

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

_____)	
In the Matter of:)	
)	
TASHERA LEONARD,)	
Employee)	
)	OEA Matter No.: J-0050-20
v.)	
)	Date of Issuance: November 18, 2020
D.C. DEPARTMENT OF YOUTH AND)	
REHABILITATION SERVICES,)	
Agency.)	
_____)	MICHELLE R. HARRIS, ESQ.
)	Administrative Judge
Felicia Dantzler, Employee Representative		
Chanel G. Hall, Esq., Agency Representative		

INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL HISTORY

On June 29, 2020, Tashera Leonard (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth and Rehabilitation Services’ (“Agency” or “DYRS”) decision to terminate her from service, effective May 29, 2020. Agency filed its Answer to Employee’s Petition for Appeal on September 21, 2020. This matter was assigned to the undersigned Administrative Judge on September 30, 2020.

On October 6, 2020, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency in its Answer. Agency had the option to submit a sur-reply brief on or before November 2, 2020. Employee submitted her response in accordance with the prescribed deadline. On November 2, 2020, I issued an Order requiring Agency to submit Employee’s SF-50s on or before November 6, 2020. Agency complied with this Order. On November 5, 2020, Employee, by and through her representative, simultaneously filed a Designation of Representation and a Supplemental Brief. As a result, on November 5, 2020, I issued an Order providing Agency the option to submit a sur-reply brief on or before November 16, 2020. Agency submitted its response on November 5, 2020. 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.

¹ This decision was issued during the District of Columbia’s Covid-19 State of Emergency.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as an Investigator, beginning June 10, 2019. In a final notice dated May 29, 2020, Employee was terminated from service, effective the same day.

Employee's Position

Employee asserts that she was not appropriately terminated during her probationary status. Employee argues that Agency failed to adhere to the District Personnel Manual (DPM) in its administration of the termination. Specifically, Employee avers that she was not appropriately evaluated as required by the DPM.² Further, Employee maintains that Agency failed to provide her with a performance plan, which also resulted in her inability to have an annual performance evaluation.³ Additionally, Employee argues that Agency also failed to conduct a mid-year progress review of her performance. Employee also avers that Agency's assertion that her "performance significantly declined after her annual review, she frequently missed deadlines, and her work product required significant corrections" is unsupported.⁴ Employee maintains that after her "performance review, there was no official verbal or written indication" regarding her work performance. Further, Employee argues that her previous manager never said that her performance had declined.⁵ As a result, Employee avers that Agency failed to meet its burden of proof that her work performance did not meet the applicable standards. Employee argues that Agency's relies upon her probationary status as its reason that it could terminate her without cause but maintains that she was entitled to "substantive and procedural protections afforded full-time career employees of the District of Columbia."⁶

Agency's Position

Agency asserts in its Answer that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee was in probationary status at the time of her termination, and therefore, OEA has no jurisdiction over this appeal.⁷ Agency avers that Employee was offered a position of "Investigator" with DYRS' Office of Internal Integrity commencing on June 10, 2019, and was subject to a twelve-month (12) probationary period. Agency asserts that in a letter dated May 29, 2020, Employee was notified that she would be terminated, effective that same day, and that the termination was not appealable because Employee was still in probationary status. Additionally, Agency avers that Employee's claims regarding performance evaluations and associated assertions

² Employee's Supplemental Brief (November 5, 2020).

³ *Id.* at Page 4.

⁴ Employee's Brief (October 20, 2020).

⁵ Employee's Brief (October 20, 2020).

⁶ Employee's Supplemental Brief at Page 5. (November 5, 2020).

⁷ Agency's Answer to Employee's Petition for Appeal (September 21, 2020).

are not at issue in this instant matter.⁸ Agency asserts that these arguments are not relevant to jurisdiction and that Employee has failed to meet the burden of proof on jurisdiction.⁹ Agency maintains that “District government probationary employees may be discharged at-will and they do not have any statutory right to appeal their termination to the Office of Employee Appeals.”¹⁰ Further, Agency contends that pursuant to DPM Chapter 8, Section 814, a termination during a probationary period is not appealable or grievable and that OEA lacks jurisdiction over this appeal.¹¹

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 of the District of Columbia Municipal Regulation (“DCMR”) § 604.1¹², 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.¹³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹⁴

In the instant matter, the undersigned agrees with Agency’s assertion that OEA does not have jurisdiction over this matter. Chapter 8, Section 814.3 of the District Personnel Manual provides in pertinent part, “that a termination during a probationary period is not appealable or grievable.” Thus, an appeal to this Office by an employee who is classified in probationary status at the time of termination must be dismissed for lack of jurisdiction.¹⁵ Based on the record, I find that Employee

⁸ Agency’s Sur-Reply Brief (November 5, 2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

¹³ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹⁴ 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).

¹⁵ *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

was hired on June 10, 2019, and was terminated effective May 29, 2020.¹⁶ Further, Employee's SF-50 that was issued when she was hired, and the offer letter both provide that her employment commenced on June 10, 2019, and was subject to a one-year (1) probationary period.¹⁷ Additionally, Employee's termination SF-50 reflects termination during the probationary period.¹⁸ Based on this timeline, I find that Employee was still in probationary status at the time of her termination. Employee does not dispute that she started working with Agency on June 10, 2019.¹⁹ Further, in her Petition for Appeal, Employee indicated that she worked at Agency "8 days less than a year" and also indicated that she was appealing her termination during her probationary period.²⁰ This Office has consistently held that an appeal to OEA by an employee serving in probationary status must be dismissed for lack of jurisdiction.²¹ Accordingly, I find that Employee's probationary status at the time of her termination preemptively precludes this Office from any further review of the claims asserted on the merits of this case, as this Office lacks the jurisdictional authority to do so. For these reasons, I find that Employee's Petition for Appeal must be dismissed for lack of jurisdiction.

ORDER

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

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Administrative Judge

¹⁶ Agency Supplemental Response - SF-50s (November 5, 2020). *See also* Agency's Answer at Offer Letter.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Employee's Petition for Appeal (June 29, 2020).

²⁰ Employee's Petition for Appeal (June 29, 2020).

²¹ *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, Opinion and Order on Petition for Review (August 19, 1991).