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

In the Matter of:)	
)	
RONALD CARTER,)	
Employee)	
)	OEA Matter No. 1601-0070-15
v.)	
)	Date of Issuance: September 15, 2015
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS)	
Agency)	
)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge
Ronald Carter, Employee <i>Pro Se</i>)	
Carl K. Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 5, 2015, Ronald Carter (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate him. On June 19, 2015, Agency filed a Motion to Dismiss and Answer to Employee’s Petition for Appeal. I was assigned this matter on August 5, 2015. Agency noted in its Motion to Dismiss and Answer to Employee’s Appeal that OEA does not have jurisdiction over this appeal because Employee was classified as an ‘at-will’ employee.

On August 10, 2015, I issued an Order directing Employee to submit a brief to address the jurisdiction issue raised by Agency. Employee’s brief was due on or before August 24, 2015. Additionally, Agency had the option to submit a response to Employee’s brief. Employee did not submit his brief by the deadline. Consequently, I issued an Order for Statement of Good Cause to Employee on August 28, 2015. Employee was ordered to submit a statement of good cause based on his failure to provide a response to the August 10, 2015 Order. Employee had until September 8, 2015 to respond.

On September 11, 2015, OEA received a letter dated September 4, 2015 from Employee. 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.

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.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for the Agency as a Special Police Officer, Office of the Deputy Chancellor.¹ In a Final Agency Decision letter dated April 30, 2015, Employee was notified of his termination from this position which would become effective May 15, 2015. Employee filed a Petition for Appeal with this Office on May 5, 2015.

Employee’s Position

Employee asserts that he was never made aware of the reason for his termination. Employee indicates that he was notified by an Agency representative that the termination was due to an “incident that occurred at Barnard ES on 1/2014.”² Employee contends that he was not given “due process” as he never had a hearing or was otherwise counseled regarding the incident that resulted in his termination. Additionally, Employee noted in a letter received at OEA on September 11, 2015, that he was not on duty at the time the incident occurred that ultimately led to his termination.

¹ Employee’s Petition for Appeal at Page 3 (May 5, 2015).

² *Id.* at Attached Statement (May 5, 2015).

Agency's position

Agency asserts in its Motion to Dismiss and Answer to Employee's Petition for Appeal that this Office lacks jurisdiction to adjudicate this matter. Agency argues that Employee's position as a Special Police Officer with the Office of the Deputy Chancellor is an 'at-will' position and subject to termination with or without cause.³ Agency also maintains that Employee was properly separated from service because he failed to employ appropriate procedures in addressing alarms.

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") § 604.1⁴, 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.⁵ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁶

In the instant matter, the undersigned agrees with Agency's assertion that OEA does not have jurisdiction over this matter. Agency asserts in its Motion to Dismiss and Answer to Employee's Petition for Appeal that Employee was classified as an at-will employee and was subject to termination with or without cause. It is well established in the District of Columbia that an employer may discharge an 'at-will' employee "at any time and for any reason, or for no reason at all."⁷ Moreover, D.C. Official Code § 1-609.05 (2001), provides that "at-will employees do not have any job protection or tenure."

³ Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal at Page 2 (June 19, 2015).

⁴ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁵ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁶ 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).

⁷ *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.* 597 A.2d 28, 30 (D.C. 1991).

During his tenure with Agency, Employee served as a Special Police Officer with the Office of the Deputy Chancellor. D.C. Official Code § 1-608.01a (2)(A)(i) provides that, "...a person appointed to a position within the Educational Service shall serve without job tenure." Furthermore, pursuant to the Public Education Personnel Reform Amendment Act of 2008,⁸ all non-excepted employees appointed to the Educational Services shall serve without tenure. As a Special Police Officer, Employee falls into this category. Furthermore, Employee attests in a letter received by OEA on September 11, 2015, "that he hoped his case would be decided on the merits and not dismissed because he is an at-will employee".⁹ Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a "preponderance of evidence. I have determined that Employee did not meet this burden.

Accordingly, I find that Employee's classification as an at-will employee at the time of his termination precludes this Office from reviewing the case on its merits, as OEA lacks the jurisdiction to do so. For this reason, 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

⁸ 55 District of Columbia Register 004275, pub. April 18, 2008.

⁹ Employee Letter to OEA dated September 4, 2015 (September 11, 2015).