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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
JEANNETTE FRETT,	)	
Employee	)	OEA Matter No. J-0129-13
	)	
v.	)	Date of Issuance: February 20, 2014
	)	
OFFICE OF THE DEPUTY	)	STEPHANIE N. HARRIS, Esq.
MAYOR FOR PLANNING AND	)	
ECONOMIC DEVELOPMENT,	)	Administrative Judge
Agency	)	
_____	)	
Jeanette Frett, Employee <i>Pro-Se</i>	)	
Frank McDougald, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 1, 2013, Jeanette Frett (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the Deputy Mayor for Planning and Economic Development’s (“Agency” or “DMPED”) decision to terminate her from her position as a Workforce Intermediary Officer. In response to Employee’s Petition for Appeal, Agency submitted its Answer on September 19, 2013.

I was assigned this matter on August 20, 2013. On November 18, 2013, I ordered the parties to submit briefs addressing whether OEA had jurisdiction in this matter in response to Agency’s claim that Employee was in probationary status at the time of her termination. Employee’s brief was due on or before December 2, 2013, and Agency’s brief was due on or before December 16, 2013. Both parties timely submitted their briefs. After reviewing the record, I have determined that no further proceedings are warranted in this matter. The record is now closed.

## JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

## ISSUE

Whether this appeal should be dismissed.

## BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## ANALYSIS AND CONCLUSIONS OF LAW

In her Petition for Appeal, Employee contends that her termination was against public policy, whistleblower law, family protective policy, and federal and state law. She also claims that Agency improperly voided her resignation against personnel policies.<sup>1</sup>

In its Answer, Agency contends that Employee’s Petition for Appeal should be dismissed for lack of jurisdiction because Employee was terminated during her probationary period, which is not appealable. Agency also denies Employee’s allegations that her termination violated public policy, whistleblower laws, and personnel policies.<sup>2</sup>

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). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

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<sup>1</sup> Petition for Appeal (August 1, 2013).

<sup>2</sup> Agency Answer (September 19, 2013).

- (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 [RIF]. . . .

In her brief, Employee argues that pursuant to District Personnel Manual (“DPM”) §814.3, OEA retains jurisdiction to hear this matter, explaining that this regulation provides an employee the right to appeal during the probationary period if the employee alleges that the termination resulted from a violation of public policy or whistleblower protection. She asserts that her termination violated the “Whistleblower Protections and Obligations of Employees Law” and the “Public Policy Protection for Family Responsibility” provided by the District of Columbia Human Rights Act of 1977, section 2-1401.02(12).<sup>3</sup>

In response, Agency asserts that OEA lacks jurisdiction to adjudicate Employee’s claim and this matter should be dismissed. Agency explains that Employee does not dispute that she was in probationary status when she was terminated. Agency also disagrees with Employee’s assertion that her termination violated the “Whistleblower Protections and Obligations of Employee Law” and that DPM §814.3 gives a terminated employee the right to file an action under the whistleblower protection law. Additionally, Agency submits that Employee has not asserted any facts to support her claim that her termination violated whistleblower provisions.<sup>4</sup>

Agency submitted Employee’s appointment letter, which advised that her position was a “Term Appointment Not-To-Exceed (NTE) [thirteen] months” and she would be “subject to the completion of a one (1) year probationary period beginning on January 14, 2013.”<sup>5</sup> In a letter dated July 2, 2013, Agency notified Employee of her termination, effective July 18, 2013.<sup>6</sup> Agency also submitted Employee’s Notification of Personnel Action (“SF-50”) showing Employee’s start date and that she was subject to a one year probationary period.<sup>7</sup>

Chapter 8, §814.1 of the DPM states that an Agency may terminate an employee serving in a probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment. Further, DPM §814.3 explains that a termination during a probationary period is not grievable or appealable, but notes that an employee alleging that the termination resulted from a violation of public policy, the whistleblower protection laws, or anti-discrimination laws *may file action under any such laws, as appropriate* (emphasis added).

This Office has no authority to review issues beyond its jurisdiction.<sup>8</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>9</sup> I find that

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<sup>3</sup> Employee Brief (December 3, 2013).

<sup>4</sup> Agency Brief (December 16, 2013).

<sup>5</sup> Agency Answer, p. 2, Tab 7 (September 19, 2013).

<sup>6</sup> *Id.*, Tab 2. The undersigned notes that there appears to be a typo with the effective date as it reads July 18, 2018.

<sup>7</sup> *Id.*, Tab 5.

<sup>8</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>9</sup> See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for*

Employee's termination date, August 13, 2010, was during her probationary period, which is less than one year from her start date, August 17, 2009. Agency submitted personnel information showing that the length of time between Employee's start date and termination date was less than one year.<sup>10</sup> Additionally, in its brief, Agency submitted Employee's last SF-50, which corroborates that Employee was employed for less than a year.<sup>11</sup>

Further, DPM §814.3, states that a termination during the probationary period cannot be appealed to this Office. Moreover, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.<sup>12</sup> Thus, I find that this Office lacks jurisdiction in this matter because the record shows that Employee was still in probationary status at the time of her removal.

Regarding Employee's claim that this Office retains jurisdiction over her appeal due to her allegations of whistleblowing, OEA has held that based on D.C. Code § 1-615.54, D.C. Superior Court has original jurisdiction over Whistleblower Act claims and OEA does not retain original jurisdiction over such claims.<sup>13</sup> The original jurisdiction of this Office was established in D.C. Official Code §1-606.03 which provides in relevant part that an employee may appeal a final agency decision affecting a performance rating resulting in removal; an adverse action for cause that results in removal, reduction in grade, suspension for ten (10) days or more; or a reduction-in-force.

While OEA has held that some causes of action under the whistleblower provisions may be adjudicated by this Office, not *all* causes of action pertaining to the Whistleblower Act may be appealed to this Office (emphasis added). OEA has previously held that when it lacks jurisdiction to adjudicate the merits of an employee's Petition for Appeal, this Office is unable to address the merits of the whistleblower claims contained therein.<sup>14</sup> Thus, if an employee has a matter with OEA that may otherwise be adjudicated by this Office, then OEA may also address any pertinent whistleblower violations.<sup>15</sup>

However, in the current case, OEA lacks the jurisdictional authority to review Employee's adverse action appeal because she was terminated during her probationary period. As noted above, this Office has no authority to review issues beyond its jurisdiction.<sup>16</sup> The undersigned also finds that DPM §814.3 does not give this Office jurisdiction over whistleblower

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*Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>10</sup> Agency Answer, Tab 6 (September 23, 2010).

<sup>11</sup> Agency Brief, Exhibit A (September 19, 2012).

<sup>12</sup> See also *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

<sup>13</sup> *Owens v. Department of Mental Health*, OEA Matter No. J-0097-03 (April 30, 2004); *Vines v. Office of Cable Television and Communications*, OEA Matter No. J-0028-08 (March 18, 2008); *Hunter v. D.C. Water and Sewer Authority*, OEA Matter No. 2401-0036-05 and 1601-0046-05 (November 9, 2005).

<sup>14</sup> See *Codling v. Office of the Chief Officer of Technology*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010); See also *Cloney v. Department of Insurance Security & Banking*, OEA Matter No. 2401-0085-09, *Opinion and Order on Petition for Review* (August 22, 2011); *James v. Office of the Chief Officer of Technology*, OEA Matter No. J-0003-08, *Opinion and Order on Petition for Review* (November 23, 2009).

<sup>15</sup> *Id.*

<sup>16</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

claims, but instead explains that an employee may file such claims in the appropriate venue. Therefore, I am unable to address the validity of any whistleblower claims raised by Employee or the factual merits, if any, of this matter. Accordingly, this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge