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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANGELA BENNETT,)	
Employee)	OEA Matter No. 1601-0079-17
)	
v.)	Date of Issuance: October 25, 2017
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Angela Bennett, Employee, <i>Pro Se</i>		
Lynette Collins, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 2, 2017, Angela Bennett (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position as an Educational Aide, effective July 29, 2017. On September 6, 2017, Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal, stating that Employee was still in her probationary period at the time of her termination and as such, OEA lacked jurisdiction over this matter.

I was assigned this matter on September 11, 2017. Thereafter, I issued an Order on September 18, 2017, requiring Employee to address the jurisdictional issue raised by Agency in its Answer. Employee’s brief on jurisdiction was due on or before October 2, 2017. Following Employee’s failure to submit her brief by the prescribed deadline, on October 6, 2017, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the September 18, 2017, Order. Employee’s response to the Show Cause Order was due on or before October 20, 2017. On October 22, 2017, this Office received Employee’s response to the Show Cause Order. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

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.

ANALYSIS AND CONCLUSIONS OF LAW

Employee’s position

Employee notes in her October 22, 2017, response to the Show Cause Order that “[m]y probation period would have been a year Aug[ust] 16, 2017[.] I didn’t have a chance to make my probationary period because I was terminated.”¹

Agency’s position

Agency states in its Motion to Dismiss that an employee removed during a probationary period cannot appeal their removal to OEA. Agency explained that Employee was hired by DCPS on or about August 7, 2016. Employee was subsequently terminated effective July 29, 2017. Therefore, Employee was still in her probationary status when she was terminated. It explains that OEA does not have jurisdiction to hear appeals from probationary employees. As such, Employee’s complaint must be dismissed.²

¹ Employee’s October 22, 2017, Letter.

² Agency’s Motion to Dismiss and Answer to Employee’s Petition for Appeal (September 6, 2017).

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴ 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 (emphasis added).

Chapter 8, § 814.3 of the District Personnel Manual ("DPM") states that a termination during an employee's probationary period cannot be appealed to this Office. Additionally, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.⁵ Employee acknowledges in her response to the Show Cause Order that she was still in her probationary period when she was terminated, and she does not dispute Agency's assertion that she was probationary at the time of her termination. Accordingly, I find that this Office lacks jurisdiction in this matter. Furthermore, Educational service employees who are serving in a probationary period are precluded from appealing a removal action to this Office until their probationary period is over. The record shows that Employee was hired effective August 7, 2016, and terminated effective July 29, 2017.⁶ Accordingly, I find that Employee was removed from service when she was still within her probationary period. For these reasons, I conclude that Employee is precluded from appealing her removal to this Office.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.⁷ 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." Employee stated in her response to the October 22, 2017 Show Cause Order, that she did not get the chance to complete her probationary period because she was terminated. Based on the foregoing, I conclude that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

³ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ 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).

⁵ See, e.g., *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

⁶ Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal, *supra*, at Tab P1 and Tab P9.

⁷59 DCR 2129 (March 16, 2012).

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge