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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
KRISTEN JONES,	)	
Employee	)	OEA Matter No. 1601-0070-16
	)	
v.	)	Date of Issuance: October 18, 2016
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
_____	)	Senior Administrative Judge
Kristen Jones, Employee <i>Pro-Se</i>		
Lynette Collins, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On July 28, 2016, Kristen Jones (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools (“DCPS” or the “Agency”) adverse action of removing her from service pursuant to a final employee evaluation<sup>1</sup> (IMPACT) of Ineffective for the 2015 – 2016 school year. Employee’s last position of record was Teacher and she was stationed at Tyler Elementary School. Pursuant to DCPS guidelines, a rating of Ineffective subjects an employee to termination.

On August 25, 2016, DCPS filed an Answer to Employee’s Petition for Appeal. In it, DCPS filed a Motion to Dismiss contending that OEA lacks jurisdiction over this matter. Agency noted that Employee was first hired by DCPS on August 27, 2015, and that the effective date of her removal was August 5, 2016. In essence, Employee was within her two year probationary period when she was removed from service, thereby, obviating OEA’s jurisdiction to hear the merits of Employee’s Petition for Appeal.

This matter was assigned to the Undersigned on or around September 9, 2016. On September 13, 2016, the Undersigned issued an Order requiring Employee to address Agency’s

<sup>1</sup> DCPS utilizes an effectiveness assessment system for all school based personnel. This system is known as IMPACT.

Motion to Dismiss. Employee was required to submit her written response on or before September 28, 2016. To date, OEA has not received a response from Employee. After reviewing the documents of record, The Undersigned has determined that no further proceedings are warranted. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether this matter should be dismissed.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSION

#### Probationary Employee

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter “CMPA”), sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) states in pertinent part that:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career service rights conferred by the CMPA may be exercised by aggrieved career and educational service employees. However, the District Personnel Manual (“DPM”) § 814.3, provides in relevant part that “a termination during a probationary period is not appealable or grievable...”<sup>2</sup> Additionally, the District of Columbia Municipal Regulations (“DCMR”) requires an initial appointee to the Educational Service to serve a two year probationary period.<sup>3</sup> Thus, according to DPM § 814.3, career service employees who are serving in a probationary period are precluded from grieving a removal to this Office until their probationary period is completed. I must also take into consideration that according to DCMR 5-1307.3, employees in the ET salary class, like Employee, serve a two year probationary period.

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<sup>2</sup> See also D.C. Official Code §1-617.1(b).

<sup>3</sup> See DCMR 5-1307 *et al.*

As was indicated *supra*, Employee was removed from service within two years of her hire date. Accordingly, I find that Employee was still serving in a probationary period at the time of her removal. Considering as much, I find that pursuant to DPM § 814.3, Employee is precluded from contesting her removal to this Office.

It is uncontested that Employee was serving in a probationary period when she was removed from service. Therefore, I conclude that this Office does not have jurisdiction over the instant matter.<sup>4</sup> Consequently, it must be dismissed for lack of jurisdiction.

*Failure to Prosecute Petition for Appeal*

OEA Rule 621.3, *id.*, states as follows:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). Here, Employee did not file her response as she was required to do pursuant to my Order dated September 13, 2016. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. This represents another reason why this matter should be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

\_\_\_\_\_  
ERIC T. ROBINSON, Esq.  
Senior Administrative Judge

<sup>4</sup> Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of Employee's petition for appeal.