

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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: |) | |
| |) | |
| ANTONIO ROBINSON, |) | |
| Employee |) | OEA Matter No. J-0054-20 |
| |) | |
| v. |) | Date of Issuance: February 25, 2021 |
| |) | |
| DISTRICT OF COLUMBIA |) | |
| DEPARTMENT OF PUBLIC WORKS, |) | |
| Agency |) | |
| |) | ARIEN P. CANNON, ESQ. |
| |) | Administrative Judge |
| _____ |) | |
| Antonio Robinson, Employee, <i>pro se</i> |) | |
| Ryan Martini, Esq., Agency Representative |) | |

INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL HISTORY

Antonio Robinson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 14, 2020, contesting the District of Columbia Department of Public Works’ (“Agency”) decision to terminate him from his position as a Motor Vehicle Operator. Employee’s termination was effective at the close of business on June 18, 2020. I was assigned this matter on December 17, 2020.

Agency submitted an Answer to Employee’s appeal on November 23, 2020. An Order on Jurisdiction was issued on January 5, 2021, which required Employee to submit a detailed written statement as to why he believes this office is the appropriate forum to address his case. Employee’s response to this Order on Jurisdiction was due on or before January 15, 2021. On January 8, 2021, I granted Employee an extension of time to file his response Order on Jurisdiction. Employee’s brief then became due on or before February 5, 2021. Employee submitted his brief on jurisdiction on February 4, 2021. Agency did not file a response to Employee’s brief on jurisdiction. The record is now closed.

¹ This Initial Decision was issued during the District of Columbia Covid-19 State of Emergency.

JURISDICTION

The jurisdiction of this office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over Employee's appeal.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.² "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.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.³

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 604, 59 DCR 2129 (March 16, 2012) this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

This appeal must be filed within thirty (30) calendar days of the effective date of the appealed agency action.⁴ Additionally, District Personnel Manual ("DPM") § 814.3, provides that a termination during a probationary period is not appealable or grievable. However, a probationary employee alleging that his or her termination resulted from a violation of public policy, the whistleblower protection law, or District of Columbia or federal anti-discrimination law, may file an action under any such laws, as appropriate.

This Office has no authority to review issues beyond its jurisdiction.⁵ OEA's jurisdiction

² 59 DCR 2129 (March 16, 2012).

³ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 604.2, 59 DCR 2129 (March 16, 2012)

⁵ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review*

is generally “limited to permanent employees who are serving in the career or educational services and who have successfully completed their probationary periods.”⁶ Here, Employee does not dispute that he was a probationary employee. However, he avers that his termination was a violation of public policy and District of Columbia whistleblower protection and anti-discrimination laws. Employee maintains that his termination amounted to retaliation, harassment, bias, and discrimination.⁷ He further contends that because his claims are in violation of public policy and the District’s whistleblower and anti-discrimination laws, OEA has jurisdiction over his termination. While District of Columbia law may provide an avenue for Employee to pursue his legal claims, OEA is not the appropriate forum for a probationary employee to assert these arguments. As such, I find that Employee has not satisfied his burden of proof. Thus, this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby **ORDERED** that Employee’s Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Arien P. Cannon
ARIEN P. CANNON, ESQ.
Administrative Judge

(September 30, 1992).

⁶ *Roxanne Smith v. D.C. Department of Parks and Recreation*, Initial Decision, OEA Matter J-0103-08 (October 5, 2009).

⁷ *See* Employee’s Response to Order on Jurisdiction (February 4, 2021).