THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
[redacted]	)	
Employee	)	OEA Matter No. J-0050-22
	)	
v.	)	Date of Issuance: August 15, 2022
	)	
D.C. OFFICE OF THE CHIEF TECHNOLOGY OFFICER,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee, *Pro-Se*
Smruti Radkar, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL HISTORY

On April 19, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Office of the Chief Technology Officer ("OCTO" or the "Agency") action of removing him from service. Employee's last position of record was Supervisory IT Specialist Governance, Risk and Compliance, MS-2210-15.[1] On April 20, 2022, the OEA's Executive Director issued a written notice to OCTO requiring it to respond to Employee's Petition for Appeal. On May 20, 2022, Agency timely filed its Answer to Employee's Petition for Appeal. According to Employee's Petition for Appeal and Agency's Answer, it is uncontroverted that Employee's last position of record was in the Management Supervisory Service ("MSS"). The Undersigned was assigned this matter on June 2, 2022. On June 6, 2022, the Undersigned issued an Order to Employee requiring him to address whether the OEA may exercise jurisdiction over this matter. Employee timely submitted 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.

[1] *See*, Agency's Answer p. 1. (May 20, 2022).

JURISDICTION

As will be explained below, the Office lacks jurisdiction over this matter.

ISSUE

Whether the OEA may exercise jurisdiction over this matter.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Management Supervisory Service ("MSS") Employee

In pertinent part, OEA Rule 631 *et al* mandates that the standard of the burden of proof for material issues of fact shall be by a preponderance of the evidence. Moreover, Employee bears the burden of proof for questions regarding OEA's jurisdiction. At the time of his termination, Employee was employed with Agency as a Supervisory IT Specialist Governance, Risk and Compliance, MS-2210-15. Employee contends that some erstwhile governing authority should have reviewed his termination prior to its implementation.[2] Agency contends that OEA does not have jurisdiction over this appeal due to established case law that exempts MSS adverse actions from OEA review. Notwithstanding Employee's protestation to the contrary, it is uncontroverted that his position was an MSS appointment. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting 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. . .

D.C. Official Code § 1-609.54 provides further elucidation on the OEA's statutorily mandated jurisdictional limits in the instant matter. It provides in relevant part that:

> Employment-at-will
>
> (a) An appointment to a position in the Management Supervisory Service shall be an *at-will appointment*. Management Supervisory Service employees shall be given a 15-day notice prior to termination... (Emphasis added).

In *Grant v. District of Columbia*, the District of Columbia Court of Appeals held that "while the CMPA and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions (such as notice and hearing

[2] Employee's Response to Order (June 21, 2022).

rights, and the right to be terminated only for cause), MSS employees are statutorily excluded from the Career Service and thus cannot claim those protections." *Citations omitted.* 908 A.2d 1173, 1178 (D.C. 2006).

Based on the preceding statutes, case law, and regulations, it is plainly evident that the OEA lacks the jurisdictional authority to review adverse action appeals of MSS employees. Since Employee's last position of record was obtained through a MSS appointment, I find that I cannot adjudicate his appeal and it therefore must be dismissed for lack of jurisdiction.[3] I further find that Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate.[4]

ORDER

Based on the foregoing, it is ORDERED that Employee's Petition for Appeal be DISMISSED due to lack of jurisdiction.

FOR THE OFFICE:

[redacted]
ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

[3] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[4] Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.