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

In the Matter of:)	
)	
ORLANDO FOX,)	
Employee)	
)	OEA Matter No. J-0146-15
v.)	
)	Date of Issuance: December 28, 2015
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge
Orlando Fox, Employee)	
Steve Luteran, Employee Representative)	
Kathleen J. Liu, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 28, 2015, Orlando Fox (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to terminate him.

I was assigned this matter on October 21, 2015. On November 4, 2015, Agency filed its Motion to Dismiss Employee’s Petition for Appeal. Agency noted in its Motion to Dismiss that OEA does not have jurisdiction over this appeal because Employee was in probationary status at the time of termination. On November 9, 2015, I issued an Order directing Employee to submit a brief addressing the jurisdiction issue raised by Agency in its Motion to Dismiss. Employee’s brief was due on or before November 23, 2015. Employee filed a Rebuttal to Agency’s Request to Dismiss on November 20, 2015. Additionally, Agency had the option to submit a response to Employee’s brief. 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 in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Substance Abuse Coordinator, Grade 11, and started on June 29, 2015. In a Final Agency Decision dated August 31, 2015, Employee was terminated from his position effective September 21, 2015.

Employee's Position

Employee asserts that he was unfairly terminated after only two months of working with Agency. Employee contends that he was wrongly terminated due to internal “managerial conflicts” at Agency.¹ Employee maintains that there was no wrongdoing on his part and that the Agency’s actions were “unjust and wrong” and that he should not have been terminated without consideration. Further, Employee maintains that he left stable employment to pursue this opportunity with Agency only to be caught in the “crossfire between managers.”²

Agency's position

Agency asserts in its Motion to Dismiss Employee’s Petition for Appeal that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee was in probationary status at the time of his termination and therefore OEA has no jurisdiction over this appeal.³ Agency indicates that Employee was hired as a Substance Abuse Coordinator and this Career Service appointment was subject to the completion of a one-year probationary period pursuant to Chapter 8, Section 813.2 of the District Personnel Manual (“DPM”) which states in pertinent part 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 in paragraphs (a) through (d) of this subsection 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 entry-level Youth Development Representative positions in the Department of Youth Rehabilitation Services;
- (c) Individuals hired into entry-level Firefighter/Emergency Medical Technician (EMT) and entry-level Firefighter/ Paramedic positions in the Fire and Emergency Medical Services Department ; and
- (d) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.”

¹ Employee’s Petition for Appeal (September 28, 2015).

² Employee’s Rebuttal to Agency’s Request to Dismiss at Page 2. (November 20, 2015).

³ Agency Answer to Employee’s Petition for Appeal at Page 3. (November 4, 2015).

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") § 604.1⁴, 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.⁵ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁶

In the instant matter, the undersigned agrees with the assertion that OEA does not have jurisdiction over this matter. Chapter 8, Section 814.3 of the District Personnel Manual provides in pertinent part, "that a termination during a probationary period is not appealable or grievable." Thus, an appeal to this Office by an employee who is classified in probationary status at the time of termination must be dismissed for lack of jurisdiction.⁷ The August 31, 2015, Final Agency Decision made Employee's termination effective on September 21, 2015. Employee commenced working with Agency on June 29, 2015. Based on this timeline, Employee was still in his probationary term at the time of termination.

Further, the August 31, 2015, Letter included a statement notifying Employee that "a termination during probationary period is not appealable or grievable." Accordingly, I find that Employee's probationary status at the time of his termination precludes this OEA from reviewing the case on its merits, as this Office lacks the jurisdiction to do so. For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

⁴ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁵ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁶ 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* (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).

⁷ *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

ORDER

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

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge