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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0007-11
ALEXIS PARKER,)	
Employee)	
)	Date of Issuance: April 28, 2011
v.)	
)	
DEPARTMENT OF HEALTH,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 7, 2010, Alexis Parker (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the Department of Health’s (“Agency”) decision to terminate her. Agency’s notice informed Employee that she was being separated from service as a result of a Reduction-in-Force (“RIF”). Employee’s termination was effective on September 4, 2010.

This matter was assigned to me on or around January 7, 2011. I issued an Order on January 14, 2011, directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee submitted a response to the Order on January 28, 2011. Agency subsequently filed a response to Employee’s Brief on Jurisdiction on February 11, 2011. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

According to Agency, Employee was appointed to her new position as a Public Health Outreach Technician as a result of an open competition advertised to the general public. Agency argues that the new position involved different duties and responsibilities than those undertaken by Employee in her previous position; therefore she was subject to a new probationary period.

Chapter 8, Section 813.3 of the District Personnel Manual states in pertinent part:

“Except when the appointment is effected with a break in service, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period, unless the employee is appointed to a position (including entry-level police officer or firefighter) from a register resulting from open competition, for which appointment the employee would not have been eligible as an internal placement in accordance with §§ 828 through 838.”

Moreover, Chapter 8, Section 814.3 of the District Personnel Manual provides that a termination during a probationary period cannot be appealed to this Office. An appeal to this Office by an employee serving in a probationary status must therefore be dismissed for lack of jurisdiction. *See, e.g., Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991) D.C. Reg. ().

In light of the above, the outcome in this matter turns upon the determination of whether Employee was still within the probationary period of her employment as Agency contends, or whether she had become a permanent employee prior to Agency’s notice of termination.

The record reflects that Employee was initially hired as a Community Relations Specialist with the Addiction Prevention and Recovery Administration (AAPA) within the Department of Health. Agency notified Employee that, effective September 4, 2009, she would be separated from service as a result of a RIF. It should be noted that Agency concedes that Employee successfully completed a one year probationary period while serving as a Community Relations Specialist.

However, during October 16, 2009 through November 30, 2009, Agency posted a notice advertising two open positions for the job title of Public Health Outreach Technician. The posting notated that the job was open to the general public.¹ Employee was therefore required to apply for the position as a result of open competition.

¹ Agency’s Appendix of Documents, Tab 5 (November 3, 2010).

On February 4, 2010, Employee was formally offered the position as a Public Health Outreach Technician. The offer letter stated that she was subject to the satisfactory completion of a one year probationary period to commence on February 16, 2010. Agency notified Employee in writing that she was being terminated as a result of a RIF effective September 4, 2010. Because Employee was a probationary employee at the time of termination, she served as an “at-will” employee.

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999), states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” OEA Rule 629.1, states that 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: “[t]hat 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.”

In light of the above, Employee has not met her burden of proof with regard to jurisdiction. This Office does not have jurisdiction matter over “at-will” employees; therefore, this matter must be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge