



## JURISDICTION

For the reasons outlined below, the jurisdiction of this Office has not been established.

## ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Records Supervisor for approximately two (2) years.<sup>2</sup> In a notice dated March 21, 2023, Employee was notified that “in accordance with § 3813 of Chapter 38 of the District Personnel Manual (DPM), this constitutes notice of at least 15 days of the termination of your Management Supervisory Service appointment as the Supervisor, Records Management in the Records Management Division, DS-0301-11, with the Metropolitan Police Department.”<sup>3</sup> The letter stipulated that the termination would be effective at the close of business on April 11, 2023. Further, the letter indicated that MSS appointments are ‘at-will’, and that this termination was neither appealable nor grievable.<sup>4</sup>

### ***Employee’s Position***

Employee cited that she has been with Agency since 2006, when she first started as a District Property Clerk.<sup>5</sup> Employee asserts that on September 3, 2020, she was “awarded the MSS position as a Records Manger.” Employee asserts that she was “held out of that position until February 21, 2021.” Employee avers that after “being placed in the position [she] was subject to a hostile work environment, harassment, discrimination, and unethical practices.” Employee cited that she was a 17-year veteran and had never had any issues. She avers that she filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) on February 27, 2023, and that she received notice on March 21, 2023, that she was being terminated effective April 11, 2023.

### ***Agency’s Position***

Agency asserts in its Motion to Dismiss and its Response to Employee’s Brief on Jurisdiction that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee’s position was an MSS appointment, and as such is ‘at-will’, and not subject to OEA’s jurisdiction.<sup>6</sup> Agency provides that Employee was promoted to an MSS Grade 11 Supervisory Records Manager on February 21, 2021.<sup>7</sup> Agency avers that on March 21, 2023, Employee was notified that she was being terminated from the position of Supervisor, Records Management. The effective date of Employee’s termination was April 11, 2023. As a result, Agency maintains that since Employee’s

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<sup>2</sup> Employee’s Petition for Appeal (March 29, 2023).

<sup>3</sup> *Id.* at Final Notice.

<sup>4</sup> *Id.*

<sup>5</sup> Employee’s Brief on Jurisdiction (June 8, 2023). Employee also goes on to describe her career history with Agency.

<sup>6</sup> Agency Motion to Dismiss (May 10, 2023). See also. Agency’s Brief (June 29, 2023).

<sup>7</sup> *Id.*

position was a MSS appointment at the time of her termination, OEA lacks jurisdiction over this matter.

### ***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<sup>8</sup>, 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 631.2, 6-B DCMR Ch. 600 (December 27, 2021), 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>9</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>10</sup> Employees have the burden of proof for issues regarding jurisdiction and must prove jurisdiction by a preponderance of evidence.

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Motion to Dismiss that Employee's position was a MSS appointment, and as such, she was classified as an 'at-will' employee. The D.C. Personnel Regulations, Chapter 38, § 3813.1, provides that "*an appointment to the Management Supervisory Service is an at-will appointment. 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* (Emphasis Added)." Further, D.C. Personnel Regulations Chapter 38, § 3813.7 indicates that "terminations from an MSS appointment are not subject to administrative appeals." Here, Employee noted in her Brief that she accepted an appointment to the MSS position of Record Supervisor on September 3, 2020, which she later assumed on February 21, 2021.<sup>11</sup> Further,

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<sup>8</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>9</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>10</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 Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>11</sup> Employee's Brief (June 8, 2023). See also. Employee's Petition for Appeal Section 12 – Employee denotes her status as "MSS." (March 29, 2023).

Employee does not dispute her MSS status in her Petition for Appeal or in her brief, rather Employee argues she was subject to a hostile work environment, discrimination, harassment, and unethical practices.

This Office has held that while there are procedural protections afforded to Career service employees, MSS employees are excluded from those protections.<sup>12</sup> Moreover, D.C. Code § 1-609.05 (2001), provides that “at-will employees do not have any job protection or tenure.” It is well established in the District of Columbia that “an employer may discharge an ‘at-will’ employee for any reason or no reason at all.”<sup>13</sup> In the instant matter, Employee was provided a fifteen (15) day notice of her termination as required by the District Personnel Regulations. Additionally, this notice also included a statement indicating that her termination was not appealable or grievable.<sup>14</sup>

As a result, I find that Employee’s status as an MSS, ‘at-will’ employee 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. Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a “preponderance of evidence.” I have determined that Employee did not meet this burden. For these reasons, I find that OEA lacks 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:

/s/ Michelle R. Harris  
MICHELLE R. HARRIS, Esq.  
Senior Administrative Judge

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<sup>12</sup> *Charlotte Richardson v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0013-14 (January 9, 2014).

<sup>13</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).

<sup>14</sup> Employee’s Petition for Appeal at Final Notice (March 29, 2023).