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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CHARLOTTE DUNLAP-CLARK,)	
Employee)	OEA Matter No.: 1601-0102-15
)	
v.)	Date of Issuance: November 9, 2015
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
)	

Charlotte Dunlap-Clark, Employee *Pro se*
Nicole Dillard, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 14, 2015, Charlotte Dunlap-Clark (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate her from her position as a Teacher, effective August 7, 2015. On September 10, 2015, Agency filed its Answer to Employee’s Petition for Appeal, along with a Motion to Dismiss, alleging that Employee was a probationary employee at the time of her termination and that this Office lacks jurisdiction to hear this matter.¹

This matter was assigned to the undersigned Administrative Judge (“AJ”) on September 25, 2015. Thereafter, on October 15, 2015, the undersigned AJ issued an Order requiring Employee to address the jurisdiction issue in this matter. According to this Order, Employee had until October 24, 2015, to submit her brief, and Agency had until November 6, 2015, to submit a reply brief if it chose to do so. Both parties have filed their respective briefs. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

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

¹ Agency’s Answer to Employee’s Petition for Appeal (September 10, 2015).

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

According to Employee's Notification of Personnel Action, Standard Form 50 ("SF-50"), the effective date of Employee's employment with Agency was October 20, 2014.² Subsequently, Employee was served with a notice of Ineffective IMPACT Rating and Termination, with an effective date of August 7, 2015.³

Employee's position

Employee notes that she has been employed with Agency for seven (7) months.⁴ Additionally, Employee states that she is an Educational service employee. In her response to Agency's Answer dated October 26, 2015, Employee asserts that Agency is attempting to cover its tracks by stating that OEA can only hear appeals of permanent employees.

Agency's position

Agency notes in its Answer that a term or an employee removed during a probationary period cannot appeal their removal to OEA. Agency explained that Employee was hired by DCPS, with an effective hire date of October 20, 2014. Employee was subsequently terminated effective August 7, 2015, prior to reaching her two (2) years anniversary. Therefore, Employee was still in probationary status when she was terminated. And since OEA does not have jurisdiction to hear appeals by probationary employees, Employee's complaint must be dismissed.⁵

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.⁶ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁷ 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

² *Id.* at Exhibit 2.

³ Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal, *supra*, at Tab 1.

⁴ Petition for Appeal at pg. 3 of 6 (July 14, 2015).

⁵ Agency's Answer to Employee's Petition for Appeal, *supra*.

⁶ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁷ See *Brown v. District of Columbia Public School*, 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 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).

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 not relevant to this case, of permanent employees in Career and Education Service who are *not serving in a probationary period*, or who have successfully completed their probationary period (emphasis added).

In the current matter, Employee was hired effective October 20, 2014, and terminated effective August 7, 2015. Also, Employee notes in her Petition for Appeal that she has been working with Agency for seven (7) months. Agency notes that Employee was required to serve a two (2) years probationary period and Employee does not dispute this fact. Additionally, Chapter 5-E of the District of Columbia Municipal Regulations (“DCMR”) section 1307.1 provides in pertinent parts that, “[a]n employee initially entering ... into the Educational Service shall ... serve a probationary period.” Moreover, the CMPA and OPRAA specifically limit this Office’s jurisdiction to appeals filed by permanent Career and Education service employees *who are not serving a probationary period*. Consequently, I find that Employee was a probationary employee at the time of her termination.

Furthermore, Chapter 8, § 814.3 of the District Personnel Manual (“DPM”) 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.⁸ 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 termination. Educational service employees who are serving in a probationary period are precluded from appealing a removal action to this Office, until their probationary period is over. Employee was hired effective October 20, 2014, and terminated effective August 7, 2015. This is less than two (2) years. Accordingly, I find that, Employee was removed from service when she was still within the two (2) years of her probationary period. For these reasons, I conclude that Employee is precluded from appealing her removal to this Office.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012). Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, *id*, as 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.” In an Order dated October 15, 2015, Employee was given an opportunity to address Agency’s claim that Employee was a probationary employee at the time of her termination, but she failed to do so in her response to said Order. Based on the foregoing, I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

⁸ 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); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

ORDER

It is hereby ORDERED that the Petition for Appeal is **DISMISSED** and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge