THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
MONICA WEST, Employee	
v.	OEA Matter No. J-0050-19
DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, Agency	Date of Issuance: August 7, 2019 MICHELLE R. HARRIS, ESQ. Administrative Judge

Monica West, Employee, *Pro Se*
Tonya A. Robinson, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 9, 2019, Monica West ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Employment Services' ("Agency" or "DOES") decision to terminate her from service effective May 14, 2019. On June 6, 2019, Agency filed its Answer to Employee's Petition for Appeal. I was assigned this matter on June 6, 2019.

Agency asserted in its Answer that OEA does not have jurisdiction over this appeal because Employee's position was a Management Supervisory Service ("MSS") appointment, and as a result, Employee's status was 'at-will' at the time of termination. Consequently, on June 11, 2019, I issued an Order directing Employee to address whether OEA has jurisdiction over this matter. Employee's response was due on or before June 26, 2019. Employee did not respond by the prescribed deadline. As a result, on July 2, 2019, I issued an Order for Statement of Good Cause to Employee, requiring her to submit a response and provide a statement for her failure to respond to the June 11, 2019 Order. Employee had until July 15, 2019 to respond. Employee filed her brief on July 11, 2019. After considering the parties' arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

For the reasons outlined below, the jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Program Manager, MSS, for eight and half years.[1] In a notice dated April 29, 2019, Employee was notified that "in accordance with section 3813 of Chapter 38 of the D.C. personnel regulations, Management Supervisory Service," this letter was a fifteen (15) day notice of the termination of her MSS appointment. The letter stipulated that the termination would be effective May 14, 2019. Further, the letter indicated that MSS appointments are 'at-will' and that this termination was neither appealable nor grievable.[2]

Employee's Position

Employee indicates that she is "aware that her classification was MSS and is at will and can be terminated at any time, without reason."[3] However, Employee argues that her issue was the process of termination and not the decision. Employee avers that DCHR should have been contacted before her termination was executed and that DOES did not follow all the steps outlined in the District Personnel Manual.[4]

Agency's position

Agency asserts in its Answer to Employee's Petition for Appeal that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee's position as a Program Manager is a MSS appointment, and as such is 'at-will', and not subject to OEA's jurisdiction.[5] Agency provides that Employee accepted a MSS position on April 18, 2017.[6] Agency maintains that since Employee's position was a MSS appointment, OEA lacks jurisdiction over this matter.

Jurisdiction

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 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. According to 6-B

[1] Employee's Petition for Appeal (May 9, 2019).
[2] *Id.*
[3] Employee's Response (July 11, 2019).
[4] *Id.*
[5] Agency Answer to Employee's Petition for Appeal (June 6, 2019).
[6] *Id.*

of the District of Columbia Municipal Regulation ("DCMR") § 604.1[7], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[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." This Office has no authority to review issues beyond its jurisdiction.[8] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[9] Employees have the burden of proof for issues regarding jurisdiction and must prove jurisdiction by a preponderance of evidence.

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Answer to Employee's Petition for Appeal, that Employee's position was a MSS appointment, and as such, she was classified as an 'at-will' employee. The D.C. Personnel Regulations, Chapter 38, § 3813.1, provides that "*an appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination* (Emphasis Added)." Further, D.C. Personnel Regulations Chapter 38, § 3813.7 indicates that "terminations from an MSS appointment are not subject to administrative appeals." Here, Employee accepted an appointment to the MSS position of Program Manager at DOES on April 20, 2017.[10] Further, Employee does not dispute her MSS status in her Petition for Appeal, rather Employee argues that Agency did not follow the appropriate process in executing her termination.

This Office has held that while there are procedural protections afforded to Career service employees, MSS employees are excluded from those protections.[11] Moreover, D.C. Official Code § 1-609.05 (2001), provides that "at-will employees do not have any job protection or tenure." It is well established in the District of Columbia that "an employer may discharge an 'at-will' employee for any reason or no reason at all."[12] In the instant matter, Employee was provided a fifteen (15) day

[7] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[8] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[9] *See Brown v. District of Columbia Public Schools*, 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).
[10] Agency's Answer to Employees Petition for Appeal (June 6, 2019).
[11] *Charlotte Richardson v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0013-14 (January 9, 2014).
[12] *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.* 597 A.2d 28, 30 (D.C. 1991).

notice of her termination as required by the District Personnel Regulations. Additionally, this notice also included a statement indicating that her termination was not appealable or greivable.[13]

In her response on jurisdiction dated July 11, 2019, Employee argued that DOES did not follow the appropriate steps with the execution of her termination.[14] However, I find that Employee's status as a MSS, 'at-will' employee at the time of her termination preemptively precludes this Office from any further review of the merits of this case, as this Office lacks the jurisdictional authority to do so. Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a "preponderance of evidence." I have determined that Employee did not meet this burden. For these reasons, I find that OEA lacks jurisdiction to adjudicate this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge

[13] Employee's Petition for Appeal (May 9, 2019).
[14] Employee's Response (July 11, 2019).