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

In the Matter of:)	
)	
ANDRE WONSON,)	
Employee)	
)	OEA Matter No. J-0109-15
v.)	
)	Date of Issuance: September 15, 2015
D.C. FIRE AND EMERGENCY)	
MEDICAL SERVICES DEPARTMENT,)	
Agency)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge
Andre Wonson, Employee <i>Pro Se</i>		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 20, 2015, Andre Wonson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department’s (“Agency” or “DC FEMS”) decision to terminate him. On August 3, 2015, Agency filed its Motion to Dismiss Employee’s Petition for Appeal.

I was assigned this matter on August 5, 2015. Agency noted in its Motion to Dismiss Employee’s Petition for Appeal that OEA does not have jurisdiction over this appeal because Employee was in probationary status at the time of termination. On August 10, 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 August 24, 2015. Additionally, Agency had the option to submit a response to Employee’s brief. Employee did not submit his brief by the deadline.

On August 28, 2015, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to provide a response to the August 10, 2015 Order. Employee had until September 8, 2015 to respond. As of the date of this decision, Employee has not responded to either Order.¹ 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.

¹ On September 9, 2015, Employee called OEA where he was informed that any information regarding his appeal must be submitted in writing. As of the date of this decision, no submissions have been received from Employee.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction and failure to prosecute.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Firefighter/EMT, FS-081, Grade 1, Step 1, from November 16, 2014, until his termination on July 25, 2015. In a Final Agency Decision dated July 17, 2015, Employee was terminated from his position for “engaging in criminal misconduct which led to your subsequent plea of guilty in the Superior Court of the District of Columbia on May 7, 2015, to the charge of possession of a large capacity ammunition feeding device.”² Employee asserts in his Petition for Appeal that he was arrested and pled guilty to the possession of a large capacity ammunition feeding device.³ Agency’s decision was effective as of July 25, 2015 and Employee filed a Petition for Appeal with this Office on July 20, 2015. Agency filed a Motion to Dismiss Employee’s Petition for Appeal on August 3, 2015.

Employee’s Position

Employee asserts that he wants a “fair chance and for someone to hear his story”⁴ Employee affirms that he did plead guilty to possession of a large capacity ammunition feeding device and was sentenced to a fine to be paid by September 15, 2015. Employee also indicated that he questioned his supervisor as to whether he was being terminated due to his arrest while he was in probationary status with Agency.⁵

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. Agency indicates that Employee was hired as a Firefighter/EMT and this Career Service appointment was subject to the completion of an 18-month 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:

² Employee’s Petition for Appeal at Final Agency Decision (July 20, 2015).

³ Employee’s Petition for Appeal at Page 4 (July 20, 2015).

⁴ *Id.* at Page 3.

⁵ *Id.*

- (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 (Emphasis added);* and
- (d) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.”

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”) § 604.1⁶, 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.⁷ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁸

In the instant matter, the undersigned agrees with Agency’s 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.⁹ Pursuant to Chapter 8, Section 813.2 of the District Personnel Manual, as a Firefighter/EMT, Employee was subject to an 18-month probationary

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

⁷ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁸ 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).

⁹ *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

period. Employee's Standard Form Fifty (50) reflects that he was appointed to this position on November 16, 2014 and indicates that he was subject to an 18-month probationary period.¹⁰ The July 17, 2015 Final Agency Decision made Employee's termination effective on July 25, 2015.

Based on this timeline, Employee was still in probationary status at the time of termination. Additionally, Employee noted in his Petition for Appeal that he questioned his supervisor as to whether the reason for his termination was due to his arrest during his probationary period.¹¹ For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

Failure to Prosecute

Additionally, OEA Rule 621.3 states in relevant part, that the "Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant if a party fails to take reasonable steps to prosecute or defend an appeal. 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 (Emphasis added);* or
- (c) Inform this Office of a change of address which results in correspondence being returned."¹²

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such a submission.¹³ In the instant matter, Employee was provided notice in both the August 10, 2015 and August 28, 2015 Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. All of the Orders were sent via first class mail to the address provided by Employee in his Petition for Appeal.

A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. Consequently, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621 and constitutes another reason why this appeal should be dismissed.

¹⁰ Agency's Motion to Dismiss Employee's Petition for Appeal at Exhibit A (August 3, 2015).

¹¹ Employee's Petition for Appeal (July 20, 2015).

¹² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

¹³ *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

ORDER

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

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge