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

_____)	
In the Matter of:)	
)	
KAREN MOORE,)	
Petitioner)	
)	OEA Matter No. J-0016-16
v.)	
)	Date of Issuance: July 8, 2016
D.C. PUBLIC SCHOOLS,)	
Respondent)	Michelle R. Harris, Esq.
_____)	Administrative Judge
Michelle Bell, Esq., Petitioner's Representative)	
Carl K. Turpin, Esq., Respondent's Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 9, 2015, Karen Moore (“Ms. Moore”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS”) decision to terminate her. The notice of appeal was sent to both the Office of the State Superintendent of Education (“OSSE”) and DCPS.¹ On January 11, 2016, DCPS filed a Motion to Dismiss.

I was assigned this matter on December 21, 2015. DCPS noted in its Motion to Dismiss Employee’s Petition for Appeal that OEA does not have jurisdiction over this appeal because Ms. Moore’s appeal was untimely, and that she was not employed by DCPS. On January 19, 2016, I issued an Order directing Ms. Moore to submit a brief addressing the jurisdiction issue raised by Agency in its Motion to Dismiss. Ms. Moore’s brief was due on or before February 3, 2016. On February 3, 2016, Ms. Moore’s representative filed a Motion requesting an extension of time in which to file her brief. On February 5, 2016, I issued an Order granting Ms. Moore’s motion. Her brief was now due on or before March 4, 2016, and DCPS’ brief was now due on or before March 18, 2016. Ms. Moore submitted her brief on March 4, 2016.

On March 18, 2016, DCPS filed a Motion requesting an extension of time in which to file its response. On March 21, 2016, I issued an Order granting DCPS’ request, requiring the brief be filed on or before March 25, 2016. Following the submissions of the briefs, I issued an Order on March

¹ On January 11, 2016, OSSE filed a Motion to Dismiss, citing that the case was against the “wrong defendant.” OSSE cites that the letters included in Employee’s appeal were not issued by OSSE.

29, 2016, scheduling a Telephonic Pre-Hearing Status Conference. The Telephonic Pre-Hearing Status Conference was held on April 18, 2016. Following the conference, I issued an Order requiring the parties to address the assertion made by DCPS that Ms. Moore had applied for a position, but was never hired by DCPS because she was determined to be ineligible for service following a background check. Ms. Moore's brief was due on or before May 12, 2016, and DCPS' brief was due on or before May 26, 2016. Both parties submitted their briefs in accordance with the prescribed deadlines. 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

Ms. Moore's Position

Ms. Moore asserts that she worked as a Bus Attendant for DCPS. Ms. Moore argues that she was wrongly terminated following a background check. Further, Ms. Moore contends that she was never made aware of her appeal rights to OEA. Ms. Moore cites that she was never provided a formal notice of her termination. Instead, Ms. Moore asserts that she was "notified verbally by a security guard that she was terminated from employment sometime in February 2010."² Ms. Moore claims that as a result, from 2010 until she filed her petition with OEA on December 9, 2015, that she "tried to get information from DCPS, her union and Human Resources on how to appeal the termination, since she never received a written termination letter and notice of appeal rights."³ Ms. Moore maintains that she was employed by DCPS in the Transportation Division from 1997 to 2010, and submitted two work identification cards and paystubs to support her argument.⁴

DCPS' Position

DCPS asserts in its Motion to Dismiss and Jurisdictional Reply Briefs that this Office lacks the jurisdiction to adjudicate this matter because Ms. Moore was not an employee of DCPS. DCPS avers that Ms. Moore was a former Bus Attendant with the Division of Transportation/OSSE, and was terminated in February of 2010.⁵ Further, DCPS cites that the work identification cards submitted by Ms. Moore reflect that she was employed by the Division of Transportation, which was separate from DCPS during the time period in which Ms. Moore was with that department.⁶ Additionally, DCPS cites that the Division of Transportation provided Ms. Moore with appeal rights in a termination letter dated February 18, 2010.⁷ DCPS argues that at some point between May and

² Employee's Supplemental Brief in Opposition to Agency's Jurisdictional Reply (May 12, 2016).

³ *Id.* at Page 4.

⁴ *Id.* at Page 5.

⁵ Agency Jurisdictional Reply at Tab1, Tab 6 (March 25, 2016)

⁶ *Id.* at Page 3.

⁷ *Id.* at Tab 6.

June of 2010, Ms. Moore applied for a position with DCPS and/or OSSE and was subject to a background check.⁸ DCPS contends that based on the results of the background check, it was determined that Ms. Moore was not eligible to provide services for DCPS. Thus, in a letter dated June 18, 2010, DCPS advised Ms. Moore that she was ineligible for employment.

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") § 604.1,⁹ 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.¹⁰ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹¹

Employment Status/Final Agency Notice

In the instant matter, the undersigned agrees with DCPS' assertion that OEA does not have jurisdiction over this matter. Ms. Moore's Petition for Appeal is based upon a letter she received from DCPS on June 18, 2010, which indicated that she was ineligible to provide services for DCPS due to the results of a background check.¹² Ms. Moore argues in her Supplemental Brief that she was terminated from employment sometime in February of 2010, but that she never received written notice of the removal because it was sent to an incorrect address. However, the February termination is not at issue in this matter.¹³ In the instant matter, the cause of action filed with Ms. Moore's

⁸ *Id.* at Page 1.

⁹ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

¹⁰ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order on Petition for Review (September 30, 1992).

¹¹ 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).

¹² Employee's Petition for Appeal (December 9, 2015).

¹³ Evidence in the record reflects that it was OSSE, not DCPS that removed Employee from service in February of 2010. The PeopleSoft record submitted by Agency in its March 25, 2016, brief reflects that Karen Moore was terminated effective February 2010, and that the sub-agency that had employed her was OSSE.

petition was the June 18, 2010, notice from DCPS which explained that she had been disqualified for employment based on the results of a background check.¹⁴ As a result, the undersigned is precluded from addressing issues related to the February 2010 termination at this time.

In her Supplemental Brief, Ms. Moore included photocopies of work identification cards and paystubs to support her contention that she was an employee of DCPS. However, I find that neither of these documents substantiates Ms. Moore's claims that she was employed by DCPS at the time she received the June 18, 2010 letter. As a result, I find that there is no evidence in the record to suggest that Ms. Moore was employed by DCPS. As previously cited, this Office's jurisdiction is limited to *employee* appeals related to performance ratings that result in removals, an adverse action that causes removal or suspension of ten (10) days or more, a reduction in force or grade, and enforced leave of ten (10) days or more. Here, the cause of action at issue in Ms. Moore's petition is a letter dated June 18, 2010, which indicated that she was ineligible for employment with DCPS based on the results of a background check. Because Ms. Moore was not an employee of DCPS, I find that the letter in her petition is not representative of a final agency notice that results in one of the aforementioned actions that are appealable to OEA.

Instead, the June 18, 2010, letter notified Ms. Moore that she had been disqualified for service with DCPS, which is not an action appealable to this Office. This Office has consistently held that appeals must be filed following a final agency decision.¹⁵ Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a "preponderance of evidence." I have determined that Ms. Moore did not meet this burden. For these reasons, I find that OEA lacks the jurisdiction to adjudicate this appeal.

Untimely Filing of Petition for Appeal

Additionally, under OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed action. The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.¹⁶ Assuming *arguendo* that Ms. Moore had appeal rights to this Office, the filing of her appeal on December 9, 2015, over five (5) years after receiving the letter dated June 18, 2010, was untimely. Ms. Moore would have needed to file her appeal by July 17, 2010, for her appeal to be untimely. For these reasons, I find that OEA has no jurisdiction to adjudicate this matter and this matter must be dismissed.

¹⁴ Employee's Petition for Appeal (December 9, 2015).

¹⁵ *Roland Tyler v. District of Columbia Department of Transportation*, OEA Matter No. J-0048-15 (March 17, 2015).

¹⁶ See *Zollicoffer v. District of Columbia Public Schools*, 735 A.2d 944 (D.C. 1999); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

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