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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JEFFREY RYNE,)	
Employee)	OEA Matter No. J-0031-16
)	
v.)	Date of Issuance: May 24, 2016
)	
DEPARTMENT OF BEHAVIORAL HEALTH,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
)	

Jeffrey Ryne, Employee, *Pro Se*
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 10, 2016, Jeffrey Ryne (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Behavioral Health’s (“Agency”) decision to terminate him from his position as a Food Service Worker, effective February 11, 2016.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on March 16, 2016. On April 12, 2016, Agency submitted its Response to Petition for Appeal. Thereafter, on April 14, 2016, I issued an Order requiring Employee to address the jurisdiction issue in this matter. Employee’s brief on jurisdiction was due on or before April 28, 2016. Additionally, Agency had the option to file a reply brief by May 9, 2016. Employee timely submitted a response to my April 12, 2016 Order. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee was a Food Service Worker at St. Elizabeth Hospital. On April 24, 2016, Employee submitted a notarized D.C. Form 307 indicating with his signature that he understood that he was required to continue to maintain bona fide District residency for seven (7) years from the effective date of appointment and that a failure to maintain residency would result in forfeiture of his position and separation from District government employment.¹ On February 11, 2016, following an investigation into Employee's place of residence, Agency issued a notice of Forfeiture of Employment with an effective date of February 11, 2016.² Employee filed a Petition for Appeal with this Office on April 24, 2016.

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") § 604.1³, 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.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵

¹ Agency's Response to Petition for Appeal at Tab 3 (April 12, 2016).

² *Id.* at Tab 12.

³ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁴ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ 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).

In the instant matter, Employee argues that he is a bona fide resident of the District of Columbia and he wants an appeal hearing. Agency on the other hand notes that termination from non-compliance with a residency requirement does not fall within OEA's jurisdiction. I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Based on the record, Employee was terminated for noncompliance with the District of Columbia residency statute. This 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.

Moreover, Chapter 6B of the District of Columbia Municipal Regulations ("DCMR"), section 307 outlines the appeal procedure when determining compliance with the residency requirement. Furthermore, Part II – Implementing Guidance and Procedures, Chapter 3 of the District Personnel Manual ("E-DPM"), at 9.1D, provides that "[t]ermination resulting from noncompliance with a residency requirement cannot be appealed to the Office of Employee Appeals or grieved through any grievance procedure." (Emphasis added). Based on the foregoing, I conclude that this Office does not have jurisdiction over Employee's current appeal. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's claims. And for this reason, 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:

MONICA DOHNJI, Esq.
Senior Administrative Judge