

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
WALTER BOWMAN,)	
Employee)	
)	OEA Matter No.: J-0327-10
v.)	
)	Date of Issuance: December 13, 2010
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge
Walter Bowman, Employee		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 2, 2010, Walter Bowman (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting D.C. Public School’s (“Agency”) decision to terminate him. Agency’s notice, dated October 23, 2008, informed Employee that he was being terminated based on his status as a probationary employee and because of his failure to provide accurate information regarding his legal history. Employee’s termination was effective immediately.

This matter was assigned to me on or around August 10, 2010. I issued an Order on September 13, 2010, directing Employee to present legal and factual arguments to support his argument that this Office has jurisdiction over his appeal. Employee was advised that he had the burden of proof with regard to the issue of jurisdiction. Employee was also notified that his appeal would be dismissed if he failed to respond to the Order by September 30, 2010. Employee did not respond to the Order. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

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 629.2, *id.*, states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Employee worked as an Assistant Principal with Agency beginning in August of 2008. In his petition for appeal, Employee identified himself as a probationary employee.¹ Moreover, in its notice, Agency identified Employee as being in probationary status at the time of termination. Employee’s appointment letter, dated July 14, 2008, stated that “[a]ll employees entering or transferring into the Board of Education Service shall meet certification requirements of the Board of Education and serve a probationary period.” Employee’s termination was effective October 23, 2008.

OEA Rule 629.2 states that employees have the burden of proof on issues of jurisdiction. Employees must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, *supra*. The jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade; suspensions of ten days or more; or reductions in force.² Thus, OEA has no authority to review issues beyond its jurisdiction.³ Chapter 8, Section 814.3 of the District Personnel Manual further provides that a termination during a probationary period cannot be appealed to this Office. An appeal to this Office by an employee serving in a probationary status must therefore be dismissed for lack of jurisdiction.⁴

¹ *Petition for Appeal* (July 2, 2010).

² OEA Rule 6604.1, 46 D.C. Reg. 9299 (1999).

³ See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ ().

⁴ 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) __ D.C. Reg __ ().

The law is clear as to what Employee's status was at the time Agency terminated him. DCMR Chapter 13, 1307.1 specifically requires that employees entering or transferring to the Board of Educational services serve a one (1) year probationary period. Under this regulation, Employee's probationary period was set to expire one year after his appointment date of August 4, 2008. At the time of his termination on October 23, 2008, Employee had only worked with Agency for just over two months. Employee was still in probationary status at the time of termination. Therefore, Employee's appeal does not fall within the purview of this Office's jurisdiction.

Although this petition can be denied solely on the grounds listed above, Employee failed to file his petition for appeal in a timely manner. Agency's termination letter was dated October 23, 2008. Employee's appeal was not filed until July 2, 2010, approximately twenty months after he was separated from service. OEA Rule 604.2, 46 D.C. Reg. 9299 (1999) requires that a petition for appeal must be filed with this Office within thirty (30) days following the effective date of the appealed agency action. Employee's petition was not filed within this time period. Employee's petition for appeal is therefore dismissed.

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ
ADMINISTRATIVE JUDGE