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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KIMBERLY THORPE,)	
Employee)	OEA Matter No. J-0109-11
)	
v.)	Date of Issuance: November 4, 2011
)	
DEPARTMENT OF HUMAN)	
RESOURCES,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
_____)	
Kimberly Thorpe, Employee <i>Pro-Se</i>)	
Charles Tucker, Jr., Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 23, 2011, Kimberly Thorpe (“the Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Department of Human Resources (“the Agency”) action of removing her from service. Upon review of the Employee’s petition for appeal, I determined that there existed a question as to whether the OEA has jurisdiction over the instant matter. Consequently, I ordered the Employee to submit a written brief regarding the jurisdiction of this Office. Employee requested an enlargement of time in order to provide her written response by October 4, 2011. Employee’s request was granted. To date, Employee has not complied with this order. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

STATEMENT OF FACTS, ANALYSIS AND CONCLUSION

The proceeding statement of facts, analysis, and conclusions are based on the documents of record as submitted by the Employee.

At the time of her termination, the Employee was employed with the Agency as a Supervisory IT Specialist, which is a MSS appointment. 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”) reads in pertinent part as follows:

(a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force. . .

D.C. Official Code § 1-609.54 provides further elucidation on the OEA’s statutorily mandated jurisdictional limits in the instant matter. It provides in relevant part that:

Employment-at-will

(a) An appointment to a position in the Management Supervisory Service shall be an *at-will appointment*. Management Supervisory Service employees shall be given a 15-day notice prior to termination... (Emphasis added).

In *Grant v. District of Columbia*, the District of Columbia Court of Appeals held that

“while the CMPA and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions (such as notice and hearing rights, and the right to be terminated only for cause), MSS employees are statutorily excluded from the Career Service and thus cannot claim those protections.” *Citations omitted.* 908 A.2d 1173, 1178 (D.C. 2006).

This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ (); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ().

Based on the preceding statutes, case law, and regulations, it is plainly evident that the OEA lacks the jurisdictional authority to review adverse action appeals of MSS employees. Since the Employee’s last position of record was obtained through a MSS appointment, I find that I cannot adjudicate over her appeal and it therefore must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge