

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____	)	
In the Matter of:	)	
	)	
JASON CODLING	)	OEA Matter No. J-0151-09
Employee	)	
	)	
v.	)	Date of Issuance: December 4, 2009
	)	
OFFICE OF CHIEF TECHNOLOGY OFFICER	)	Rohulamin Quander
Agency	)	Senior Administrative Judge
_____	)	

Jason Codling, Employee, *pro se*  
Bryan Sivak, Director, Agency Representative

**INITIAL DECISION**

INTRODUCTION

On July 2, 2009, Employee filed a petition for appeal against the Office of Chief Technology Officer (“OCTO” or “Agency”), challenging Agency decision to terminate his employment during his probationary period. Employee seeks reinstatement to the IT Project Manager position that he obtained on May 12, 2008. Christopher Willey, Deputy CTO of Agency, issued a letter to Employee, dated December 12, 2008, which advised him that, effective January 2, 2009, he was terminated from employment. The letter further advised him that, pursuant to the provisions of the *D.C. Comprehensive Merit Personnel Act of 1978*, (the “Act”), codified at *D.C. Official Code, § 1-601.1, et seq.*, there are no administrative appeal provisions for employees who are terminated during the probationary period. This matter was assigned to me on November 30, 2009. Since there were no material facts in dispute, no proceedings were held. I reviewed Employee’s Petition for Appeal and the applicable law and governing personnel regulations. The record is now closed.

JURISDICTION

Pursuant to the legal parameters of *D.C. Official Code § 1-606.03* (2001), the Office lacks jurisdiction over this appeal.

ISSUE

Whether the Employee met his burden of proof that  
the Office has jurisdiction over this appeal.

FINDING OF FACTS, LEGAL ANALYSIS AND CONCLUSIONS

Employee was appointed by OCTO on May 12, 2008, to serve as an Information Technology Project Manager, DS-2210-15, and served in that capacity until terminated, effective January 2, 2009. The position that Employee held mandates a probationary period of one year. He encumbered the position in question for about seven months, and, therefore, was still a probationary employee at the time of his separation.

*Probationary Employees*

Effective October 21, 1998, and except as otherwise provided by the Act, pursuant to the *D.C. Official Code*, §1-606.03 and OEA Rule 604.2, a D.C. government employee may appeal a final agency decision affecting: (a) A performance rating which results in removal of the employee; (b) An adverse action for cause that results in removal, reduction in grade, or suspension for ten (10) days or more; or, (c) A reduction in force.

Effective June 9, 2000, the Council of the District of Columbia adopted amended regulations for the updated implementation of the Act and, at the outset of the new regulations, provided at Chapter 16, § 1600.1(b), that the newly adopted regulations apply to each employee of the District government in the Career Service, who has completed a probationary period.<sup>1</sup>

Further, the District Personnel Manual at § 813.2, provides as follows:

An 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, except in the case of an individual appointed on or after the effective date of this provision to an entry-level police officer position in the Metropolitan Police Department or an entry-level correctional officer position in the Department of Corrections or Department of Youth Rehabilitation Services, who shall be required to serve a probationary period of eighteen (18) months.

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<sup>1</sup> See also, *D.C. Official Code §1-608.01(5)*, which reflects that attaining status as a permanent Career Service employee requires completion of a probationary period of at least one year.

Thus, a District government employee serving a probationary period does not have a statutory right to be removed for cause and cannot utilize the adverse action procedures under subchapters VI or XVII of the Comprehensive Merit Personnel Act (“CMPA”), which include appealing an adverse action to this Office. An appeal of an adverse action filed in this Office by an employee serving a probationary period must therefore be dismissed for lack of jurisdiction. See *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 305 (1991) (regardless of agency regulations and advice to the contrary, probationary employees may be discharged at-will and they do not have any statutory right to appeal their termination to the OEA); *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (July 10, 1995), \_\_ D.C. Reg. \_\_ ( ); *Employee v. Agency*, OEA Matter No. 1601-0057-83, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 6057 (1985); *Jones v. District of Columbia Lottery Bd.*, OEA Matter No. J-0231-89, *Opinion and Order on Petition for Review* (Aug. 19, 1991), \_\_ D.C. Reg. \_\_ ( ); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), \_\_ D.C. Reg. \_\_ ( ); *Jordan v. Metropolitan Police Dep't*, OEA Matter No. 1601-0314-94, *Opinion and Order on Petition for Review* (Sept. 29, 1995), \_\_ D.C. Reg. \_\_ ( ); and *Ramos-McCall v. District of Columbia Pretrial Services*, OEA Matter No. J-0197-93, *Opinion and Order on Petition for Review* (March 18, 1994), \_\_ D.C. Reg. \_\_ ( ).

Here, Employee’s one-year probationary period began on May 12, 2008, and would have ended on May 11, 2009. However, Employee was separated from service on January 2, 2009, within the probationary period. Regardless of any other component or other potential validity of his claim, I conclude, therefore, that this Office has no jurisdiction over this appeal, and that it must be dismissed.

### ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

ROHULAMIN QUANDER Esq.  
Senior Administrative Judge