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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
ANGELA L. WHITE,	)	
Employee	)	OEA Matter No. J-0083-16
	)	
v.	)	Date of Issuance: November 3, 2016
	)	
D.C. FIRE & EMERGENCY	)	
MEDICAL SERVICES,	)	
	)	
Agency	)	ERIC T. ROBINSON, Esq.
_____	)	Senior Administrative Judge
Angela L. White, Employee <i>Pro-Se</i>		
Andrea Comentale, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 29, 2016, Angela L. White (“Employee”) filed a Petition for Appeal with the District of Columbia Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Fire and Emergency Medical Services (“FEMS” or “the Agency”) adverse action of removing her from service. Employee’s last position of record was Management Liaison Specialist. Employee was promoted to this position on May 31, 2015. The effective date of Employee’s termination was May 20, 2016. It is uncontroverted that Employee’s promotion was subject to a one year probationary period. Employee admitted this in her filings with the OEA. This matter was initially assigned to the Undersigned on September 9, 2016. Thereafter, the undersigned noted that there existed a question as to whether the OEA may exercise jurisdiction over this matter. On September 16, 2016, the Undersigned issued an Order requiring both parties to address whether the instant appeal should be dismissed over lack of jurisdiction. Both parties timely filed their respective briefs in this matter. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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.

### JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

### ANALYSIS AND CONCLUSION

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter “CMPA”), sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) states in pertinent part that:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career service rights conferred by the CMPA may be exercised by aggrieved career and educational service employees. However, the District Personnel Manual (“DPM”) § 814.3, provides in relevant part that “a termination during a probationary period is not appealable or grievable...” Thus, according to DPM § 814.3, career service employees who are serving in a probationary period are precluded from grieving a removal to this Office until their probationary period is completed. According to the documents of record, particularly Employee’s admission as referenced in her Petition for Appeal, I find that Employee was serving

in a probationary period at the time of her removal. Considering as much, I find that pursuant to DPM § 814.3, the Employee is precluded from grieving her removal to this Office.

### Conclusion

Based on the preceding statutes, case law, and regulations, it is plainly evident that the OEA lacks the jurisdictional authority to review adverse action appeals of probationary employees. Since Employee was terminated during her probationary period, I find that I lack the authority to adjudicate the instant appeal. Consequently, I CONCLUDE that this matter must be dismissed for lack of jurisdiction.

### ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.<sup>1</sup>

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Senior Administrative Judge

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<sup>1</sup> Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that Employee noted in her petition for appeal.