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

In the Matter of:)	
)	
DARNELL WALL,)	
Employee)	
)	OEA Matter No. 1601-0087-18
v.)	
)	Date of Issuance: December 28, 2018
D.C. PUBLIC SCHOOLS,)	
Agency.)	
)	Michelle R. Harris, Esq.
)	Administrative Judge
<hr/>		
Darnell Wall, Employee <i>Pro Se</i>		
Nicole C. Dillard, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 28, 2018, Darnell Wall (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate him from service, effective July 27, 2018. Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal on September 13, 2018. This matter was assigned to the undersigned Administrative Judge on October 5, 2018.

On October 10, 2018, I issued an Order scheduling a Prehearing Conference in this matter for October 29, 2018. Both parties appeared for the Prehearing Conference. During the conference, Agency renewed its Motion to Dismiss, citing that Employee was in probationary status at the time of termination and that OEA had no jurisdiction over this matter. As a result, I issued a Post Prehearing Conference Order requiring Employee to address the jurisdiction issue raised by Agency. Employee was required to respond on or before November 16, 2018. Agency had the option to submit a response to Employee’s brief on or before November 30, 2018. Employee submitted his response on November 13, 2018. To date, Agency has not submitted a response. 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.

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 Paraprofessional, beginning August 6, 2017. Following an IMPACT rating of “Ineffective” for the 2017-2018 school year, in a final decision dated June 25, 2018, Employee was notified that he would be separated from service, effective July 27, 2018.

Employee’s Position

Employee asserts that his service with Agency began in March 2017 at West Campus when he was hired as a “long-term” substitute. Employee also asserts that he served as a behavioral specialist in June 2017. Employee argues that he was offered a position to return as an Educational Aide for the 2017-2018 school year, beginning August 14, 2017, and ending on June 15, 2018. As a result, Employee states that he worked a full year and that OEA has jurisdiction over his appeal.¹

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 his termination, and therefore, OEA has no jurisdiction over this appeal.² Agency avers that Employee was hired on August 6, 2017, and was subsequently separated on July 28, 2017. Agency contends Employee was still in his probationary period and that pursuant to DPM § 814.3, a termination during a probationary period is not appealable or grievable and that OEA lacks jurisdiction over this appeal.³

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”) § 604.1⁴, 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

¹ Employee’s Response (November 13, 2018).

² Agency’s Answer to Employee’s Petition for Appeal (September 13, 2018).

³ *Id.*

⁴ *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.⁵ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁶

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.⁷ Employee was hired on August 6, 2017, and his termination was effective July 27, 2018.⁸ Based on this timeline, Employee was still in probationary status at the time of his termination. The other service dates that Employee worked for Agency were separate positions, that were not associated with the position held at the time of his termination, and as a result, I find that they cannot be included in the calculation of his probationary term. Further, Employee’s offer letter and hire SF-50 cites that his employment commenced on August 6, 2017.⁹ Additionally, Employee’s previous position as a substitute teacher was an appointment term that was effective October 14, 2016, with a “Not to Exceed” date of October 14, 2020. 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

⁵ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁶ 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).

⁷ *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

⁸ See Employee’s SF-50 and Offer Letter (December 20, 2018).

⁹ See Employee’s SF-50 and Offer Letter (December 20, 2018).

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).