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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SETH VELSEY,)	
Employee)	OEA Matter No. 1601-0379-10
)	
v.)	Date of Issuance: July 24, 2012
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
)	
Seth Velsey, Employee <i>Pro se</i>		
Sara White, Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 23, 2010, Seth Velsey (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“DCPS” or “Agency”) decision to terminate him from his position as an ET-15 Art Teacher, effective August 13, 2010. On September 24, 2010, Agency filed an Answer to Employee’s petition for appeal alleging that Employee was a probationary employee at the time of his termination and as such, this Office lacks jurisdiction to hear this matter.¹

I was assigned this matter on or about July 17, 2012. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

¹ See Agency’s response to Petition for Appeal at p. 5 (September 24, 2010).

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In his petition for appeal filed with this Office on August 23, 2010, Employee highlights that he was a probationary employee at the time he was terminated from Agency.² Agency also notes in its Answer that Employee was a probationary employee at the time of his separation. Additionally, Agency submits that Employee was not a permanent employee at the time of his separation.³ Agency explains that Employee was hired as an ET-15 teacher effective October 14, 2008, and his probationary period would have ended on October 14, 2010. Employee was terminated because he received an ‘ineffective’ rating for his final 2009-2010 performance rating review, and pursuant to the IMPACT process, his employment was terminated effective August 13, 2010.⁴

The threshold issue in this matter is one of jurisdiction. 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 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. Additionally, District of Columbia Municipal Regulations (“DCMR”), Title 5, § 1307.1 provides that, an employee initially entering or transferring into the Educational Service shall ... serve a probationary period. Section 1307.3, *id.*, further provides that an initial appointee to the ET salary class shall serve a two (2) year probationary period requirement.

Here, Employee was hired as an ET-15 Teacher with an effective date of October 14, 2008.⁷ Employee concedes in his petition for appeal that he was a probationary Education Service employee with an ET salary class.⁸ Employee’s appointment as an Education Service employee in the ET salary class was subject to the completion of a two (2) years probationary period. Employee was employed from October 14, 2008 to August 13, 2010, a period of approximately one (1) year, ten (10) months. Employee did not complete the two (2) years

² Petition for Appeal at p.2 (August 23, 2010).

³ Agency’s response to petition for appeal, *supra*.

⁴ IMPACT is the effectiveness assessment system which DCPS used for the 2009-2010 school year to rate the performance of school-based personnel.

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

⁶ 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).

⁷ Agency’s response to petition for appeal, *supra*, at Tab 8.

⁸ Petition for Appeal, *supra*.

probationary period as required by 5 DCMR § 1307.3 and therefore remained in probationary status at the time he was terminated on August 13, 2010.

According to 5 DCMR §1307.5, the probationary period shall be used to evaluate the performance of the employee. Also, 5 DCMR §1307.6 suggests termination from a position as a penalty for failure to satisfactorily complete the requirements of the probationary period. In this case, Employee's performance was evaluated and he received an 'ineffective' rating pursuant to the IMPACT components, and was therefore terminated from his position as an Art Teacher.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012). 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." I find that Employee has not met his burden of proof as it is evidenced in his petition for appeal that he was aware of the fact that he was serving in a probationary capacity at the time of his separation. Consequently, I conclude that this Office does not have jurisdiction over this appeal, and as such, this matter must be dismissed for lack of jurisdiction. Based on the foregoing, 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 and Agency's Request to Dismiss for lack of jurisdiction is GRANTED.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge