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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
BEVERLY DAVIS,)	
Employee)	OEA Matter No. J-0069-12
)	
v.)	Date of Issuance: May 11, 2012
)	
DEPARTMENT OF MENTAL HEALTH,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Beverly Davis, Employee <i>Pro se</i>		
Andrea Comentale, Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 27, 2012, Beverly Davis (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Mental Health’s (“DMH” or “Agency”) decision to terminate her from her position as a Psychiatric Nurse, effective January 28, 2012. On March 20, 2012, Agency filed an Answer to Employee’s petition for appeal alleging that Employee was a probationary employee at the time of her termination and as such, this Office lacks jurisdiction to hear this matter.¹ This matter was assigned to me on or about March 26, 2012. Thereafter, I issued an Order wherein I required Employee to address whether OEA may exercise jurisdiction over this matter because Employee was a probationary employee when she was terminated. Employee had until April 17, 2012, to respond, while Agency had until April 30, 2012, to submit a response to Employee’s reply if it chose to do so. While Employee submitted a timely response to this Order, Agency did not submit a reply to Employee’s response brief on jurisdiction. 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.

¹ See Agency’s response to Petition for Appeal, TAB 6 (March 20, 2012).

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In a letter dated August 9, 2011, Agency extended an offer of employment to Employee for the position of Psychiatric Nurse, to which Employee accepted.² This letter listed Employee's effective date of employment as August 15, 2011. Among other things, the letter stated that Employee's career was a Probationary appointment.³ On January 23, 2012, Employee received a notice of termination of her probationary appointment effective January 28, 2012. The letter advised Employee that termination during a probationary period is neither appealable nor grievable. The letter noted that, an employee may be terminated during his or her probationary period whenever there was an issue with their work performance or conduct.⁴

Employee states in her petition for appeal that she was not provided "with any training or performance evaluation on the unit."⁵ She explains that during her six (6) weeks orientation period, there was no mention of dissatisfaction regarding her work, and therefore she should be reinstated. Employee also submits that she was not "assigned to a preceptor, she did not get an orientation packet until December 22, 2011; and she never had a meeting with her manager regarding performance."⁶ Employee further submits that she never had a verbal or written disciplinary action regarding her work performance or conduct.⁷ She explains that according to Agency's policies # 740.2 exhibit 2-5b and 6-1416-1, she is entitled to performance plan/evaluation, "... on the job training with an experience staff member, followed by a performance evaluation and this should be documented."⁸

Agency notes in its Answer that Employee was a probationary employee at the time of her termination. Moreover, Agency maintains that, Employee's effective hire date was August 15, 2011, and she was terminated effective January 28, 2012, about five (5) months after her start date, and "well within the statutory one-year probationary period."⁹ Agency asserts that, since Employee was a probationary employee when she was terminated, Employee's appeal rights are limited, and that therefore, the matter should be dismissed. Additionally, Agency submits that Employee's petition for appeal contains no factual or legal basis to bring Employee under OEA's jurisdiction.¹⁰

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.¹¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹² This Office's jurisdiction is conferred upon it by law, and

² *Id.* at TAB 2.

³ *Id.*

⁴ *Id.* at TAB 4.

⁵ Petition for Appeal (February 27, 2012).

⁶ Employee's Letter (March 7, 2012).

⁷ Employee's response to jurisdiction Order (April 17, 2012).

⁸ *Id.*

⁹ Agency's response to petition for appeal, *supra*.

¹⁰ *Id.*

¹¹ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹² See *Brown v. District of Columbia Public School*, 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*

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 not relevant to this case, of permanent employees in Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period.

District Personnel Manual (“DPM”) § 813.2 states that:

A person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall be required to serve a probationary period of one (1) year, except in the case of individuals appointed on or after the effective date of this provision to the positions listed below, who shall serve a probationary period of eighteen (18) months:

- (a) Individuals hired into entry-level police officer positions in the Metropolitan Police Department;
- (b) Individuals hired into entry-level correctional officer positions in the Department of Corrections or the Department of Youth Rehabilitation Services; and
- (c) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

Here, Employee was hired as a Psychiatric Nurse with an effective date of August 15, 2011. Employee’s appointment as a Career Service employee was subject to the completion of a one (1) year probationary period. Agency issued Employee a notice of termination by letter dated January 23, 2012. Employee’s offer letter dated August 9, 2011, noted that Employee was a probationary employee. Employee did not complete the one (1) year probationary period as required by DPM § 813.2 and therefore remained in probationary status at the time she was terminated effective January 28, 2012. District Personnel Manual §§ 814.1-814.3 states that:

814.1 Except for an employee serving a supervisory or managerial probationary period under section 815 of this chapter, an agency shall terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.

814.2 An employee being terminated during the probationary period shall be notified in writing of the termination and its effective date.

I find that Agency complied with District Personnel Manual §814.2 and §814.3 by providing Employee with written notice of her termination on January 23, 2012, which was effective January 28, 2012, and informed Employee of her appeal rights. DPM § 814.1 does not require Agency to provide the specific reasoning for an employee's termination. Instead, it offers a general reason why termination is allowable during the probationary period.

Pursuant to DPM § 814.3, termination during a probationary period is not appealable or grievable unless the termination stems from a violation of public policy, the whistle blower protection laws, or District of Columbia or federal anti-discrimination laws. Employee was a probationary employee at the time of her termination. Consequently, I find that OEA lacks jurisdiction to adjudicate this matter, and as such, Employee's petition for appeal must be dismissed.

The crux of Employee's arguments pertains to her belief that Agency did not comply with the Agency's orientation policies and the DPM because it failed to provide her with a proper assessment of her work, and a written performance plan and evaluation prior to terminating her. It is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. I find that Employee's arguments are all grievances outside of OEA's purview.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 628.1, *id*, as 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." I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED and Agency's Request to Dismiss is GRANTED.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge