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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
EMPLOYEE ¹)	OEA Matter No. J-0070-23
Employee)	
v.)	Date of Issuance: December 11, 2023
DISTRICT OF COLUMBIA DEPARTMENT OF)	LOIS HOCHHAUSER, Esq.
PARKS AND RECREATION)	Administrative Judge
Agency)	
Employee, <i>Pro Se</i>		
Amy Caspari, Esq., Agency Representative		

INITIAL DECISION

PROCEDURAL HISTORY AND BACKGROUND

Employee filed a Petition for Appeal (“PFA”) with the Office of Employee Appeals (“OEA”) on September 19, 2023, challenging the decision of the District of Columbia Department of Parks and Recreation (“Agency”) to terminate him from his position as customer service representative, effective September 7, 2023. By letter dated September 20, 2023, Sheila Barfield, Esq., OEA Executive Director informed Thennie Freeman, Agency Acting Director of the appeal, providing a copy of the PFA; and notified him of the October 20, 2023 deadline for filing the Agency’s answer. Agency filed a motion to dismiss on October 18, 2023. The matter was assigned to this Administrative Judge (“AJ”) on or about October 25, 2023.

By Order dated October 26, 2023, Employee was notified that the jurisdiction of this Office was at issue based on the statement in his PFA that he had been employed for six months and Agency’s contention that he was in probationary status at the time of his removal. Employee was informed that employees have the burden of proof on the issue of jurisdiction, and directed to file legal and/or argument supporting this Office’s jurisdiction by 5:00 p.m. on November 14, 2023. He was advised that his failure to file a timely response could be considered as failure to prosecute this appeal and/or concurrence that this Office lacked jurisdiction; and that either result could result in the dismissal of the appeal. The parties were notified that the record in this matter would close at 5:30 p.m. on

¹ This Office does not identify employees in the *Initial Decisions* published on the Office of Employee Appeals website.

November 14, 2023 unless they were notified to the contrary. Employee did not file a response, and the record did close at that time.

JURISDICTION

The jurisdiction of this Office was at issue in this matter.

ISSUES

Did Employee meet his burden of establishing the jurisdiction of this Office to hear this appeal? Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The relevant facts in this matter appear undisputed. In his PFA, Employee stated that he held his position as customer service representative for six months. According to Agency's motion to dismiss, Employee was hired on April 24, 2023, and separated on September 7, 2023. Agency argued that this Office lacked jurisdiction of the appeal, since Employee was in probationary status at the time of his removal. Agency submitted the April 10, 2023 letter to Employee offering him the position. The letter notified Employee of a probationary period requirement, stating that he would be "subject to the satisfactory completion of a one (1) year probationary period beginning...April 24, 2023."

The jurisdiction of this Office is established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Law 2-139; D. C. Official Code § 1-601.01 et seq. (2016 Repl. and 2019), as amended by the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124. The threshold issue in this matter is one of jurisdiction. This Office has no authority to hear matters beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public Schools*, OEA Matter 1602-0030-90, *Opinion and Order* (September 30, 1992).

Agency maintains that the PFA must be dismissed because this Office lacks jurisdiction to hear an appeal of an employee who is terminated while in probationary status. Section 227.4 of Title 6-B of the District of Columbia Personnel Regulations states that separations from service "during a probationary period is neither appealable nor grievable." This Office has long maintained that an employee removed while in probationary status cannot appeal the removal to this Office. *See, e.g., Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order* (December 6, 2010). Employee's first day of employment with Agency was on or about April 24, 2023. His last day of employment was on or about September 7, 2023. Therefore, he was employed for less than six months, and was serving a one-year probationary period at the time of his removal.

Employees carry the burden of proof on issues of jurisdiction and must meet this burden by a preponderance of evidence. *See* OEA Rules 631.1 and 621.2. Employee failed to submit any legal or factual argument in support of this Office's jurisdiction to hear this appeal. The October 26, 2023 Order stated that Employee's failure to respond could be considered concurrence with the position that this Office lacks jurisdiction of his appeal. The AJ concludes that this appeal should be

dismissed because Employee failed to meet the burden of proof on the issue of jurisdiction.

There is an alternative basis for dismissing this appeal. OEA Rule 624.3 states in pertinent part:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

(b) Submit required documents after being provided with a deadline...

The October 26, 2023 Order was sent to Employee by first class mail, postage prepaid, at the address provided by Employee in his PFA. The Order was not returned to this Office as undelivered, and it is presumed to have been received by Employee in a timely manner. The Order directed Employee to file legal and factual argument in support of his position that this Office had jurisdiction of this matter by November 14, 2023, and notified him that his failure to do so by the stated deadline could be considered a failure to prosecute his appeal, which could result in the imposition of sanctions, including dismissal of the appeal. Employee failed to file a response and did not contact the AJ to request an extension. The AJ concludes that Employee failed to prosecute this appeal, and in the “exercise of sound discretion,” she imposes the sanction of dismissal of this appeal. This provides the second basis for dismissing this matter.

ORDER

The petition for appeal is dismissed.²

FOR THE OFFICE:



Lois Hochhauser, Esq.
Administrative Judge

² Since the appeal is dismissed, Agency’s motion to dismiss is denied as moot.