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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: J-0013-24
EMPLOYEE, ¹)	
Employee)	
)	Date of Issuance: July 1, 2025
v.)	
)	
D.C. DEPARTMENT OF)	
FOR-HIRE VEHICLES,)	NATIYA CURTIS, Esq.
Agency)	Administrative Judge
)	

Andraea Benson, Esq., Employee Representative
Connor Finch, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 4, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of For-Hire Vehicles’ (“Agency” or “DFHV”) decision to separate her from service as a Vehicle Inspection Officer (“VIO”) during her probationary period effective December 4, 2023. OEA issued a letter dated December 4, 2023, requesting that Agency file an Answer on or before January 3, 2024. Agency filed its Answer to Employee’s Petition for Appeal as required. The undersigned Administrative Judge (“AJ”) was assigned this matter on January 3, 2024. On January 10, 2024, I issued an Order convening a Status Conference for January 25, 2024. On January 22, 2024, Agency filed a Consent Motion to Continue the Status Conference. On January 31, 2024, Subsequently, I issued an Order granting Agency’s Motion and rescheduled the Status Conference for February 20, 2024. Both parties appeared for the Conference as scheduled. On February 21, 2024, I issued a Post Status Conference Order, which codified the verbal orders made during the Status Conference. This Order required Agency to submit additional information regarding Employee’s work schedule, paid family leave calculations, and probationary period dates. In this Order, the undersigned also scheduled a Prehearing Conference for March 19, 2024.

On March 8, 2024, Agency submitted its Praecipe Responsive to the Post Status Conference Order. On March 19, 2024, an additional Status Conference was convened.² During the Status

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

Conference, the undersigned determined that supplemental information was required from Agency. On March 21, 2024, I issued a Post Status Conference Order, requiring Agency to submit the required information by or before April 19, 2024. On April 19, 2024, Agency filed its Praecipe Responsive to Second Post Status Conference Order. Upon review, the undersigned determined that this submission did not fully provide the information requested in the March 21, 2024, Order. Accordingly, the undersigned issued an Order on April 26, 2024, scheduling a Status Conference for May 14, 2024.

On May 7, 2024, Employee, by and through her representative filed a Consent Motion to Continue the Status Conference scheduled for May 14, 2024. Thereafter, on May 9, 2024, I issued an Order Granting Employee's Motion and rescheduled the Status Conference for May 21, 2024. Both parties appeared for the Status Conference as scheduled. On May 21, 2024, I issued an Order for Briefs on Jurisdiction. Employee's brief was due on or before June 11, 2024, and Agency's brief was due by July 2, 2024. Both parties submitted their briefs as required.

After reviewing the parties' submissions, the undersigned determined that additional information was required and convened a Status Conference on September 26, 2024. Based on the information discussed at the Status Conference, the undersigned issued a Post Status Conference Order on September 26, 2024, requesting additional briefs. Employee's brief was due by October 25, 2024. Agency's brief was due by November 15, 2024. Both parties submitted their briefs as required.

Based on the parties' submissions, the undersigned again determined that additional information was warranted. On January 21, 2025, the undersigned issued an Order for Briefs on Jurisdiction. Employee's brief was due February 11, 2025. Agency's response was due by March 4, 2025. On February 5, 2025, Employee submitted a motion to extend the deadline to submit her brief to February 25, 2025. The undersigned granted the motion in an Order dated February 7, 2025. Employee's brief was now due by February 18, 2025, and Agency's response was due March 18, 2025. The parties submitted their briefs as required. Upon review of the record and the parties' submissions, I have determined that an Evidentiary Hearing was not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

² This Conference was initially scheduled as a Prehearing Conference but was converted to a Status Conference because the undersigned requested additional information from Agency concerning the calculation of Employee's probationary period and PFL hours.

The burden of proof for material issues of fact shall be by a preponderance of the evidence. “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 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

Summary of Employee’s Position

Employee presented several distinct arguments in support of her position. First, Employee avers that she was not in a probationary period at the time Agency terminated her. Employee asserts that she was hired on October 9, 2022, and her probationary period ended on October 9, 2023.³ Employee maintains that she applied for Paid Family Leave (“PFL”) due to unforeseen circumstances.⁴ Employee asserts that pursuant to the District Personnel Manual (“DPM”) Issuance I-2023-1, when an employee applies for PFL, they are required to sign a one-year Continuation of Service Agreement.⁵ Employee maintains this agreement must be signed by an employee prior to receiving PFL, and also extends the probationary period by the number of PFL hours used. Employee further maintains that a probationary period cannot be extended by the number of PFL hours used if an employee does not enter into a Continuation of Service Agreement. Employee avers that because Agency has not provided proof that Employee entered into a Continuation of Service Agreement, Employee’s probationary period cannot be extended by the number of PFL hours she used. Employee therefore contends that her probationary period ended on October 9, 2023, per her original employment contract.⁶

Employees further asserts that section 224.3 of the DPM mandates that an agency seeking to extend an employee’s probationary period beyond one (1) year must submit a written request for authorization, including a detailed explanation of the factors that justify this extension.⁷ Employee maintains that her termination was conducted without a certificate of service, as required by DPM 1618.7.⁸ Employee argues that because Agency failed to comply with the mandatory requirements set forth in the DPM, Employee was no longer in a probationary status at the time of termination, and OEA maintains jurisdiction over this appeal. Employee further asserts that because Employee was terminated after her probationary period, Agency was required to employ progressive discipline.⁹

³ Employee’s Petition for Appeal (Dec 4, 2023).

⁴ Employee’s Brief on Jurisdiction, p. 1 (June 11, 2024).

⁵ *Id.* at p. 2 (citing DPM Issuance I-2023-1-Probationary Employees).

⁶ *Id.* at p. 2 and Exhibit 4.

⁷ *Id.* at p. 2 (citing DPM § 224.3-Extending Probationary Periods).

⁸ DPM 1618.7 states: “For notices of proposed actions delivered in person, the employee to whom the notice is issued shall be asked to certify its receipt in writing. If the employee refuses to certify receipt, a brief descriptive written statement, signed by a witness to the refusal, may be used as evidence of service.

⁹ Employee’s Brief on Jurisdiction pp.2-3 (June 11, 2024).

Employee also argues that she was erroneously classified as a probationary period employee. Employee maintains that she had already fulfilled her probationary period while employed as a Correctional Officer with the D.C. Department of Corrections. Employee avers that under the DPM, she was not required to serve an additional probationary period, thus Agency could only terminate her for cause.¹⁰

Summary of Agency's Position

Agency asserts that Employee was terminated during her probationary period, thus, OEA does not have jurisdiction over this appeal. Agency states that Employee was hired as a Vehicle Inspection Officer in the Enforcement and Field Compliance Division of Agency on October 9, 2022, and was subject to a one (1) year probationary period.¹¹ Agency maintains that the original end date for Employee's probationary period was set for October 9, 2023; however, her probationary period was extended in accordance with DPM § 225.5, which requires a probationary employee who receives PFL to have their probationary period extended by the length of the paid family leave pursuant to §1286.9.¹²

Further, Agency avers that the one (1) year probationary period considers the normal annual and sick leave an employee may use but does not account for extended absences. Agency asserts that on May 2, 2023, Employee requested PFL for the care of a family member with a serious health condition. Agency cites that on May 9, 2023, Agency granted Employee's request, and approved 320 hours of PFL, of which Employee used 310 hours, amounting to thirty-one days. Agency notes that Employee worked a ten (10)-hour shift, four (4) days per week. Agency asserts that because Employee worked four (4) days per week, her use of thirty-one (31) days of PFL added over seven (7) weeks to her probationary period.¹³

Agency further cites to District of Columbia Human Resources ("DCHR") Issuance I-2021-33 ("Issuance I-2021-33"), which states that some paid and unpaid leave does not count toward the completion of the probationary period and thus must be added to the original anticipated leave date. Agency asserts that per Issuance I-2021-33, administrative leave provided prior to termination does not count toward the completion of the probationary period.¹⁴ Agency also notes that, "[by] rule the period of administrative leave following the Notice of Separation should not be credited toward the completion of the probationary period."¹⁵ Agency maintains that on November 20, 2023, Agency served Employee with a Notice of Separation, notifying her that she would be terminated during her probationary period, effective December 4, 2023. Agency states that Employee was placed on administrative leave from the date of the Notice of Separation, November 20, 2023, through the date of her termination, December 4, 2023. Agency cites that the Notice of Separation was served on November 20, 2023, and prior to the end of Employee's probationary period. Agency therefore argues that because Employee was in a probationary period at the time the Notice of Separation was issued, Employee has no right to appeal to OEA.¹⁶

¹⁰ Employee's Brief on Jurisdiction, p. 2 (February 25, 2025).

¹¹ Agency's Answer to the Petition for Appeal at p. 1 (January 3, 2024).

¹² *Id.* at p. 2.

¹³ Agency's Brief on Jurisdiction, pp 1-2; p. 6 (July 2, 2024).

¹⁴ *Id.* at p. 6.

¹⁵ *Id.* at p. 6 (citing 6-B DCMR § 225.9, which states: "No leave granted during a period of advanced notice of termination shall be credited toward completion of the probationary period unless the separation is subsequently reversed").

¹⁶ *Id.* at p. 6.

Agency also contends that the absence of a Continuation of Service Agreement has no bearing on Employee's receipt of PFL, or the extension of her probationary period.¹⁷ Agency maintains that signing a Continuation of Service Agreement and the extension of a probationary period are not conditional. Agency clarifies that probationary employees who utilize PFL during their probationary period shall enter into a Continuation of Service Agreement according to D.C. Code §1-612.04a(d).¹⁸ Agency states the Continuation of Service Agreement requires an employees in a probationary period to repay the District government salary they receive while on PFL if he or she voluntary separates from employment during the probationary period.¹⁹ Agency avers that an employee in a probationary period shall have their leave extended if they use PFL, regardless of whether they entered into a Continuation of Service Agreement. Agency further notes that the lack of Continuation of Service Agreement may have prevented the District from demanding payment from Employee if she left voluntarily. Agency notes that Employee did not leave voluntarily and asserts that the lack of Continuation Agreement is inconsequential.²⁰

Agency also asserts that the Employee's probationary period was extended pursuant to 6-B DCMR § 225, which addresses 'Completing Probation'.²¹ Agency therefore maintains that while Employee cited to 6-B DCMR § 224, which concerns Extending Probation, it is inapplicable in this matter.²² Agency maintains that Employee was properly terminated during her probationary period.

Agency argues that Employee's previous employment as a Correctional Officer did not preclude her from serving an additional probationary period in her position as a VIO. Agency maintains that Employee's position at Agency required different knowledge and position requirements than those required as a Correctional Officer, and there is no overlap in the requirements for these positions. Accordingly, Agency maintains that requiring a new probationary period was within the scope of the DPM and necessary to give Agency an independent opportunity to determine if Employee was qualified to serve as a VIO.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

ANALYSIS²³

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.²⁴ This Office's jurisdiction is conferred upon it by law and was

¹⁷ *Id.* at 7.

¹⁸ *Id.* at p. 8. *See also* DC Code 1-612.04a(d), which states: [i]f an employee using leave under this section is serving in a probationary capacity, the employee shall enter into a 1-year continuation of service of agreement, and the employee's probationary period shall be extended by the duration of the leave used.

¹⁹ *Id.* at p. 8 (citing DC Code (1-612.04(4) and (1-612.04a(d))).

²⁰ *Id.* at pp. 8- 9.

²¹ Pursuant to DPM §225.5, "[a] probationary employee who receives paid family leave shall have their probationary period extended by the length of the paid family leave pursuant to § 1286.9."

²² pursuant to DPM § 224.2, "[f]actors or conditions that would warrant a probationary period requirement longer than one (1) year for a specific class of positions include, but are not limited to: An agency's need to provide new hires with formalized classroom or field training, or both, that is pertinent to the position; An agency's use of a standardized training evaluation system for new hires, the successful completion of which is a pre-requisite for a new hire to be able to perform the duties of the position; or A new hire's need to complete courses or training necessary for receiving certification(s) required for the position."

²³ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

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 the OPRAA conferred jurisdiction on this Office to hear appeals, with some exceptions. According to the rules of this Office, established at 6-B of the District of Columbia Municipal Regulation (“DCMR”) Chapter 600, Rule 604.1 states 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.

Probationary Period

In the instant matter, the undersigned must first determine whether Employee was required to serve a new probationary period in her role as a VIO. Chapter 2, Section 226 of the DPM governs new probationary periods. Section 226.2 states:

226.2: An employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee:

- a. Is appointed through open competition to a position with a different educational requirement; b. Applies for and is appointed from a register to a uniformed position in the Metropolitan Police Department or the Fire and Emergency Medical Services Department; or c. Is appointed through open competition to a position with different licensure, certification, or other similar requirements.

Employee did not have a break in services of three (3) business days or more, as she started her position with Agency the next business day²⁵ after submitting her resignation as a Correctional Officer. Employee also applied through open competition and acknowledged such by noting that she applied through a publicly advertised vacancy announcement.²⁶

Thus, what is at issue is whether the VIO position had different licensure, certification, *or other similar requirements*. (Emphasis added). Agency maintains that the position as a VIO required substantially different qualifications and knowledge, and thus a new probationary period was warranted.²⁷ Employee maintains that the qualifications for a VIO are less stringent than those of a Correctional Officer. Employee avers that the VIO position only requires a valid driver’s license,

²⁴ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

²⁵ Days is defined as “calendar days for all periods of more than ten days, and business days for all periods of ten (10) days or less.” DPM § 299.

²⁶ Employee’s Brief on Jurisdiction p. 2 (February 25, 2025).

²⁷ Agency’s Brief on Jurisdiction, - pp 7-10 (March 18, 2025).

while a Correctional Officer requires a high school diploma/GED, firearms qualifications, and a valid driver's license.²⁸

The undersigned finds that while neither position has significantly different licensure or certification requirements, the other requirements for each of these positions are substantially different. The Correctional Officer position requirements are very specific to working in a Correctional facility and the duties are concentrated specifically on inmate safety and supervision, inmate counseling and enforcing codes of conduct. The position description states a Correctional officer performs "moderate to complex work involving the care and custody of offenders. Work involves the direct supervision of inmate work groups in their daily assigned duties and responsibility of preventing escapes and maintaining discipline while performing specific security duties in conformance with strict rules, regulations, standard operating procedures..."²⁹ The knowledge required is also specific to managing inmates, and includes providing inmates "with advice, guidance, and referral service on matters pertaining to such items as academic/vocational involvement," and "personal relationships or institutional adjustment."³⁰

In contrast, the major duties of a Vehicle Inspection Officer include: recording daily violations of District public vehicles for-hire regulations, and issuing citations accordingly; investigating public vehicle for-hire fleet facilities and operations for compliance with DCMR Title 31; Assisting with developing evidence of violations and preparing written reports on results of approved investigations, including findings of fact and conclusions; Collaborating with agents of governments in neighboring local jurisdictions relative to public vehicle for hire operations; examining vehicle licenses, public vehicle's operator's license and identification cards, and vehicle operator's permit for authenticity.³¹

The knowledge for the VIO position includes knowledge of Taxicab and other public vehicle for-hire regulations, as well as zone rates and fair systems governing District taxicab operations; ability to evaluate written records for evidence of omission and alteration; ability to read and interpret local maps for various geographical locations; knowledge of computers, particularly the use of a keyboard and terminal display screen for input and retrieval of information; familiarity with the Immigration and Naturalization Service requirement to differentiate types of work documents.³² Because of the specific nature of each respective position, the undersigned finds that the differences between the requirements of each position are substantial enough to meet DPM §226.2c, which authorizes a new probationary period when the position had different licensure, certification, *or other similar requirements*. (Emphasis added). Accordingly, the undersigned finds that Agency was permitted to authorize a new probationary period.

Whether Employee was in a probationary period at the time of termination.

The undersigned finds that Employee was still in a probationary period as of her effective date of termination, December 4, 2023; and this finding also involves an analysis of Employee's work schedule, calculation of the PFL hours Employee used, and the use of administrative leave. Section 225.5 of the DPM notes that a probationary employee who receives paid family leave *shall*

²⁸ Employee's Brief on Jurisdiction, p. 2 (February 25, 2025).

²⁹ Agency's Brief on Jurisdiction (March 18, 2025).

³⁰ *Id.*

³¹ *Id.* at Exhibit 4.

³² *Id.* at Exhibit 8.

have their probationary period extended by the length of the paid family leave pursuant to DPM § 1286.9, which also states that: “[a] probationary employee who receives paid family leave shall have their probationary period extended by the length of the paid family leave.”³³ (Emphasis Added). DCHR Issuance I-2021-33, while not law, provides further guidance and notes:

Generally, all workdays and nonworkdays while on probation count toward the completion of the probationary period. For example, in a two-week period where an employee uses annual leave for three workdays and is off for four non-workdays within the pay period, the employee will have completed 14 days of probation.

The issuance further states that:

“However, some paid and unpaid leave does not count toward the probationary period and the hiring authority shall add these days to the original anticipated probation period end date. These periods of paid and unpaid leave include: any non-paid workdays (Leave Without Pay and Absence Without Official Leave); paid leave in excess of ten consecutive workdays; *paid family leave*; or *administrative leave* provided prior to termination unless the termination is reversed.”³⁴ (Emphasis Added).

Here, the record reflects that Employee was hired on October 9, 2022, and was subject to a one (1) year probationary period. Accordingly, her probationary period was set to conclude on or around October 9, 2023.³⁵ However, in May 2023, Employee was granted 320 hours of PFL, which amounts to eight (8) weeks of leave. Employee did not use the full 320 hours but used 310 hours of PFL between June 2023 and November 2023.³⁶ Consistent with DPM Section 225.5, Employee’s probationary period was extended by the amount of PFL hours used.

However, the undersigned finds that Agency’s Supervisory HR specialist Ms. S. Frazier calculated Employee’s use of 310 hours of leave incorrectly. In a document dated October 31, 2024, Ms. Frazier indicated that Employee used 310 hours of paid leave, extending her probationary period through week eight (8), which she notes is December 4, 2023. Ms. Frazier additionally stated that Employee was separated during her probationary period and placed on administrative leave for *two (2) weeks* through December 4, which is also incorrect, as Employee was placed on nine (9) days of administrative leave as will be discussed below. Further, Ms. Frazier included a chart to illustrate the calculation of Employee’s use of PFL, which erroneously indicates that the additional PFL hours added eight weeks to Employee’s probationary period, starting at October 16, 2023, and ending at December 4, 2023.³⁷

The undersigned finds that Employee worked ten (10) hour shifts, four (4) days a week, totaling forty (40) hours a week. Thus, her use of 310 hours amounted to thirty-one (31) days or seven (7)-weeks and three (3) days of leave because Employee used her leave in ten-hour increments,

³³ Chapter 12 of the DPM applies to the Government Family Leave Program-Protections and Limitations.

³⁴ DPM Issuance I-2021-33 (September 7, 2021).

³⁵ Agency’s Answer to Petition for Appeal, Tab 1 (January 3, 2024). *See also*. Agency’s Praeceptive Responsive to Post Status Conference Order at Exhibit 1 (March 8, 2024).

³⁶ Agency’s Brief on Jurisdiction, p. 2 (July 2, 2024).

³⁷ Agency’s Brief on Jurisdiction at Exhibit 6 (November 14, 2024).

consistent with the length of her shifts.³⁸ Accordingly, extending Employee's probationary period by thirty one (31) days or seven weeks and three days would extend it from October 9, 2023, through November 29, 2023.³⁹ This calculation is consistent with Section 225.5 of the DPM which notes that a probationary employee who receives paid family leave shall have their probationary period *extended* by the length of the paid family leave..." Therefore, extending her probationary period should start at October 9, 2023, which would have been the end of her probationary period if Employee did not use leave. Despite these miscalculations, however, Agency's use of administrative leave from November 20, 2023, to December 4, 2023, had the effect of tolling the calculation of days toward Employee's probationary period as explained below, and extended her probationary period beyond November 29, 2023.

Agency's use of Administrative Leave

Agency contends that administrative leave granted after the Notice of Separation was issued on November 20, 2023, does not count toward the completion of probation. On November 20, 2023, Agency issued Employee a Notice of Separation, which placed employee on administrative leave effective that same day, November 20, 2023. The Separation Notice stated that Employee's probationary period and service would end effective Monday, December 4, 2023, on close of business. Agency argues that because Employee was put on administrative leave on November 20, 2023, and prior to the end of her probationary period, she remained in a probationary period until her removal on December 4, 2023.⁴⁰ I agree with Agency's assessment.

The undersigned finds that Agency's use of administrative leave had the effect of pausing the calculation of days toward the completion of Employee's probationary period. Chapter 2 Section 227.3 of the DPM states that "[t]he personnel authority may provide a probationary employee advanced written notice of his or her separation and may place the employee on administrative leave for up to ten (10) days prior to the effective date of the separation." DPM Chapter 12, section 1299, which governs hours of work, legal holidays, and leave defines administrative leave as an excused absence from duty without loss of pay and without charge to annual leave, sick leave, or compensatory time.⁴¹ By this reasoning, administrative leave would only count actual workdays. Here, Agency used nine (9) business days of Administrative leave from November 20, 2023, to December 4, 2023.⁴² DPM Chapter 2 section 225.9 specifies that "[n]o leave granted during a period of advanced notice of termination shall be credited toward completion of the probationary period unless the separation is subsequently reversed." Section 225.9 does not explicitly reference administrative leave as the type of leave contemplated. However, DCHR Issuance I-2021-33 provides further guidance and clarifies that administrative leave provided prior to termination does not count toward the completion of the probationary period:

However, some paid and unpaid leave does not count toward the probationary period and the hiring authority shall add these days to the original anticipated probation

³⁸ Employee was one (1) day or ten (10) hours shy from using the full 320 hours (eight-weeks), considering she took her leave in ten-hour increments. Accordingly, Employee used seven weeks and three days of PFL.

³⁹ This calculation is as follows: week one (1): October 9th-12th; Week two (2): October 16-19; Week three (3): October 23-26; Week four (4): October 30th - November 2nd; Week five (5): November 6th - 9th; week six (6): November 13th - November 16th. Week seven (7): November 20th - 23rd. The final Week amounts to three days: November 27th -29th.

⁴⁰ Agency's Supplemental Brief on Jurisdiction, p. 6 (November 14, 2024).

⁴¹ DPM Chapter 12 governs Hours of Work, Legal Holidays, and Leave.

⁴² Administrative leave was effective on November 20, 2023. Thus, counting November 20, 2023, as the first business day, December 4th would have been the ninth business day.

period end date. These periods of paid and unpaid leave include: any non-paid workdays (Leave Without Pay and Absence Without Official Leave); paid leave in excess of ten consecutive workdays; paid family leave; or *administrative leave provided prior to termination* unless the termination is reversed.” (issuance I-2021-33)(Emphasis Added).

Consequently, because the nine administrative leave days could not count toward the completion of Employee’s probationary period, she was still in a probationary period on November 20, 2023, the first day of administrative leave, and on December 4, 2023, the effective date of separation. Chapter 2, § 227.4 of the District Personnel Manual (“DPM”) states that a termination during an employee’s probationary period is neither appealable nor grievable. Consistent with the DPM, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.⁴³

Continuation of Service Agreement

While Employee argues that the Continuation of Service Agreement was a prerequisite to extending the probationary period by the amount of PFL used, the undersigned finds that this issue has no bearing on this matter. The purpose of a Continuation of Service Agreement is to reimburse the District for paid leave granted to a probationary employee, if that employee uses PFL and *voluntarily* leaves employment prior to the end of the probationary period DC Code § (1-612.04(a)(d)(1)-(2)(Emphasis Added). Here, Employee was terminated during her probationary period, and thus did not leave her employment voluntarily. Accordingly, whether she signed a Continuation of Service Agreement has no bearing on this matter. Additionally, there is no explicit language in the DPM or DC Code that states extending the probationary period by the amount of PFL is contingent on an employee entering into Continuation of Service Agreement.

Certificate of Service

The undersigned also finds that Employee’s arguments regarding certificate of service and extending the probationary period are not applicable. Employee maintains that her termination was conducted without certification of receipt of the notice of proposed action, as required by DPM § 1618.7. However, Chapter 16 of the DPM governs Corrective and Adverse Actions; Enforced Leave; and Grievances. Employee was terminated pursuant to Chapter 2 of the DPM, which governs Talent Acquisition. Section 227.2 states, “[w]hen an employee is separated pursuant to 227.1, the personnel Authority *shall* notify the employee in writing of the effective date of the separation.” Section 227.3 states, “[t]he personnel Authority *may* provide a probationary employee advanced written notice of his or her separation and may place an employee on administrative leave for up to 10 days prior to the effective date of the separation.” (Emphasis Added). Employee was notified in writing and provided advanced written notice of separation, consistent with DPM sections §227.2 and §227.3.

However, *assuming arguendo* that DPM § 1618.7 applies, the undersigned finds that Agency met the certificate of service requirements. Section 1618.7 states: “For notices of proposed actions delivered in person, the employee to whom the notice is issued shall be asked to certify its receipt in writing. If the employee refuses to certify receipt, a brief descriptive written statement, signed by a witness to the refusal, may be used as evidence of service.” Employee’s Notice of Separation

⁴³ 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).

indicates that she refused to sign.⁴⁴ A brief notation “Refused to Sign” was indicated on the Notice of Separation and signed by a witness to the refusal, as required.⁴⁵ Accordingly, I find that the evidence does not support improper certificate of service.

Extending Probation

The undersigned also finds that Section 224 of the DPM which governs Extending Probation, is not applicable to this matter. Employee asserts that this section mandated Agency to submit a written request for authorization and receive permission from DCHR prior to extending Employee’s probationary period beyond one year.⁴⁶ However, extending an employee’s probationary period pursuant to Section 224, considers certain factors, which are not present in this matter.⁴⁷ Further, Agency extended Employee’s probationary period pursuant to Section 225 of the DPM which governs Completing Probation. Section 225.5 states “[a] probationary employee who receives paid family leave *shall* have their probationary period extended by the length of the paid family leave pursuant to §1286.9.”⁴⁸ (Emphasis Added). Both sections 225.5 and 1286.9 require extending the probationary period by the amount of PFL used, but do not include any language requiring permission from DCHR to extend the probationary period. Agency correctly noted that the probationary period considers normal leave and absences, but extended leave is not to be counted toward the probationary period.

Further, any argument that an employee in their probationary period can appeal a termination during a probationary period is in contradiction to section 227.4 of the DPM, which explicitly states “separation from government service during a probationary period is neither appealable or grievable.” Additionally, extending a probationary period by the amount of PFL used supports the purpose of the probationary period, which provides District agencies insight regarding an employee’s suitability and qualifications for permanent employment.⁴⁹ As such, it stands to reason that an agency cannot observe an employee while they are on extended leave. Extending one’s probationary period by the amount of PFL used, restores Agency’s ability to observe the probationary employee for the full amount of the probationary period. Accordingly, the undersigned finds that Employee was in probationary status at the time of her separation from Agency. As a result, Employee’s probationary status at the time of termination precludes her from appealing her removal to this Office, as OEA lacks jurisdiction in this matter.

⁴⁴ Agency’s Brief on Jurisdiction at p. 2 (July 2, 2024).

⁴⁵ *Id.* at Exhibit 5(July 2, 2024).

⁴⁶ DPM § 224.3 requires an agency seeking a probationary period of longer than one (1) year to submit a written request for authorization to DC Department of Human Resources (“DCHR”). *See also* Employee’s Brief on Jurisdiction, p. 2 (June 11, 2024).

⁴⁷ DPM § 224.2 (February 1, 2021).

⁴⁸ Section 1286.9 states “A probationary employee who receives paid family leave shall have their probationary period extended by the length of the paid family leave.”

⁴⁹ DPM §223.1 (February 1, 2021).

ORDER

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

FOR THE OFFICE:

/s/ Natiya Curtis
NATIYA CURTIS Esq.
Administrative Judge