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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
)	OEA Matter No. 1601-0027-21
v.)	Date of Issuance: November 15, 2021
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
)	
Employee, <i>Pro Se</i>)	
Nicole Dillard, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 3, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Physical Education Teacher, effective June 25, 2021. On June 25, 2021, Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal, stating that Employee was still in his probationary period at the time of his termination and as such, OEA lacked jurisdiction over this matter.

I was assigned this matter on September 3, 2021. Thereafter, I issued an Order on September 21, 2021, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss and Answer. Employee’s brief on jurisdiction was due on or before October 5, 2021. Following Employee’s failure to submit his brief by the prescribed deadline, on October 7, 2021, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the September 21, 2021, Order. Employee’s response to the Show Cause Order was due on or before October 21, 2021. The undersigned received Employee’s jurisdiction brief on October 8, 2021, a day after the Show Cause Order was issued.²

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

² See Employee’s Response to Order dated September 21, 2021 (October 8, 2021).

Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

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.

ANALYSIS AND CONCLUSIONS OF LAW

Employee’s position

Employee notes in his October 8, 2021, submission that “[t]he purpose of my appeal was not to argue the legitimacy of my termination. I fully understand that I was under a two year probationary contract. The SOLE purpose of my appeal was to request additional time (prior to termination) in order to take the exam.”³

Agency’s position

Agency states in its Motion to Dismiss that an employee removed during a probationary period cannot appeal their removal to OEA. Agency explains that Employee was hired by DCPS on or about October 7, 2019. Agency asserts that Employee was subsequently terminated effective June 25, 2021. Therefore, Employee was still in his probationary period when he was

³ *Id.*

terminated. It explains that OEA does not have jurisdiction to hear appeals from probationary employees. As such, Employee's complaint must be dismissed.⁴

Agency further avers that Employee's service was contingent upon satisfactory completion and maintenance of the teacher/service provider licensure requirement. His failure to comply with these requirements made him an at-will Employee. Agency stated that Employee was an at-will employee when Agency made the decision to terminate him, and OEA does not have jurisdiction over at-will employees.⁵ Citing to case law, Agency avers that OEA has consistently held that, if an employee neglects to obtain the proper licensure or certification by the effective date of their removal, then they are deemed at-will employees. Agency further asserts that at-will employees in the District of Columbia can be discharged at any time and for any reason, or no reason at all.⁶ Agency explains that as an at-will employee, Employee in this matter does not have any job tenure, protection, or appeal rights. Therefore, OEA does not have jurisdiction over Employee. Consequently, Agency contends that Employee's Petition for Appeal must be dismissed.⁷

*Analysis*⁸

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.⁹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹⁰ 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 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 (emphasis added).

Chapter 2, § 227.4 of the District Personnel Manual ("DPM") states that a termination during an employee's probationary period cannot be appealed to this Office. Additionally, this Office has consistently held that an appeal by an employee serving in a probationary status must

⁴ Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal (June 25, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 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").

⁹ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹⁰ 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 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).

be dismissed for lack of jurisdiction.¹¹ Employee acknowledged in his October 8, 2021, response that he was under a two (2) year probationary contract. He also did not dispute Agency's assertion that he was hired effective October 7, 2019 and terminated effective June 25, 2021. Agency also attached a copy of Employee's Offer letter with an effective start date of October 7, 2019.¹² Furthermore, Educational service employees who are serving in a probationary period are precluded from appealing a removal action to this Office until their probationary period is over. The record shows that Employee was hired effective October 7, 2019, and terminated effective June 25, 2021.¹³ October 7, 2019 to June 25, 2021, is less than two (2) years. Consequently, I find that Employee was removed from service when he was still within his probationary period. For these reasons, I conclude that Employee is precluded from appealing his removal to this Office, as OEA lacks jurisdiction in this matter.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.¹⁴ 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." Employee stated in his October 8, 2021, that he was under a two-year probationary contract. He also noted that he had not met his licensure requirement at the time of his termination. Based on the foregoing, I conclude that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge

¹¹ 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).

¹² Agency's Motion to Dismiss and Answer, *supra*, at Tab 4.

¹³ Agency's Motion to Dismiss and Answer.

¹⁴59 DCR 2129 (March 16, 2012).