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

In the Matter of:)	
)	
EVELYN SMITH-CURETON,)	
Employee)	
)	OEA Matter No. J-0017-16
v.)	
)	Date of Issuance: February 19, 2016
D.C. DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge
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Evelyn Smith-Cureton, Employee <i>Pro Se</i>		
Lindsey O. Appiah, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 17, 2015, Evelyn Smith-Cureton (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to terminate her. I was assigned this matter on December 21, 2015.

Agency filed its Answer on January 19, 2016. Agency noted in its Answer that OEA does not have jurisdiction to hear this matter because Employee was in probationary status at the time of termination. Consequently, on January 20, 2016, I issued an Order directing Employee to submit a brief addressing the jurisdiction issue raised by Agency in its Answer. Employee’s brief was due on or before February 3, 2016. Agency had the option to submit a response. On February 2, 2016, Employee requested an extension of time to file her brief. An Order granting her extension was issued on February 2, 2016. Employee filed a second request for an extension on February 10, 2016. On February 16, 2016, Employee filed a response indicating a request for the Office to “disregard her request for an extension and close out my complaint.”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.

JURISDICTION

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

¹ Employee’s Response (February 16, 2016).

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 Youth Development Representative for two and a half (2.5) months.² In a Final Agency Decision dated December 7, 2015, Employee was notified that she would be terminated during her probationary period effective December 11, 2015.

Employee's Position

Employee asserts in her Petition for Appeal that she wanted the Office to “look into the reasons for her dismissal.” Employee asserts that she was only told by one official that she “wasn’t a good fit.”

Agency's position

Agency asserts in its Answer that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee was in probationary status at the time of her termination, and therefore, OEA has no jurisdiction over this appeal.³ Agency indicates that Employee was hired on October 5, 2015, as a Youth Development Representative. Agency contends that Employee was made aware that her appointment was subject to the “satisfactory completion of an eighteen (18) month probationary period.” Agency further contends that “on November 22, 2015, Employee was given notice that she was being placed on administrative leave pending an investigation of an altercation between Employee and security guards at the secure facility to which Employee was assigned to work.”⁴ Following the completion of the investigation, Agency concluded that Employee’s behavior was not conducive of a Youth Development Representative, and she was issued a notice of termination during her probationary period on December 7, 2015, with an effective date of termination on December 11, 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”) § 604.1⁵, 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

² Employee’s Petition for Appeal (December 17, 2015).

³ Agency’s Answer to Employee’s Petition for Appeal (January 19, 2016).

⁴ *Id.*

⁵ *See also*, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

- (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.⁶ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁷

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.⁸ Employee was hired on October 5, 2015, and her termination was effective December 11, 2015. Employee does not dispute her hire or termination date. Employee was subject to a successful completion of an eighteen (18) month probationary period. Based on this timeline, Employee was still in probationary status at the time of her termination. Further, Employee noted in her Petition for Appeal that she was in probationary status with the Agency.⁹ This Office has consistently held that an appeal to OEA by an employee serving in probationary status must be dismissed for lack of jurisdiction.¹⁰ For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

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

⁶ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁷ 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).

⁸ *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

⁹ Employee’s Petition for Appeal at Page 4 (December 17, 2015).

¹⁰ *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).