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

_____	)	
In the Matter of:	)	
	)	
YVETTE E. HOWE,	)	
Employee	)	
	)	OEA Matter No. J-0004-16
v.	)	
	)	Date of Issuance: January 15, 2016
SUPERIOR COURT OF THE	)	
DISTRICT OF COLUMBIA,	)	
Agency	)	MICHELLE R. HARRIS, Esq.
_____	)	Administrative Judge
James Benny Jones, Esq., Employee Representative		
Tanya M. Jones Bosier, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On October 7, 2015, Yvette Howe (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Superior Court of the District of Columbia’s (“Agency” or “DCSC”) decision to terminate her. On November 9, 2015, Agency filed its Answer to Employee’s Petition for Appeal. This matter was assigned to the undersigned Administrative Judge (“AJ”) on October 21, 2015.

On November 13, 2015, I issued an Order directing Employee to address the jurisdiction issue raised by Agency in its Answer. Employee’s brief was due on or before November 27, 2015. Additionally, Agency had the option to submit a response to Employee’s brief. On November 30, 2015, Employee filed a Motion to Enlarge Filing Date of Brief. On December 1, 2015, I issued an Order granting this Motion. Employee’s brief was now due on or before December 14, 2015. Employee filed her brief on December 22, 2015. Agency filed a Reply to Employee’s Brief on December 21, 2015.<sup>1</sup> 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.

**JURISDICTION**

The jurisdiction of this Office has not been established.

<sup>1</sup> Employee’s Brief arrived via postal service to this Office on December 22, 2015. It is presumed that an issue with mailing delayed its arrival to this Office and that Agency received it prior to its filing date at this Office.

## ISSUE

Whether this appeal 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.

## FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Deputy Clerk in the Paternity and Support Branch of the Family Court of the Superior Court. In a Memorandum dated September 1, 2015, Employee was notified that she would be terminated effective close of business on September 11, 2015. Employee was notified in the Memorandum that, “according to Personnel Policy 1006, you have the right to appeal this decision in writing to the Executive Officer within fifteen (15) calendar days from the receipt of this notification.”<sup>2</sup>

### ***Employee’s Position***

Employee claims she was wrongfully terminated. Employee indicates that she was harassed and discriminated against by her branch chief. Employee believes her recent health issues served as a pretext to attack her job performance.<sup>3</sup> Employee contends that under the circumstances, an independent administrative hearing is warranted and without one she would effectively be denied her “constitutional rights as proscribed in the Fourteenth and Fifth Amendment.”<sup>4</sup>

### ***Agency’s position***

Agency asserts that OEA lacks jurisdiction over this matter. Agency asserts that pursuant to D.C. Official Code § 1-602.01(a), as a Superior Court employee, Employee is not covered by the Comprehensive Merit Personnel Act (“CMPA”) which established the authority and jurisdiction of

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<sup>2</sup> Employee’s Petition for Appeal (October 7, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> Petitioner’s Brief in Support of Jurisdiction (December 22, 2015).

the Office of Employee Appeals.<sup>5</sup> Further, Agency argues that the “appeals of adverse personnel matters are statutorily prohibited from being heard by OEA.”<sup>6</sup> Agency indicates that Employee was employed as “a deputy clerk, a non-judicial position, from 1998 until September 2015”. Agency maintains that Employee was terminated because of poor work performance exhibited over several years and for failure to comply with District of Columbia Courts Comprehensive Personnel Policies.<sup>7</sup>

Agency asserts that in a Memorandum from the Director of the Family Court Operations Division dated September 1, 2015, Employee was provided notice of her termination which was effective close of business September 11, 2015. Employee was also notified of her appeal rights to the Executive Officer pursuant to the Court’s Personnel Policy. Agency indicates that “DC Courts Personnel Policy No.1000 provided the guidelines and timeframes for court employees to appeal imposed corrective actions, such as a termination.”<sup>8</sup> Agency highlights that Employee was granted extensions to file responses, but failed to comply with the timeframes as set forth in the personnel policy which ultimately resulted in the denial of her request to appeal her termination.<sup>9</sup>

### ***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”) § 604.1<sup>10</sup>, 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.<sup>11</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>12</sup>

<sup>5</sup> Agency’s Reply to Petitioner’s Brief In Support of Jurisdiction (December 21, 2015).

<sup>6</sup> Agency’s Reply to Petitioner’s Brief in Support of Jurisdiction (December 21, 2015).

<sup>7</sup> Agency’s Answer to Employee’s Petition for Appeal at Page 2 (November 9, 2015).

<sup>8</sup> *Id.* at Page 2.

<sup>9</sup> *Id.*

<sup>10</sup> See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

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

<sup>12</sup> 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* (July 29, 1993).

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Employee has appealed her termination from the Superior Court of the District of Columbia. The CMPA which established OEA, and set forth its jurisdictional authority, provides in pertinent part, that the provisions of this statute "shall apply to all employees of the District of Columbia, *except the Chief Judges and Associate Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the non-judicial personnel of said Courts.*" D.C. Official Code § 1-602.01(a) (Emphasis added). It is undisputed that Employee worked as a deputy clerk, a non-judicial personnel position in the Superior Court of the District of Columbia. She received a termination notice that included information about the Court's personnel policies and procedures, which outlined the manner by which she could appeal her termination.

This Office is only permitted to adjudicate appeals from District of Columbia governmental agencies for which it has the statutorily authorized jurisdiction to do so. In this case, D.C. Code §1-602.01(a) explicitly outlines that OEA does not have jurisdiction over appeals of non-judicial personnel of the Superior Court of the District of Columbia. Further, in accordance with D.C. Official Code §§ 1-1701(b)(1) and §11-725; the District of Columbia Courts have their own responsibility with regards to establishing general personnel policies and the removal of court personnel; and are not "subject to the laws, rules and limitations applicable to District of Columbia employees." For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

#### ORDER

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

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge