

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
MARTIN COLLINS,	)	OEA Matter No. J-0082-19
Employee	)	
	)	Date of Issuance: January 13, 2020
v.	)	
	)	Senior Administrative Judge
DEPARTMENT OF GENERAL SERVICES,	)	JOSEPH E. LIM, Esq.
Agency	)	
_____	)	
C. Vaughn Adams, Esq., Agency Representative	)	
Martin Collins, Employee <i>pro se</i>	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On August 23, 2019, Martin Collins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”), challenging the District of Columbia Department of General Services’ (“Agency”) decision to remove him from his position as a Supervisory Special Police Officer.<sup>1</sup> This matter was assigned to the undersigned on September 17, 2019. Agency filed its Answer and a Motion to Dismiss for Lack of Jurisdiction on September 9, 2019.

An Order on Jurisdiction was issued on September 23, 2019, which required Employee to submit a brief addressing why he believed this Office may exercise jurisdiction over his appeal. Employee failed to respond. On December 11, 2019, the undersigned issued an Order for Good Cause to Employee for his failure to comply. Employee submitted a response to Agency’s Motion to Dismiss on December 20, 2019, addressing the jurisdiction issue in this matter. Based on the filings of both parties, I have determined that an evidentiary hearing is not warranted. The record is now closed.

**JURISDICTION**

As discussed below, the jurisdiction of this Office has not been established.

**ISSUE**

Whether this Office has jurisdiction over Employee’s appeal

<sup>1</sup> Employee’s Petition for Appeal, Attachment, Notice of Separation (June 4, 2019).

### ***Employee's position***

Employee concedes that he was an MSS at-will employee, but felt that his employment was unjustly terminated by the Agency.<sup>2</sup> Employee avers that Agency never gave him any reason for his termination nor was he given a chance to speak on his behalf. Employee maintains that he was not paid by the American Red Cross for working weekends and holidays, and, had no involvement regarding the vote of no confidence on Deputy Chief Lancaster. As for his failure to timely respond to the September 23, 2019, Order on Jurisdiction, Employee alluded to illness and deaths in his family.

### ***Agency's position***

Agency asserts that because Employee was in an MSS position, he was an at-will employee; thus, OEA lacks jurisdiction to adjudicate this matter on the merits.

### **FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW**

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.<sup>3</sup> "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 provides that employees have the burden of proof for establishing jurisdiction.<sup>4</sup> The agency shall have the burden of proof as to all other issues.<sup>5</sup> OEA's jurisdiction is generally "limited to permanent employees who are serving in the career or educational services and who have successfully completed their probationary periods."<sup>6</sup> Further, 6-B DCMR § 3813.1 provides that an appointment to a Management Supervisory Service ("MSS") position is an at-will appointment and may be terminated at any time.

The Omnibus Personnel Reform Amendment Act of 1998 (D.C. Official Code § 1-609.51 *et seq.*), effective June 10, 1998, amended the Comprehensive Merit Act of 1978 (effective March 3, 1979). The purpose of the Act was to, *inter alia*, "establish the Management Supervisory Service to be composed of employees whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall goals...."<sup>7</sup> Pursuant to D.C. Official Code § 1-609.54(a) (2001)<sup>8</sup>, "[a]n appointment to a position in the Management Supervisory Service shall be an at-will appointment. Management Supervisory Service employees shall be given a 15-day notice prior to termination...."

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<sup>2</sup> Order for Good Cause Statement - Employee Response(December 18, 2019).

<sup>3</sup> 59 DCR 2129 (March 16, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

<sup>6</sup> *Roxanne Smith v. D.C. Department of Parks and Recreation*, Initial Decision, OEA Matter No. J-0103-08 (October 5, 2009).

<sup>7</sup> See D.C. Law 12-124, Notice.

<sup>8</sup> Formerly D.C. Code § 1-610.58 (1981).

OEA has consistently held that it lacks jurisdiction over at-will employees.<sup>9</sup> The D.C. Court of Appeals in *Grant v. District of Columbia*, 908 A.2d 1173 (D.C. 2006), held that there are certain procedural protections afforded to Career Service employees. However, MSS employees are statutorily excluded from Career Service protections. In addition, the United States District Court for the District of Columbia in *Evans v. District of Columbia*, 391 F.Supp. 2d 160 (2005), articulated that because MSS employees serve at-will, they have no property interest in their employment because there is no objective basis for believing that they will continue to be employed indefinitely.

Applying the provisions of D.C. Official Code § 1-609.54(a) and the reasoning provided in *Grant* and *Evans*, *supra*, it is clear from the record that Employee was an MSS employee at the time of termination.<sup>10</sup> Agency fulfilled its requirement to provide him with fifteen days' notice prior to his termination. Employee was not entitled to the same protections afforded to Career Service employees. Thus, his at-will status authorized Agency to terminate him without cause.<sup>11</sup> Consequently, the undersigned AJ concludes that OEA lacks jurisdiction to adjudicate appeals from MSS employees. I further find that Employee has failed to satisfy his burden of proof and has failed to establish that OEA may exercise jurisdiction over this matter.

### **ORDER**

Accordingly, it is hereby **ORDERED** that Agency's Motion to Dismiss for Lack of Jurisdiction is hereby **GRANTED**, and Employee's Petition for Appeal is **DISMISSED**.

FOR THE OFFICE:

Joseph Lim, Esq.  
Senior Administrative Judge

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<sup>9</sup> *Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Guimaraes v. D.C. Public Schools*, OEA Matter No. 1601-0101-14 (December 22, 2014); *Luchner v. D.C. Public Schools*, OEA Matter No. 1601-0216-12 (January 10, 2013); *Stewart v. Department of Corrections*, OEA Matter No. J-0078-15 (July 9, 2015); and *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, *Opinion and Order on Petition for Review* (February 10, 2004).

<sup>10</sup> *Agency Answer and Motion to Dismiss*, Tab 1 (September 1, 2019).

<sup>11</sup> *Leonard et al v. Office of the Chief Financial Officer*, OEA Matter Nos. et al. 1601-0241-96 (February 5, 1997).