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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JESSE JONES, JR.,)	
Employee)	OEA Matter No.: J-0130-13
)	
v.)	Date of Issuance: September 13, 2013
)	
DEPARTMENT OF MENTAL HEALTH,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
)	

Jesse Jones, Jr., Employee *Pro se*
Andrea Comentale, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 2, 2013, Jesse Jones, Jr. ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Department of Mental Health's ("DMH" or "Agency") decision to terminate him from his position as a Material Handler, effective August 2, 2013. On September 5, 2013, Agency filed its Answer to Employee's Petition for Appeal, alleging that Employee was a probationary employee at the time of his termination and that this Office lacks jurisdiction to hear this matter.¹

This matter was assigned to the Undersigned on August 20, 2013. 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.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

¹ See Agency response to Petition for Appeal (September 5, 2013).

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In a letter dated June 13, 2013, Agency confirmed Employee's oral acceptance of its offer of employment for the position of Material Handler, RW-6907-05/10.² This letter listed Employee's effective date of employment as June 17, 2013. Among other things, the letter stated that Employee's Career Service Appointment was a Probationary appointment.³ On August 1, 2013, Employee was served with a notice of Termination During Probationary Period, which Employee refused to sign.⁴ The effective date of Employee's termination was August 2, 2013. The letter advised Employee that termination during a probationary period is neither grievable nor appealable except as provided by the D.C. Human Rights Act of 1977, § 1-2501 et seq., D.C. Code (1981).⁵

Employee concedes in his Petition for Appeal that he was serving in a probationary or trial period with Agency at the time of his termination. Employee also submits that he was terminated for missing too many days as a result of being absent from work for one (1) week. He explains that he was under a doctor's care after he suffered a reaction from his work environment.⁶

Agency notes in its Answer that Employee's employment offer letter stated that Employee's appointment was probationary, and he was still a probationary employee at the time of his termination. Moreover, Agency maintains that Employee's effective hire date was June 17, 2013, and he was terminated effective August 2, 2013, less than two (2) months after his start date, and "well within the statutory one-year probationary period."⁷ Agency asserts that since Employee was a probationary employee when he was terminated, Employee's appeal rights are limited, and therefore, the matter should be dismissed. Additionally, Agency submits that Employee's Petition for Appeal contains no factual or legal basis to bring Employee under OEA's jurisdiction.⁸

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.⁹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹⁰ 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 Tab 2.

³ *Id.*

⁴ *Id.* at Tab 4. According to this notice, Employee's refusal to sign was witnessed by another employee.

⁵ *Id.*

⁶ Petition for Appeal (August 2, 2013).

⁷ Agency's response to Petition for Appeal at Tab 6.

⁸ *Id.*

⁹ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹⁰ 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.

District Personnel Manual (“DPM”) § 813.2 states that:

A person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall be required to serve a probationary period of one (1) year, except in the case of individuals appointed on or after the effective date of this provision to the positions listed below, who shall serve a probationary period of eighteen (18) months:

- (a) Individuals hired into entry-level police officer positions in the Metropolitan Police Department;
- (b) Individuals hired into entry-level correctional officer positions in the Department of Corrections or the Department of Youth Rehabilitation Services; and
- (c) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

Here, Employee was hired as a Material Handler with an effective date of June 17, 2013. Employee’s appointment as a Career Service employee was subject to the completion of a one (1) year probationary period. Agency issued Employee a notice of termination by letter dated August 1, 2013. Employee’s offer letter dated June 13, 2013, noted that Employee was a probationary employee. Employee did not complete the one (1) year probationary period as required by DPM § 813.2 and therefore remained in probationary status at the time he was terminated effective August 1, 2013. District Personnel Manual §§ 814.1-814.3 states that:

814.1 Except for an employee serving a supervisory or managerial probationary period under section 815 of this chapter, an agency shall terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.

814.2 An employee being terminated during the probationary period shall be notified in writing of the termination and its effective date.

I find that Agency complied with District Personnel Manual §814.2 and §814.3 by providing Employee with written notice of his termination on August 1, 2013, which was effective on August 2, 2013, and informed Employee of his appeal rights. DPM § 814.1 does not require Agency to provide the specific reasoning for an employee's termination. Instead, it offers a general reason why termination is allowable during the probationary period.

Pursuant to DPM § 814.3, termination during a probationary period is not appealable or grievable unless the termination stems from a violation of public policy, the whistle blower protection laws, or District of Columbia or federal anti-discrimination laws. Employee was a probationary employee at the time of his termination, and he has not provided this Office with any evidence in support of a public policy, whistle blower or discrimination claim. Consequently, I find that OEA lacks jurisdiction to adjudicate this matter.

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." 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. Accordingly, I am unable to address the factual merits, if any, of this matter.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge