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

In the Matter of:	)	
	)	
TRINA ROBINSON,	)	OEA Matter No. J-0080-15
Employee	)	
	)	
v.	)	Date of Issuance: August 4, 2015
	)	
DEPARTMENT OF BEHAVIORAL	)	
HEALTH,	)	
Agency	)	
	)	
	)	Arien Cannon, Esq.
	)	Administrative Judge
Trina Robinson, Employee, <i>Pro se</i>		
Andrea Comentale, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Trina Robinson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 27, 2015, challenging the Department of Behavioral Health’s (“Agency”) decision to remove her from her position as a Staff Assistant. Agency’s Termination During Probationary Period letter, dated May 6, 2015, indicated that the effective date of Employee’s termination was May 15, 2015.

I was assigned this matter on June 18, 2015. Agency filed its Answer on July 8, 2015. Based on an initial review of the file, an Order on Jurisdiction was issued on July 13, 2015. This order required Employee to set forth her argument as to why this Office may exercise jurisdiction over her appeal. Employee submitted her response to the Order on Jurisdiction on July 21, 2015. The record is now closed.

**JURISDICTION**

As set forth below, Jurisdiction of this Office has not been established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### **ANALYSIS AND CONCLUSION**

OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.<sup>1</sup> Pursuant to OEA Rule 604 this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.<sup>2</sup>

An Order on Jurisdiction was issued on July 13, 2015, which gave Employee until July 27, 2015, to file her response. Employee filed her response on July 21, 2015. Employee's response to the Order on Jurisdiction focuses on her being rehired under the District's Displaced Employee program and then being reassigned/transferred to various agencies within the District government. Employee also focuses on the time frame she believes her probationary period began and ended. Employee asserts that her probationary period began on September 9, 2013, when she was rehired with the District government to the Department of Health. On November 17, 2013, Employee was reassigned/transferred to the Department of Human Services. Employee further asserts that she continued in her probationary period when she was transferred/reassigned to the Department of Behavior Health on May 18, 2014. Employee asserts that her probationary period ended on September 9, 2014, a year after she began working with the Department of Health.

Agency's Answer to Employee's Petition for Appeal addresses the jurisdiction issue. In it, Agency asserts that Employee was hired through an open competition on May 18, 2014, as a probationary Staff Assistant with Agency at Saint Elizabeths Hospital. Agency also states that Employee was informed, via her offer letter, that her new position was subject to a one year probationary period beginning on May 18, 2014.<sup>3</sup> On May 6, 2015, Agency sent Employee a termination letter, indicating that she was being terminated during her probationary period. The effective date of the termination was May 15, 2015. Employee was put on administrative leave effective May 7, 2015. While on administrative leave, Employee submitted a resignation letter, which was accepted by Agency as evidenced by the official Personnel Action Form (SF-50).<sup>4</sup>

While Employee argues that she was terminated pursuant to Agency's termination letter dated, May 6, 2015, she voluntarily submitted a resignation letter on May 15, 2015. Rather than allow Employee's termination to become effective, Agency opted to accept Employee's resignation letter on the date it was tendered.<sup>5</sup> Because Employee voluntarily resigned from her position with Agency before her termination became effective, I find that this appeal must be

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> OEA Rule 604, 59 DCR 2129 (March 16, 2012); D.C. Official Code § 1-606.03.

<sup>3</sup> Agency's Answer, Tab 8 (July 8, 2015).

<sup>4</sup> *Id.*, Tab 13, Tab 14 (July 8, 2015).

<sup>5</sup> *Id.*, Tab 14 (July 8, 2015).

dismissed for lack of jurisdiction.

In the alternative, I find that Employee was still subject to a one year probationary period beginning on May 18, 2014 and ending on May 18, 2015. Pursuant to 6-B DCMR § 813.9(c), a one-year probationary period is also imposed on employees who have previously started or completed a probationary period when that employee is “appointed as a result of open competition to a position in a different line of work.”<sup>6</sup>

Here, Employee argues that her probationary period began on September 9, 2013, when she was hired by the Department of Health. However, when Employee accepted her position with Agency, the offer letter explained that she would be subject to a one year probationary period beginning on May 18, 2014. Employee was appointed to her Staff Assistant position with Agency as a result of open competition in a different line of work. The vacancy for the position occupied by Employee was announced online and was available to the general public from February 24, 2014 through March 7, 2014. The series number associated with Employee’s position as a Social Service Representative was 187, whereas the series number associated with Employee’s position as a Staff Assistant with Agency was 301.<sup>7</sup> The different series number indicate that the positions were in “different line[s] of work” with different duties and requirements as set forth in 6-B DCMR § 813.9(c).<sup>8</sup>

Because Agency hired Employee as a result of open competition for a position in a different line of work, Agency appropriately placed Employee in a one year probationary period effective May 18, 2014. Even if Employee’s resignation was not accepted by Agency, her termination would have become effective on May 15, 2015, which was within the one year probationary period. This Office has consistently held that a probationary employee may be removed without cause during their probationary period.<sup>9</sup> District government employees serving a probationary period do not have a statutory right to be removed for cause and cannot utilize the adverse action procedures under the Comprehensive Merit Personnel Act, which includes appealing those actions to this Office.<sup>10</sup> Accordingly, I find that Employee’s Petition for Appeal must be dismissed.

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<sup>6</sup> 6-B DCMR § 813.9(c).

<sup>7</sup> See Agency Answer, Tab 10 (July 8, 2015).

<sup>8</sup> See also *Parker v. Department of Health*, OEA Matter No. J-0007-11, Opinion and Order on Petition for Review (September 12, 2012).

<sup>9</sup> *Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, Opinion and Order on Petition for Review (December 6, 2010); *Wallace v. D.C. Public Schools*, OEA Matter No. J-0009-05 (January 31, 2006); and *Parker v. Department of Health*, OEA Matter No. J-0007-11, Opinion and Order on Petition for Review (September 12, 2012).

<sup>10</sup> *Parker v. Department of Health*, OEA Matter No. J-0007-11, Opinion and Order on Petition for Review (September 12, 2012).

**ORDER**

It is hereby **ORDERED** that Employee's Petition for Appeal is hereby **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge