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

In the Matter of:)	
)	
GEORGE VINCENT II,)	
Petitioner)	
)	OEA Matter No. J-0094-15
v.)	
)	Date of Issuance: August 14, 2015
DISTRICT OF COLUMBIA)	
DEPARTMENT OF TRANSPORTATION,)	
Agency)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge
<hr/>		
George Vincent II, <i>Pro Se</i>		
Mitchell F. O’Connell, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 2, 2015, George Vincent, II filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Transportation’s (“Agency” or “DDOT”) decision not to hire him as a Safety Technician. On July 8, 2015, Agency filed an Answer to the Petition for Appeal and a Motion for Summary Disposition.

I was assigned this matter on August 5, 2015. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

In a letter dated June 16, 2015, Agency informed Mr. Vincent of a “conditional offer of employment for the position of Safety Technician, CS-019-03-01, Job Announcement No., JO-1501-879 at an annual salary of \$28,599 (13.74 per hour).” This letter goes on to state that, “[t]his offer of employment is *contingent* upon satisfactory completion of pre-employment checks. In the initial recruitment process, Job Announcement No., JO-1501-879, you were advised of the safety-sensitive nature of this position and that your acceptance of this position is with the understanding that the final appointment is contingent upon successful completion of a background investigation and drug and alcohol clearance. (emphasis added).”¹ This letter also informed Mr. Vincent that he would begin employment with the department on Monday, June 29, 2015, but indicated that the Agency retained the right to end the employment agreement should the results of the background check not be successful.²

Mr. Vincent’s Position

Mr. Vincent asserts that he was “sworn in and went to pick up his identification, where he was notified he did not have the job”.³

Agency’s position

Agency notes that “when Mr. Vincent reported for orientation on June 29, 2015, he was informed that the conditional job offer was revoked as he was found unsuitable for the position.”⁴ In a Criminal Background Notification letter dated June 24, 2015, the District of Columbia Department of Human Resources indicated that Mr. Vincent was “deemed unsuitable for further consideration for a Safety Sensitive Position as defined by *the Criminal Background and Traffic Record Checks of the Protection of Children and Youth Act 2004, as amended, {(D.C. Official Code § 4-1501.01, et. eq.) (“the Act”)}*”.⁵

Agency asserts that Mr. Vincent is not an employee, as he had only received a conditional offer of employment and as such, OEA lacks jurisdiction in this matter. Agency also submits that a person who is an “employee may only appeal to OEA a final Agency decision and that this matter does not involve a final Agency decision.”⁶ Agency argues that it issued a revocation of a conditional offer and did not remove Mr. Vincent from employment by issuing a final decision. Agency also asserts that assuming Mr. Vincent was considered an employee, (which it does not concede), he would have been appealing a removal during the probationary period, and as a result, OEA would not have jurisdiction in this matter.

¹ Agency’s Answer to Petition for Appeal at Exhibit 4 (July 8, 2015).

² *Id.* at Exhibit 4.

³ Employee’s Petition for Appeal (July 2, 2015).

⁴ Agency’s Answer to Petition for Appeal at Page 2 (July 8, 2015).

⁵ *Id.* at Exhibit 5.

⁶ Agency’s Answer to Petition for Appeal at Page 3(July 8, 2015).

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") § 604.1⁷, 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.⁸ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁹

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter. Based on the record, I find that Mr. Vincent was not an employee of the District of Columbia government. Agency notified Mr. Vincent in the June 16, 2015 letter that this position was a conditional offer and was contingent upon satisfactory completion of pre-employment checks. Agency's letter also indicated that they retained the right to revoke this offer if the results of the background investigation and other pre-employment checks were not successful. In the Criminal Background Notification letter dated June 24, 2015, results of the background check deemed Mr. Vincent unsuitable for the position.

Furthermore, the June 24, 2015 letter does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. The June 24, 2015 letter reflects the results of Agency's background check wherein Mr. Vincent was found unsuitable for the position, and included a subsequent revocation of the conditional offer of employment. Consequently, I conclude that the June 16, 2015 conditional offer of employment did not confer District Government employee status on Mr. Vincent, and therefore the June 24, 2015 letter is not a final agency decision that is appealable to OEA.

⁷ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁸ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁹ 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).

Accordingly, Mr. Vincent does not have appeal rights to this Office. 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