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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0120-15
ELLEN CANNON,)	
Employee)	
)	Date of Issuance: November 12, 2015
v.)	
)	
D.C. PUBLIC SCHOOLS,)	Monica Dohnji, Esq.
Agency)	Administrative Judge
_____)	
Ellen Cannon, Employee <i>Pro Se</i>)	
Nicole Dillard, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 10, 2015, Ellen Cannon (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate her from her position as a Teacher, effective August 7, 2015. On September 10, 2015, Agency filed its Answer to Employee’s Petition for Appeal, along with a Motion to Dismiss, alleging that Employee was a probationary employee at the time of her termination and that this Office lacks jurisdiction over her appeal.¹

This matter was assigned to the undersigned Administrative Judge (“AJ”) on September 25, 2015. Thereafter, on October 15, 2015, the undersigned AJ issued an Order requiring Employee to address the jurisdiction issue. According to the Order, Employee had until October 24, 2015, to submit her brief, and Agency had until November 6, 2015, to submit a reply brief if it chose to do so. Following Employee’s failure to comply with the October 15, 2015, Order, the undersigned issued an Order for Statement of Good Cause on October 28, 2015, wherein, Employee was ordered to explain her failure to comply with the Order, on or before November 9, 2015. Employee has complied with the October 28, 2015, Order. The record is now closed.

¹ Agency’s Answer to Employee’s Petition for Appeal (September 10, 2015).

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee's position

Employee notes that Agency is required to adhere to D.C. Code sections 1-613.51-52. Specifically, she explains that Agency does not have sole authority to design its evaluation process, and as such, OEA is authorized pursuant to 1-606.03(a) to review Agency's compliance with D.C. Code sections 1-613.51-52.²

Agency's position

Agency states in its Answer and Response to Order that an employee removed during a probationary period cannot appeal their removal to OEA. Agency explained that Employee was hired by DCPS on December 11, 2013. Employee was subsequently terminated effective August 7, 2015, prior to reaching her two (2) year anniversary. Therefore, Employee was still in probationary status when she was terminated. And since OEA does not have jurisdiction to hear appeals from probationary employees, Employee's complaint must be dismissed.³

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵ 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).

In the current matter, Employee was hired effective December 11, 2013, and terminated effective August 7, 2015. Also, Employee notes in her Petition for Appeal that she has been working with Agency for one (1) year. Agency notes that Employee was required to serve a two

² Employee's Brief (November 9, 2015).

³ Agency's Answer to Employee's Petition for Appeal, *supra*; See also Agency's Response to Order (November 6, 2015).

⁴ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ 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).

(2) years probationary period and Employee does not dispute this fact. Chapter 5-E of the District of Columbia Municipal Regulations (“DCMR”) section 1307.1 provides in pertinent parts that, “[a]n employee initially entering ... into the Educational Service shall ... serve a probationary period.” Moreover, the CMPA and OPRAA specifically limit this Office’s jurisdiction to appeals filed by permanent Career and Education service employees *who are not serving a probationary period*. Therefore, I find that Employee was a probationary employee at the time of her termination.

Chapter 8, § 814.3 of the District Personnel Manual (“DPM”) states that a termination during an employee’s probationary period cannot be appealed to this Office. Moreover, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.⁶ Thus, I find that this Office lacks jurisdiction in this matter because the record shows that Employee was still in probationary status at the time of her termination. 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. Employee was hired effective December 11, 2014, and terminated effective August 7, 2015. This is less than two (2) years. Accordingly, I find that, Employee was removed from service when she was still within the two (2) years of her probationary period. For these reasons, I conclude that Employee is precluded from appealing her removal to this Office.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.⁷ 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.” In an Order dated October 15, 2015, Employee was given an opportunity to address Agency’s claim that she was a probationary employee at the time of her termination, but she failed to do so. 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** and Agency’s Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁶ 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).

⁷59 DCR 2129 (March 16, 2012).