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

_____)	
In the Matter of:)	
)	
DANYCE EDWARDS,)	
Employee)	
)	OEA Matter No. J-0127-15
v.)	
)	Date of Issuance: October 28, 2015
DEPARTMENT OF)	
FORENSIC SCIENCES,)	
Agency)	MICHELLE R. HARRIS, Esq.
_____)	Administrative Judge
Danyce Edwards, Employee <i>Pro Se</i>		
Robert J. Hidlum, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 19, 2015, Danyce Edwards (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Forensic Sciences’ (“Agency” or “DFS”) decision to terminate her. I was assigned this matter on September 2, 2015.

On September 21, 2015, Agency filed its Answer to Employee’s Petition for Appeal.¹ Agency noted in its Answer to Employee’s Petition for Appeal that OEA does not have jurisdiction to hear this matter because Employee was in probationary status at the time of termination. Consequently, on September 30, 2015, 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 October 13, 2015. Agency had the option to submit a response to Employee’s Brief. On October 13, 2015, Employee filed her brief in response to the September 30, 2015, Order. 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 Note: An Order for Statement of Good Cause was issued to Agency on September 25, 2015 for failure to submit an Answer by the September 21, 2015 deadline. However, it was determined that Agency had in fact complied and submitted its response within the prescribed deadline, thus making the September 25, 2015 , Order moot.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as an Evidence Specialist, Grade 7, Step 1, since March 23, 2015. In a letter dated July 24, 2015, Employee was notified that Agency was terminating her appointment, effective close of business August 7, 2015.

Employee's Position

Employee asserts that she is appealing her termination because she believes Agency's decision was "unfair and unwarranted" and that she was terminated without cause.² Employee further contends that she was unfairly treated following an incident on July 23, 2015 regarding a safety violation with evidence. Employee argues that OEA has jurisdiction over her appeal because her termination was unjustified given Agency's failure to provide her with appropriate training and performance management programs. Employee indicates that her probationary status should not be considered as a sufficient reason for her termination and that she was unfairly targeted. Employee also indicates that she filed a grievance with NAGE on July 24, 2015.³

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. Agency indicates that Employee was hired as a "Central Evidence Specialist with a term appointment not to exceed thirteen (13) months and was subject to completing a one-year (1-year) probationary period beginning March 23, 2015. Agency further cites that the Employee's probationary period was in accordance with Chapter 6-B DCMR §§ 813.2 and 814.1. Agency contends that pursuant to Chapter 6-B DCMR § 814.3, "a termination during a probationary period is not appealable or grievable."⁴

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

² Employee's Answer to Administrative Judge's Order of Burden of Proof (October 13, 2015).

³ Employee Petition for Appeal at Page 6 (August 19, 2015).

⁴ Agency's Answer to Employee's Petition for Appeal (September 21, 2015).

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
- (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 March 23, 2015, and was given notice that her appointment was subject to a one-year (1-year) probationary term. The July 24, 2015 notice to Employee made her termination effective August 7, 2015. Based on this timeline, Employee was still in probationary status at the time of termination. Additionally, Employee does not dispute that she was on probation at the time of termination. Employee noted in an attached statement to her Petition for Appeal that “the mere fact that she is on probation should not suffice as a reason for termination.” Instead, Employee argues the merits of the case citing that Agency’s actions against her were unwarranted and unfair.

Employee argues that because Agency’s decision to terminate her was without cause that OEA has jurisdiction to address her appeal. However, I find that Employee’s probationary employment status at the time of her termination preemptively precludes this Office from any further review of the merits of this case as this Office lacks the jurisdictional authority to do so. This Office has consistently held that an appeal to OEA by an employee serving in probationary status must be dismissed for lack of jurisdiction.⁹ For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

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

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 *Id.*

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