

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)

██████████)
Employee)

v.)

DISTRICT OF COLUMBIA)
FIRE & EMERGENCY MEDICAL)
SERVICES,)
Agency)

██████████ Employee, *Pro se*
Andrea Comentale, Esq., Agency Representative

OEA Matter No. J-0026-21

Date of Issuance: August 2, 2021

ARIEN P. CANNON, ESQ.
Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on April 29, 2021, contesting the District of Columbia Fire and Emergency Medical Services’ (“Agency”) decision to terminate him from his position as a Firefighter/Paramedic. Employee’s termination was effective at the close of business on April 24, 2021. I was assigned this matter on July 1, 2021.

Agency filed a Motion to Dismiss on June 21, 2021. An Order on Jurisdiction was issued on July 12, 2021, which required Employee to submit a detailed written statement as to why he believes this office is the appropriate forum to address his case. Employee submitted a response to this Order on July 26, 2021. The record is now closed.

JURISDICTION

As explained below, the jurisdiction of this office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over Employee’s appeal.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “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.

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.²

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 604, 59 DCR 2129 (March 16, 2012) this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

OEA’s jurisdiction is generally limited to permanent employees who are serving in the career or educational services and who have successfully completed their probationary periods.³ Additionally, District Personnel Manual (“DPM”) § 227.4, generally provides that a termination during a probationary period is not appealable or grievable.⁴ However, a probationary employee alleging that his or her termination resulted from some other form of violation, such as a violation of public policy, the whistleblower protection law, or District of Columbia or federal anti-discrimination law, may file action under any such laws, as appropriate.

This Office has no authority to review issues beyond its jurisdiction.⁵ Here, Employee does not dispute that he was a probationary employee. However, he avers that his termination was based on his age and was a violation of Title VII of the Civil Rights Act and the D.C.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ See *Roxanne Smith v. D.C. Department of Parks and Recreation*, Opinion and Order on Petition for Review, OEA Matter J-0103-08 (May 23, 2011).

⁴ See Variance issued for Chapter 8, *Police, Fire and Emergency Medical Services Employees*.

Section 810.1 reads: Notwithstanding § 200.4, and except for § 225.3(a) and (c), the probationary rules at §§ 223 – 227 shall apply to uniformed members of the Metropolitan Police Department (MPD) and the Fire and Emergency Medical Services Department (FEMS).

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

Human Rights Act of 1977. Employee also provides examples of allegations of discriminatory acts he faced while employed with Agency.⁶ Employee contends that OEA should exercise jurisdiction over his appeal despite being a probationary employee. In this matter, I find that while federal and District of Columbia laws may provide an avenue for Employee to pursue his legal claims, OEA is not the appropriate forum for a probationary employee to assert these arguments. As such, I find that Employee has not satisfied his burden of proof regarding the jurisdiction of this Office. Thus, this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

ARIEN P. CANNON, ESQ.
Administrative Judge

⁶ See Petition for Appeal, Attachment (April 29, 2021).