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

In the Matter of:)	
)	
DESTINEE ROBINSON,)	
Employee)	
)	OEA Matter No. 1601-0044-16
v.)	
)	Date of Issuance: September 18, 2017
METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	Michelle R. Harris, Esq.
)	Administrative Judge
<hr/>		
Destinee Robinson, Employee <i>Pro Se</i>		
Jhumur Razzaque, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 2, 2016, Destinee Robinson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency” or “MPD”) decision to terminate her. On June 3, 2016, Agency filed its Answer to Employee’s Petition for Appeal.

I was assigned this matter on June 13, 2016. Agency noted in its Answer to Employee’s Petition for Appeal that OEA does not have jurisdiction over this appeal because Employee was in probationary status at the time of termination. On June 15, 2016, I issued an Order directing Employee to submit a brief addressing the jurisdiction issue raised by Agency in its Motion to Dismiss. Employee’s brief was due on or before June 30, 2016. Additionally, Agency had the option to submit a response to Employee’s brief on or before July 14, 2016. Employee submitted her response on June 29, 2016. Agency did not submit a response. Based on a review of the record, I issued an Order on July 29, 2016, Convening a Prehearing Conference. The Prehearing Conference was scheduled for September 27, 2016.

On September 28, 2016, I issued a Post Prehearing Conference Order requiring both parties to submit briefs addressing the outstanding jurisdictional issue in this matter. Employee’s brief was due on or before October 20, 2016, and Agency’s brief was due on or before November 10, 2016. Both parties submitted their respective briefs. After considering the parties’ arguments as presented in their briefs, I decided that an Evidentiary Hearing was warranted. Accordingly, on December 30, 2016, I issued an Order scheduling a Status Conference for February 6, 2017, for the purpose of

discussing dates for the Evidentiary Hearing. The Evidentiary Hearing was scheduled for April 14, 2017. On April 3, 2017, Agency submitted a Motion to reschedule the Evidentiary Hearing. I held a Telephonic Status Conference on April 5, 2017, to discuss the parties' positions, wherein Employee noted her objections to Agency's request. However, after consideration of the circumstances and the parties' positions, I granted Agency's Motion. On April 11, 2017¹, I issued an Order Rescheduling the Evidentiary Hearing in this matter for May 4, 2017. An Evidentiary Hearing was held on May 4, 2017, where both parties presented testimonial and documentary evidence. Both parties submitted their written closing briefs by the prescribed deadline. 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.

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. (Emphasis Added)

SUMMARY OF TESTIMONY

On May 4, 2017, an Evidentiary Hearing was held before this Office. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Employee and Agency presented testimonial and documentary evidence during the course of this matter to support their position.

¹ At the end of the Telephonic Status Conference call, both parties agreed on a date of April 24, 2017, for the Evidentiary Hearing. On April 6, 2017, Employee emailed and indicated that her witnesses were unavailable on that date. As a result, the undersigned provided alternative dates and required parties submit a response by April 7, 2017.

Employee's Case-In-ChiefDestinee Robinson ("Ms. Robinson" or "Employee") Tr. 13 -35

Ms. Robinson testified that she was hired as a probationer officer with MPD on November 18, 2013. Employee testified that she became a career officer and was ranked as such from the time period of November 14, 2014, until April 8, 2016, when she was terminated. Ms. Robinson relies on an ACADIS² training report to support her contention. Ms. Robinson indicated that she had never been to a probationary review or scheduled for such. Ms. Robinson testified that she never received any documentation regarding an extension of her probationary period. Ms. Robinson maintained that she was not in probationary status at the time of her termination.

On cross-examination, Ms. Robinson testified that even though the training manual contained information regarding the extension of probationary periods for up to an additional 18-months for non-full duty days, that she was unaware of this provision until she was terminated. Ms. Robinson stated that she was not provided any "paperwork" or any other notification regarding extensions until after she was terminated. Ms. Robinson testified that she was aware of the days she was not on full duty status, but maintained that she was not aware that her probationary period was extended as a result of those absences.

Agency's Case-In-ChiefMatthew Miranda ("Miranda") Tr. 35-125

Matthew Miranda ("Miranda") testified that he has been employed by the Metropolitan Police Department since January 2009. Miranda currently serves as a Special Assistant assigned to the Police Academy where he handles management and administration. Prior to that position, Miranda testified that from 2011 until November 2016, he served as a special assistant in the Human Resource Management Division, which was one of the deputy director positions. In that role, Miranda's responsibilities included labor relations, policy development, program management and oversight. Additionally, he was the coordinator of the officer probationary program from approximately 2012 until November 2016.

On direct examination, Miranda testified that the probationary program is one in which newly hired officers serve an 18-month training program which includes field training, reviews and other checks. Miranda testified that the 18-month probationary training period is required in accordance with Chapter 8, Section 813 of the District Personnel Manual ("DPM"). Miranda stated that the DPM specifically stipulates that the 18-month period is required of officers, and that any day spent in non-full duty status, including non-contact without police powers or a sick or limited medical duty status would have to be made up.

Miranda confirmed that he had personal knowledge of Employee's termination from MPD. Miranda stated that at the time of her termination, Employee was a probationary police officer with MPD. Miranda testified that he knew about Employee through his work with the system of tracking personnel information, known as the Personnel Resource Tracking System (PRT), as well having had manually added up all of the time Employee spent in non-full duty status.

² ACADIS is a training software system utilized by the Metropolitan Police Academy.

Miranda stated that all recruits are provided with a copy of the Recruit Officer Training Program Guide which provides all newly hired officers with details of their probationary period and other pertinent information. Miranda stated that after graduation from the Police Academy, officers are then assigned to one of the seven police districts. During that time, their training continues with a field process and they have to complete a 12-week training program under the supervision of a field training officer. Miranda stated that while an officer may complete this training and go on patrols alone, it does not mean they are a career officer.

Miranda also testified that Employee's probationary period was extended multiple times due to several periods of non-full duty status. Miranda explained that Ms. Robinson was hired on November 18, 2013, and that assuming she had spent the entire 18-month probationary period in full duty status, her probationary term would have expired on May 17, 2015. However, Miranda noted, that in Employee's matter, she had four (4) periods of less than full duty status starting in December of 2013 for 141 days, again in March of 2015 for sick leave of 51 days, again in July 2015 for several weeks and then another time between the period of September 2015 through December 2015, where Employee was in non-contact status in which she did not have her police powers. As a result, Miranda testified that Employee had 192 days to make up in the probationary 18-month term, which would extend the term until May 3, 2016. Miranda testified that the 18-month term could be extended up to an additional 18-months based on the number of days the member was not in full duty status. Miranda further explained that make-up days can only be done when an officer is in full duty status, namely that the clock would stop if another period of non-full duty status occurred.

Miranda also testified that the system of record which reflects an officer's rank and assignment with accuracy is the Personnel Resource Tracking System (PRT). Miranda indicated that employees are able to access their own profile and supervisors can access anyone's profile in the system. Miranda stated that Employee's profile page reflected that her rank was probationer. Miranda further testified that the ACADIS system is a training software system used by the Police Academy. Miranda explained that this system is utilized differently from the PRT, in that; its primary role is a training tracking system. Miranda explained that this is not considered a human resources tool, and is only administered by the Metropolitan Police Academy for training purposes. Miranda indicated that there is no connectivity with ACADIS and the PRT, and updates to the ACADIS system regarding promotions or rank are done manually, and as a result, it is not a reliable source of rank or status.

Miranda also testified that the compensation data for Ms. Robinson reflected her probationary status. Miranda explained that career officers are classified as Grade 01, but that probationers are classified as Grade 00. Miranda stated that Employee's pay reflected the "00" status as a probationer. Further, Miranda indicated that Ms. Robinson never received the retention increase (4.2%) because she had not yet completed her probationary period. Miranda maintained that he had personal knowledge of Employee's matter because he was responsible for processing her termination.

Miranda also explained that there was a time at Agency where courtesy notifications were sent to probationers if their probationary period was going to be extended. Miranda indicated that these courtesy notices were sent in 2011, 2012, 2013, and possibly in the beginning of 2014, as a courtesy to notify probationers of an extension. Miranda explained that at some time in 2015 the courtesy notifications regarding probationary term extensions ended. Miranda explained that it was never required by any rule, regulation, internal general orders or otherwise to provide notifications of extensions of probationary terms. Miranda maintained that Section 813 of the DPM specifically

indicates that a probationary period shall be extended, but does not provide any requirement of notice.

On cross examination, Miranda testified that ACADIS is a training system and is not an accurate means of personnel record keeping. Miranda maintained that ACADIS is a training system and that every change is made manually. Miranda indicated that assignment location as listed in ACADIS is not a place for an officer's official assignment. Miranda maintained that there are no formal notifications sent regarding specific advance notice of extensions. Miranda stated that the Recruit Officer Handbook which is gone over extensively with recruits explicitly outlines the requirements regarding making up any non-full duty days. Miranda indicated that notices are sent to officers once they complete their 18-month probationary period to notify officers of pay, and other matters. Miranda stated that contact with probationary officers is made when they are reaching the conclusion of the probationary period. Miranda testified that because Employee was out for such an extended period, they were not sure when or how long she would be back for certain times. As a result, Miranda explained that it would have been difficult for them to provide a definitive date for the completion of her probationary period given that she was in non-full duty status for such an extended time.

He also explained that since Employee had 192 days to make up, that he could not have provided Employee a definitive date of when her probationary period would have ended because even on the May 17, 2015, (which would have ended her probationary term if she had not had any extension), Employee was still not in full duty status. Miranda testified that in these cases, it is not until a person is closer and have made up a majority of the time that they are actually able to delineate what the expiration of the probationary period might actually be.

On re-direct, Miranda testified again that there is no general order in the department or any other requirement in the DPM that requires them to send notification regarding the extension of a probationary period. He explained that officers are notified in writing in the Recruit Handbook that their probationary period could be extended.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee's Position

Employee asserts that she was improperly terminated. Employee asserts that on March 8, 2016, she reported for her shift and was placed on non-contact due to a civilian complaint.³ Further, Employee asserts that she had completed her probationary term, which was reflected in her online personnel records. Additionally, Employee avers that there was no indication that her probationary term had been extended and that she was not provided notice of any such extension.⁴

Employee also argues that she was never presented before the probationary board for review. Employee cites that she "began duties as a certified MPD Officer on November 13, 2014."⁵ Employee maintains that she was a career officer, and at the time of termination she was riding alone on daily patrol, making arrests among other tasks. Employee argues that these activities were assigned to her by her Commanding Officer and "are only permitted upon successful completion of

³ Employee's Petition for Appeal at Page 4.

⁴ *Id.*

⁵ Employee Response (September 12, 2016).

all required training and certifications.”⁶ Employee argues that she was also paid full salary, which only follows a completion of a probationary period.⁷ Employee also contends that her superiors referred to her as an officer and assigned her with duties commiserate with that of a career officer. Further, Employee states that the ACADIS system⁸ reflected that she was an officer, not a probationer at the time of her termination. Employee argues that Agency failed to give her appropriate notice of the extension of her probationary period, and as a result, improperly terminated her.

Agency’s position

Agency asserts that this Office lacks the jurisdiction to adjudicate this matter. Agency argues “pursuant to Chapter 8, Section 814.3 of District of Columbia Municipal Regulations (“DCMR”), a termination during a probationary period is not appealable or grievable.”⁹ Agency avers Employee’s appeal must be dismissed because Employee was in probationary status at the time of her termination and therefore OEA has no jurisdiction over this appeal. Agency indicates that Employee was hired as an entry-level police officer with the Fourth District.¹⁰ Agency contends that this Career Service appointment was subject to the completion of an 18-month probationary period pursuant to Chapter 8, Section 813.2 of the District Personnel Manual (“DPM”). Further, Agency cites that under Chapter 8 Section 813.10 (b), for each day Employee was not performing the full range of police duties to which she was assigned, her probationary period was extended by an “equitable period of time in increments of full work days.”¹¹

Agency cites that Employee had significant periods of sick/limited duty and non-contact status. Agency asserts that “Employee was on sick leave from December 24, 2013 through May 13, 2014 for a total of one-hundred forty one (141) days.”¹² Employee was on “sick leave again March 27, 2015 through June 22, 2015, for a total of eighty-eight (88) days, and was on sick leave for a third time from July 23, 2015 to August 13, 2015 for a total of twenty-two (22) days.”¹³ Agency also indicates that Employee was in a “non-contact status from September 19, 2015 through December 21, 2015 for a total of ninety-four (94) days.”¹⁴ Agency argues that Employee amassed three hundred and forty-five (345) days where she was not performing the full range of duties as assigned. As a result, Agency asserts that Employee had over 192 make up days, thus extending her probationary term until May 3, 2016. As a result, Agency argues that Employee’s termination was done during her probationary term, and that OEA lacks jurisdiction to adjudicate this claim.

Additionally, Agency maintains that there was no requirement to notify Employee of the extension of her probationary term. Agency asserts that the Recruitment Officer Training Program Manual highlighted the policy regarding the extension of the probationary term.¹⁵ Agency argues that they were only required to provide notice of the termination and that Employee’s termination was in accordance with all applicable regulations and guidelines.

⁶ *Id.*

⁷ Employee’s Response (October 19, 2016).

⁸ Employee indicates that this was the personnel system utilized by Agency.

⁹ Agency’s Brief Regarding Jurisdiction (November 10, 2016).

¹⁰ Agency’s Pre-Hearing Statement (September 19, 2016).

¹¹ *Id.*

¹² Agency’s Reply Brief on Jurisdiction (November 10, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at Page 9.

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") § 604.1,¹⁶ 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.¹⁷ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹⁸

In the instant matter, the undersigned agrees that OEA does not have jurisdiction over this matter. Employee commenced working with the Metropolitan Police Department on November 16, 2013, and was subject to an eighteen (18) month probationary term. Pursuant to Chapter 8, Section 813.2 (a) of the District Personnel Manual ("DPM"), "[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* (Emphasis Added)."¹⁹

Additionally, Chapter 8 Section 813.10 (b) of the DPM, indicates that a probationary term "shall be extended for an equal amount of work days" for each work day that an employee was "not performing the full range police duties of the position to which assigned, including, but not limited to, periods of sick leave or non-contact status." Further, in the case of an entry-level police officer

¹⁶ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

¹⁷ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order on Petition for Review (September 30, 1992).

¹⁸ 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).

¹⁹ Chapter 8, Section 813.2 (a) of the District Personnel Manual

who is subject to the 18-month probationary term, in accordance with Section 813.12, an extension can be levied up to, but not exceed, an additional 18-months. In the instant matter, Employee was an entry-level officer and had several periods where she was out on sick leave or other non-contact status days that resulted in her not being in full duty status. As a result of these absences, Employee had 192 days to make up in her probationary term.²⁰ Thus, pursuant to Section 813.10(b) of the DPM, Employee's 18-month probationary term was extended until May 3, 2016, due to the 192 workdays that she had to make up. Employee argued that she was treated as an officer and received a salary increase that reflected a full officers pay. Despite her testimony arguing otherwise, Employee was unable to provide tangible evidence of any promotion or completion of her probationary period. Further, an examination of the personnel records indicate that Employee only received annual step increases, but remained classified as probationer, Grade Level "00".²¹

Employee relied on the ACADIS training system to support her contention that she was no longer probationary and that she should not have been terminated. However, during direct testimony and also on cross-examination, Agency's witness, Mr. Miranda, explained that the ACADIS system is only a training system utilized by the Police Academy and is not an accurate human resource/personnel management tool. Miranda went on further to explain that the Personnel Resource Tracking System (PRT) is the system in which an officer's grade and status are maintained and monitored. Miranda explained that the PRT is the system that human resources relies upon to determine an employee's status at Agency. As a result, Miranda explained that this system listed Employee as a probationer. Additionally, Agency provided documentary evidence from the PRT tracking which indicated Employee's status as probationary.²² Agency issued its final notice regarding termination on April 8, 2016. Because Employee's probationary term was extended through May 3, 2016, due to her absences during the probationary term, I find that Employee was still in probationary status at the time of her termination.

Employee also argued that she was not provided any notice of the extension of her probationary period.²³ Agency contends that it had no responsibility to inform Employee of the extension of the probationary period, and that this rule regarding the extension of a probationary term is enumerated in the training manual for police officers. Agency's witness testified that there was a time in which courtesy notifications were provided, however, it was not required by any law, regulation, or general order of Agency. Further, Agency maintains that the Recruit Training Manual explicitly provides all recruits with the rule regarding the requirement for the extension of a probationary term for any non-full duty days.²⁴ While the undersigned finds Agency's lack of any policy or procedure to provide a notice to employees regarding extensions of probationary terms to be an ineffective policy practice, I also find that there is no regulation that requires Agency to provide any such notice. Based on the aforementioned, I find that Employee was still in probationary status at the time of termination.

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. This Office has consistently held that an appeal to OEA by an employee serving in

²⁰ See Agency Exhibit 9.

²¹ See Agency Exhibit 1 (Employee SF-50).

²² See Agency Exhibit 5.

²³ Employee's Response (October 19, 2016).

²⁴ See Agency Exhibit 11 (Recruit Training Manual).

probationary status must be dismissed for lack of jurisdiction.²⁵ For these reasons, I find that OEA lacks the 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:

MICHELLE R. HARRIS, Esq.
Administrative Judge

²⁵ *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, Opinion and Order on Petition for Review (August 19, 1991).