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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
ROBERT SAUNDERS,	)	
Employee	)	OEA Matter No. 1601-0063-19
	)	
v.	)	Date of Issuance: November 6, 2019
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Robert Saunders, Employee, <i>Pro Se</i>	)	
Andria Bagwell, Esq., Agency's Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On July 12, 2019, Robert Saunders (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Public Schools’ (“Agency”) notice of non-reappointment. On August 15, 2019, Agency filed its Answer to Employee’s Petition for Appeal. I was assigned this matter on September 17, 2019.

On September 24, 2019, the undersigned Senior Administrative Judge (“SAJ”) issued an Order requiring Employee to address the jurisdiction issue in this matter no later than October 15, 2019. Specifically, the undersigned ordered Employee to submit a written brief in support of his position that OEA had jurisdiction over appeals for non-reappointment to the position of Assistant Principal. Agency was also afforded the option to submit a reply brief no later than October 29, 2019. Employee submitted a timely brief. However, as of the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

**JURISDICTION**

As will be discussed below, the jurisdiction of this office has not been established.

**ISSUE**

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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 628.2 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

ANALYSIS AND CONCLUSIONS OF LAW

In his October 15, 2019, brief, Employee noted that Agency did not adhere to the guidelines stated in the District of Columbia Personnel Regulations Chapter 38 Management Supervisory Service (“MSS”). Employee explained that, according to this regulation, an MSS employee shall be entitled to a fifteen (15) day notice prior to termination. Employee further explains that Agency violated this policy as they did not provide him notice within fifteen (15) days of termination/retreat. Employee concluded that he had met the burden of proof of jurisdiction.<sup>1</sup>

Agency notes in its Answer that a letter was issued to Employee on May 29, 2019, informing him of Agency’s decision not to reappoint Employee to the position of Assistant Principal for the 2019-2020 school year, pursuant to District of Columbia Municipal Regulations (“DCMR”), Title 5-E, Chapter 5, Section 520.02. The letter advised Employee that the action was effective at the close of business on June 21, 2019. Employee was further notified in the May 29, 2019, letter that Agency would honor any valid reversion rights that Employee possessed. On June 20, 2019, Employee executed his acceptance of his reversion rights to occupy his previous permanent position of Dean of Studies.<sup>2</sup>

***Analysis***

The threshold issue in this matter is one of 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, of permanent employees in Career and Educational Service who are not serving in a probationary period, or

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<sup>1</sup> Employee’s Brief (October 15, 2019).

<sup>2</sup> Agency’s Answer to Employee’s Petition for Appeal (August 15, 2019).

who have successfully completed their probationary period. According to 6-B DCMR § 604.1, 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) Placement on enforced leave for 10 days or more.

As previously noted, 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.<sup>3</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>4</sup>

In the instant matter, Employee is appealing Agency’s decision not to reappoint him to the position of Assistant Principal for the 2019-2020 school year. This action by Agency does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Employee is simply appealing his non-reappointment, as well as the timeliness of the notice of non-reappointment, which falls outside of OEA’s purview. Further, Employee has not provided any evidence to show that his complaint is within OEA’s jurisdiction. Thus, I find that this Office does not have jurisdiction over this matter.

Employee further argues that he was terminated from an MSS position without proper notice. He explained that as an Assistant Principal, he was an MSS employee, who was entitled to a fifteen (15) day notice prior to termination pursuant to Chapter 38 of the DCMR. Employee asserts that Agency violated this policy as it did not provide him with notice within fifteen (15) days of termination/retreat.

Assuming *arguendo* that Employee was indeed an MSS employee, who was subject to an adverse action of termination, this Office would still not have jurisdiction over Employee’s appeal. Chapter 16 of the District Personnel Manual (“DPM”) § 1600, affords adverse action protection only to Career and Educational Service Employees. DPM § 1600.2(h) specifically states that employees in the MSS are excluded from coverage. Thus, the procedural protections (notice and hearing rights) applicable to Career and Educational Service employees are not applicable to MSS employees. Furthermore, D.C. Official Code §1-609.51 provides in pertinent

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<sup>3</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>4</sup> 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 General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

part that, “persons appointed to the Management Supervisory Service are not in the Career... Service.” In addition, DPM § 3801.4 provides that “[p]ersons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Services.” Here, Employee alludes in his October 15, 2019, brief that he was an MSS employee at the time of his termination. DPM § 3800.3 highlights that, “[i]n accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54), an appointment to the Management Supervisory Service is an at-will appointment.” Additionally, this Office has consistently held that it lacks jurisdiction over “at-will” employees.<sup>5</sup> Accordingly, I find that this Office does not have jurisdiction over his appeal since he is an MSS and not a Career or Educational service Employee.

Moreover, it is well established in the District of Columbia that, an employer may discharge an at-will employee “at any time and for any reason, or for no reason at all.”<sup>6</sup> DPM § 3813.1 further notes that “[a] person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.” I disagree with Employee’s argument that he was not provided with proper notice prior to his termination. Based on the record, Employee was issued a notice of Non-Reappointment as Assistant Principal for the 2019-2020 School year on May 29, 2019. The action was effective on June 21, 2019. May 29, 2019 to June 21, 2019, is more than fifteen (15) days. Applying this reasoning to the present case, I conclude that Agency clearly fulfilled its obligation by providing Employee with sufficient written notice of its decision not to reappoint Employee as Assistant Principal.

Based on the foregoing, I find that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

### ORDER

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

FOR THE OFFICE:

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MONICA DOHNJI, ESQ.  
SENIOR ADMINISTRATIVE JUDGE

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<sup>5</sup>*Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, Opinion and Order on Petition for Review (February 10, 2004); *Jenkins v. Department of Public Works*, OEA Matter No. 1601-0037-01, Opinion and Order on Petition for Review (April 5, 2006); and *Minter v. D.C. Office of Chief Medical Examiner*, OEA Matter No. J-0116-07, Opinion and Order on Petition for Review (July 22, 2009).

<sup>6</sup>*Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991).