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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DONNELL MORGAN,)	
Employee)	OEA Matter No. J-0108-15
)	
v.)	Date of Issuance: September 25, 2015
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HUMAN)	
SERVICES,)	
Agency)	
_____)	
Donnell Morgan, Employee, <i>Pro se</i>)	Arien Cannon, Esq.
Monica J. Brown, Esq., Agency Representative)	Administrative Judge
Robert C. Warren, Jr., Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Donnell Morgan (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 17, 2015, challenging the Department of Human Services’ (“Agency”) decision to remove him from his position as an Information Technology Specialist. Agency issued its termination letter to Employee on March 9, 2015, which stated that Employee’s termination became effective at the close of business on April 17, 2015.

I was assigned this matter on August 20, 2015. Agency filed its Answer on August 19, 2015. Based on an initial review of the file, an Order on Jurisdiction was issued on August 21, 2015. This order required Employee to set forth his argument as to why this Office may exercise jurisdiction over his appeal. After an extension of time was granted to Employee, he submitted his response to the Order on Jurisdiction on September 22, 2015. The record is now closed.

JURISDICTION

As set forth below, the jurisdiction of this Office has not been established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ANALYSIS AND CONCLUSION

OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.¹ Pursuant to OEA Rule 604 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.²

Section 814, Chapter 8, of the D.C. Personnel Regulations provides that an employee terminated during a probationary period may not appeal or file a grievance of an adverse action.³ Furthermore, a probationary employee alleging that his or her termination resulted from a violation of public policy, the whistleblower protection law, or District of Columbia or federal anti-discrimination laws, may file under any such laws, as appropriate.⁴ Here, Employee's response to the Order on Jurisdiction focuses on the merits of the case and his discrimination arguments rather than the jurisdiction question. Employee also includes D.C. Code §§ 2-1402.01 and 2-1401.11 in his brief to support his jurisdiction argument. These sections of the code address prohibited acts of discrimination and do not bolster Employee's arguments to establish the jurisdiction of this Office. Before addressing the merits of this matter, the jurisdiction of this Office must be established.

Section 813.2 of the District Personnel Manual ("DPM") provides in relevant part that, "[a] person hired to serve under a Career Service Appointment (Probational),...shall be required to serve a probationary period of one (1) year..." Agency's Answer to Employee's Petition for Appeal addresses the jurisdiction issue. In it, Agency asserts that at the time Employee was terminated, he was in a probationary status. Employee began working with Agency on April 21, 2014.⁵ Employee's termination became effective on April 17, 2015, prior to the end of his probationary period.⁶ Employee does not dispute the effective dates of his start time with Agency or the effective date of his termination.

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 604, 59 DCR 2129 (March 16, 2012); D.C. Official Code § 1-606.03.

³ See 6-B DCMR § 814.3.

⁴ *Id.*

⁵ See Agency's Answer, Tab 2 (August 19, 2015).

⁶ *Id.*, Tab 3.

This Office has consistently held that a probationary employee may be removed without cause during their probationary period.⁷ District government employees serving a probationary period do not have a statutory right to be removed for cause and cannot utilize the adverse action procedures under the Comprehensive Merit Personnel Act, which includes appealing those actions to this Office.⁸ Because Employee was still a probationary employee at the time of his termination, I must find that jurisdiction of this Office has not been established. Although the jurisdiction of this Office has not been established, that does not preclude Employee from seeking a remedy for his discrimination claims in another forum.

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

⁷ *Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, Opinion and Order on Petition for Review (December 6, 2010); *Wallace v. D.C. Public Schools*, OEA Matter No. J-0009-05 (January 31, 2006); and *Parker v. Department of Health*, OEA Matter No. J-0007-11, Opinion and Order on Petition for Review (September 12, 2012).

⁸ *Parker v. Department of Health*, OEA Matter No. J-0007-11, Opinion and Order on Petition for Review (September 12, 2012).