Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0023-23
	)	
v.	)	Date of Issuance: April 28, 2023
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee, *Pro-Se*
Lynette Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 20, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Public Schools' ("DCPS" or the "Agency") action of removing him from service. Employee's last position of record was Specialist – Restorative Practice, Grade 14, Step 5. By letter dated January 20, 2023, Agency was notified that it was required to provide an Answer to the Petition for Appeal by February 19, 2023. On February 14, 2023, DCPS submitted its Motion to Dismiss and Answer. In its submission, DCPS asserted that the OEA lacks jurisdiction over this matter because Employee was removed from service during his probationary period and that it is well documented that the OEA lacks jurisdiction over appeals from probationary employees. It is uncontroverted that Employee's date of hire for his last position of record was May 26, 2022. The effective date of Employee's removal from service was December 27, 2022.

This matter was assigned to the Undersigned on February 14, 2023. Thereafter a series of Orders requiring Employee to respond were issued on February 14, March 7, and March 27, 2023. This was due to a series of inadvertent clerical errors in the mailing addresses denoted in the Certificates of Service. The mailing addresses reflected in the Order dated March 27, 2023, correspond to the addresses on file in this matter. Employee did not respond to this Order.

Consequently, on April 11, 2023, the Undersigned issued an Order for Statement of Good Cause to Employee that required him to explain his failure to submit a reply to Agency's Motion to Dismiss and to submit his response to same. Employee submitted his response on April 24, 2023. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for 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 631.2 id. States:

> For appeals filed under §604.1, 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.

JURISDICTION

As will be explained below, the Office lacks jurisdiction over this matter.

ISSUE

Whether the OEA may exercise jurisdiction over this matter.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Probationary Employee

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Protections Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") states in pertinent part that:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record

> and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

The above referenced career/education service rights conferred by the CMPA may be exercised by aggrieved employees. The District Personnel Manual ("DPM") § 814.3, provides in relevant part that "a termination during a probationary period is not appealable or grievable. Thus, according to preceding sections of the DPM and the CMPA, Career Service employees who are serving in their probationary period are precluded from appealing a removal action to this Office until their probationary period is finished. As was noted previously, Employee has the burden of proof regarding the jurisdiction of this Office. In his Petition for Appeal, Employee admits that he had worked for Agency in his present position for only six months prior to his termination. The Board of the OEA has previously held that an employee's admission is sufficient to meet Agency's burden of proof.[1] Employee noted that prior to his stint as a Specialist – Restorative Practice he was employed as a teacher at Burrville Elementary School. Nevertheless, I find that Employee was still in probationary status at the time of his termination. The other service dates that Employee worked for Agency were separate positions, that were not associated with the position held at the time of his termination, and as a result, I also find that they cannot be included in the calculation of his probationary term. Because Employee was in a probationary status when he was removed from service, I find that I cannot adjudicate his appeal and it therefore must be dismissed for lack of jurisdiction.[2] I further find that Employee's other ancillary arguments are best characterized as grievances that are outside of the OEA's jurisdiction to adjudicate.[3]

ORDER

Based on the foregoing, it is ORDERED that Employee's Petition for Appeal be DISMISSED due to lack of jurisdiction.

FOR THE OFFICE:

/s/ *Eric T. Robinson*
ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

---

[1] *See Employee v. Agency*, OEA Matter No 1601-0047-84, 34 D.C. Reg. 804, 806 (1987).

[2] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[3] Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.