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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
QUEEN GLYMPH,)	
Employee)	OEA Matter No.: 1601-0136-13
)	
v.)	Date of Issuance: November 20, 2013
)	
DISTRICT OF COLUMBIA DEPARTMENT)	
OF MENTAL HEALTH,)	STEPHANIE N. HARRIS, Esq.
Agency)	Administrative Judge
)	
Richard L. Swick, Esq., Employee Representative		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 19, 2013, Queen Glymph (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Mental Health’s (“Agency” or “DMH”) decision to terminate her from her position as a Program Analyst. In response to Employee’s Petition for Appeal, Agency filed its Answer on September 27, 2013.

I was assigned this matter on October 7, 2013. After reviewing the case file and the documents of record, I issued an Order dated October 16, 2013, wherein I questioned whether OEA may exercise jurisdiction over the instant matter. Employee was ordered to submit a written brief, together with copies of cited statutes, regulations, and cases to address whether this matter should be dismissed for lack of jurisdiction. The undersigned granted Employee’s request for an extension of time on November 5, 2013. Employee timely submitted her response on November 6, 2013. After reviewing the record, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a ***final agency decision*** affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . (emphasis added).

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to OEA Rule 628.1, *id.*, 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.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.²

¹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² 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*

Employee's Petition for Appeal states that she is appealing her termination as a Program Analyst from Agency. In its Answer, Agency submits that OEA does not have jurisdiction over this matter because no Final Agency Decision has been issued for Employee's termination and she is currently employed with Agency as a Program Analyst. Agency notes that although an Advanced Notice of Removal was issued to Employee on April 10, 2013, no final decision has been made or issued regarding the Advanced Notice.³ In her response to the undersigned's Order regarding jurisdiction, Employee states that "in view of the fact that Agency has rescinded the proposal to terminate" her, she acknowledges that OEA does not have jurisdiction over her appeal.⁴

Pursuant to D.C. Code § 1-606.03, a Final Agency Decision is required in order to pursue an appeal before this office. Although Employee's Petition for Appeal alleges that she was terminated, she did not submit a Final Agency Decision. Further, Agency states that no Final Agency Decision has been issued to Employee. The undersigned agrees with Agency's position that Employee has not presented any legal claim upon which OEA may grant relief. The jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals; reductions in grade; suspensions or enforced leave; or reductions in force.⁵ Therefore, because there is no Final Agency Decision of record for this matter, I find that OEA lacks jurisdiction over this appeal. Moreover, in her Brief, Employee has also acknowledged that OEA does not have jurisdiction over her appeal.

Accordingly, I find that Employee has failed to meet her burden of proof regarding jurisdiction and therefore, OEA lacks jurisdiction. Consequently, this matter must be dismissed for lack of jurisdiction and the undersigned is unable to address the factual merits, if any, of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

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).

³ See Agency Answer (September 27, 2013).

⁴ See Employee Brief (November 6, 2013).

⁵ OEA Rule 604.1, 59 DCR 2129 (March 16, 2012).