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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROBERT JONES,)	
Employee)	OEA Matter No. 1601-0136-15
)	
v.)	Date of Issuance: January 29, 2016
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Robert Jones, Employee <i>Pro Se</i>)	
Lynette Collins, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 4, 2015, Robert Jones (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Behavior Technician, effective August 7, 2015. On October 8, 2015, Agency filed its Answer to the Petition for Appeal.

I was assigned this matter on November 18, 2015. Upon review of the case file, I issued an Order on November 23, 2015, requiring Employee to address the potential jurisdictional issue in this matter. Employee’s brief on jurisdiction was due on or before December 8, 2015, and Agency had the option to submit a reply brief on or before December 22, 2015. Following Employee’s failure to submit the requested brief by the December 8, 2015, deadline, on January 6, 2016, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the November 23, 2015, Order, on or before January 20, 2016. Employee timely submitted a response to the Good Cause 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, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That 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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

Employee’s position

Employee notes that he was employed with Agency for more than one year, during which time he met all the job requirements of his position and title. He explains that he began his tenure with Agency on August 4, 2014, when he attended the on-boarding session held at Agency’s central office. Employee also notes that, he attended professional development training relevant to his position prior to this date, and he remained employed with Agency until August 7, 2015. For these reasons, he contends that OEA has jurisdiction over his appeal.¹

Agency’s position

Agency states in its Motion to Dismiss and Answer to Employee’s Petition for Appeal that an employee removed during a probationary period cannot appeal their removal to OEA. Agency explained that Employee was hired by DCPS on August 15, 2014. Employee was subsequently terminated effective August 7, 2015, prior to reaching his one (1) year anniversary. Therefore, Employee was still in probationary status when he was terminated. And since OEA

¹ Employee’s Brief (January 20, 2016).

does not have jurisdiction to hear appeals from probationary employees, Employee's complaint must be dismissed.²

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴ 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 (emphasis added).

Furthermore, chapter 8, § 813.2 of the District Personnel Manual ("DPM") provides 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 in paragraphs (a) through (d) of this subsection 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 entry-level Youth Development Representative positions in the Department of Youth Rehabilitation Services;
- (c) Individuals hired into entry-level Firefighter/Emergency Medical Technician (EMT) and entry-level Firefighter/ Paramedic positions in the Fire and Emergency Medical Services Department; and
- (d) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

In the instant matter, Employee argues that he was hired effective August 4, 2014, and terminated effective August 7, 2014, and therefore, he was employed with Agency for more than

² Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal (October 8, 2015).

³ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ 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).

one (1) year. However, except for his statements that he attended the “on boarding session held at Agency’s central office” on August 4, 2014, and that he also “attended professional development training relevant to his position prior to this date,” he has not submitted any documentary evidence in support of these assertions. Agency on the other hand, submitted an electronic copy of Employee’s offer letter from the Deputy Chief, Office of Human Resources, Crystal Jefferson, dated August 14, 2014, stating that “[Employee’s] first date of employment is 8/15/2014.”⁵ Additionally, Agency submitted Employee’s most recent Notification of Personnel Action - Standard Form 50 (“SF-50), which lists Employee’s Service Computation Date (“SCD”) as August 14, 2014.⁶ These documents were included in Agency’s Motion to Dismiss, and Employee does not dispute the validity of said documents. Consequently, based on the offer letter dated August 14, 2014, and the SF-50 showing a SCD of August 14, 2014, I conclude that, Employee was hired effective August 14, 2014, and terminated effective August 7, 2015. This is less than one (1) year. Accordingly, I find that, Employee was removed from service when he was still within the one (1) year of his probationary period.

Moreover, DPM § 814.3 states that, a termination during an employee’s probationary period cannot be appealed to this Office. In addition, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.⁷ Thus, I find that this Office lacks jurisdiction in this matter because the record shows that Employee was still in probationary status at the time of his termination. For these reasons, I further conclude that Employee is precluded from appealing his removal to this Office.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.⁸ Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, *id.*, as that “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.” Based on the foregoing, I conclude that Employee has not met the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency’s Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁵ Agency’s Answer, *supra*, at Tab 9.

⁶ *Id.* at Tab 10.

⁷ See, e.g., *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

⁸59 DCR 2129 (March 16, 2012).