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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
NANCY WILLSON,)	
Employee)	OEA Matter No. 1601-0170-13
)	
v.)	Date of Issuance: January 22, 2014
)	
DISTRICT DEPARTMENT)	
OF TRANSPORTATION,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
Nancy Willson, Employee, <i>Pro Se</i>		
Nana Bailey-Thomas, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 30, 2013, Nancy Willson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District Department of Transportation’s (“Agency”) decision to terminate her. On November 1, 2013, Agency filed a Motion to Dismiss Employee’s Petition for Appeal stating that Employee was a probationary employee at the time of her termination.¹ This matter was assigned to the undersigned on or about November 18, 2013 to address the jurisdiction issued raised by Agency in its Motion to Dismiss. Thereafter, on November 22, 2013, I issued an Order to Employee requesting that she submit a written brief addressing the jurisdiction concerns. Additionally, this Order required Agency to submit Employee’s most recent Standard Form 50 (SF-50), along with copies of Employee’s pay stubs for the period starting August 13, 2013 to September 30, 2013. In her December 4, 2013 brief, Employee stated that her status as a DDOT employee ended after the probationary period. On December 16, 2013, Agency submitted the required documents. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that there are no material issues in dispute, and therefore, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

¹ Agency’s Motion to Dismiss Employee’s Petition for Appeal (November 1, 2013).

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

The following facts are not subject to genuine disputes and are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA:

1. On July 25, 2012, Employee accepted an appointment with Agency as a Staff Assistant, effective August 13, 2012. This letter stated that Employee's employment was subject to the satisfactory completion of a one-year probationary period beginning on August 13, 2012.
2. On August 2, 2013, Agency issued a Termination of Probationary Employee letter to Employee noting that Employee was being terminated effective August 23, 2013.
3. On August 8, 2013, Agency mailed a second Termination of Probationary letter to Employee. This second letter also stated that the effective date of Employee's termination was August, 23, 2013.
4. On August 15, 2013, Agency mailed a Separation Date Correction letter to Employee noting that the correct effective date of Employee's termination was August 13, 2013, and that the previous letters (August 2, 2013 and August 8, 2013 letters) contained a typographical error.
5. Agency continued paying Employee through the pay period ending August 24, 2013.
6. The SF-50 which was processed on September 19, 2013, backdated Employee's termination effective date to August 13, 2013.

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ 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 not relevant to this case, of permanent employees in Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period.

Employee has the burden of proof on issues of jurisdiction.⁴ And Employee must meet this burden by a "preponderance of the evidence" which is defined as that degree of relevant evidence,

² See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Public. School*, 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).

⁴ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.”⁵

District Personnel Manual (“DPM”) § 813.2 states 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 below, who shall serve a probationary period of eighteen (18) months:

- (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 the Department of Youth Rehabilitation Services; and
- (c) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

Here, Employee was hired as a Staff Assistant with an effective date of August 13, 2012. Employee’s appointment as a Career Service employee was subject to the completion of a one (1) year probationary period effective August 13, 2012. Agency issued Employee three (3) separate letters of termination, listing two (2) different termination effective dates. The August 2, 2013 and August 8, 2013 letters both listed a termination date of August 23, 2013. The August 15, 2013, letter listed a termination effective date of August 13, 2013. This letter explains that the first two letters incorrectly listed the termination effective date as August 23, 2013, instead of August 13, 2013. In its Motion to Dismiss, Agency argued that the first two (2) letters contained typographical errors which stated the incorrect probationary period end date of August 23, 2013. I find Agency’s argument that the August 23, 2013, termination effective date listed in the first two (2) letters was a topographical error unpersuasive. Based on Employee’s paystub, Agency continued paying Employee long after the purported August 13, 2013 termination effective date. Agency in fact continued paying Employee up until the pay period ending on August 24, 2013. Accordingly, I conclude that because Employee was paid up until the pay period ending on August 24, 2013, the August 23, 2013, termination effective date listed in the August 2, and August 8, 2013, letters was not a result of a typographical error.

Assuming arguendo that the August 15, 2013, letter contained the correct termination effective date, Agency would still have erred in its classification of Employee as a probationary Employee. Because Agency did not seek to remove Employee prior to August 13, 2013, she thereafter became a Career Service employee effective 12:00 am on August 13, 2013.⁶ Consequently, as a permanent Career Service employee, Employee has the right to have adverse action issued only for cause, and she also has the right to appeal any adverse action against her. Based on the

⁵ OEA Rule 628.1, *id.*

⁶ *Nicolau v. D.C. Metropolitan Police Department*, OEA # 1601-0005-05 *Opinion and Order on Petition for Review* (April 5, 2007).

aforementioned, I find that Employee has met her burden of proof in this matter, and as such, this Office has jurisdiction over this Petition for Appeal. I further find that because Agency did not initiate adverse action procedures against Employee prior to August 13, 2013, at the time of her termination, Employee was a permanent Career Service employee. And for these reasons, Agency's Motion to Dismiss is **DENIED**.

Moreover, pursuant to DPM § 1603.2, disciplinary action against an employee may only be taken for cause. As a permanent Career Service employee, Employee has the right to have adverse action issued only for cause, along with the right to appeal any adverse action that leads to termination to this Office. Here, all the letters from Agency to Employee regarding her termination noted that Employee was being terminated during her probationary period pursuant to § 814 of the D.C. Personnel Regulations. None of the letters stated any specific cause for termination in compliance with DPM § 1603. And since Agency did not take the termination action on the basis of cause nor did Agency adhere to the guidelines that must be followed when dismissing a Career Service employee, Employee's termination should be reversed and Employee restored to her previous position of record.⁷

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee and reimburse her all back-pay, benefits lost as a result of her removal; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁷ See Agency's Motion to Dismiss Employee's Petition for Appeal; Tab(s) 2, 3, and 4.