludes that Employee did not meet his burden of proof, and that this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.[2]

FOR THE OFFICE:

_____
Lois Hochhauser, Esq.
Administrative Judge

[1] Employee offered no support for his argument regarding the "implied contract exception". However, if his argument is protection by contract and not by the CMPA, he must still seek relief in another forum.

[2] Given the resolution of this matter, Agency's motion to dismiss is denied as moot.