THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CHARLOTTE RICHARDSON,	)	
Employee	)	OEA Matter No.: J-0013-14
	)	
v.	)	Date of Issuance: January 9, 2014
	)	
DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Johnnie Louis Johnson III, Esq., Employee Representative
Lindsey Appiah, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 5, 2013, Charlotte Richardson ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the Department of Youth Rehabilitation Services' ("Agency") decision to terminate her effective October 11, 2013. At the time of her termination, Employee was a Correctional Institutional Administrator. Employee noted in her Petition for Appeal that she had a Management Supervisory Services ("MSS") appointment classification.

This matter was assigned to the undersigned Administrative Judge ("AJ") on November 18, 2013. On December 9, 2013, Agency filed a Motion for an Enlargement of Time to File a Response to Employee's Petition for Appeal. In its Motion, Agency requested that the deadline to file its Answer be extended from December 9, 2013, to December 16, 2013. Subsequently, on December 16, 2013, Agency filed its Answer to Employee's Petition for Appeal. In its Answer, Agency asserted that OEA did not have jurisdiction over Employee's appeal because Employee was an "at-will" employee under the Management Supervisory Services and as such, she could be terminated for any reason. After reviewing the documents on record, I have decided that no proceedings are warranted. This record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of 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, of permanent employees in Career and Educational Service who are not serving in a probationary period, or who have successfully completed their probationary period. According to 6-B DCMR § 604.1, 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.

D.C. Personnel Regulations, Chapter 16, Part I, § 1600, affords adverse action protection only to Career and Educational Service Employees. Section 1600.3(g) specifically states that employees in the MSS are excluded from coverage. Thus, the procedural protections (notice and hearing rights) applicable to Career and Educational Service employees are not applicable to MSS employees. Furthermore, D.C. Official Code §1-609.51 provides in pertinent parts that, "persons appointed to the Management Supervisory Service are not in the Career….Service." In addition, D.C. Personnel Regulations, Chapter 38, § 3801.4 provides that "[p]ersons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Services." Here, Employee states in her Petition for Appeal that she was an MSS employee at the time of her termination. Also, Agency's *Exhibit 2*[1] shows that Employee was converted to an MSS appointment effective May 27, 2007. Moreover, the D.C. Court of Appeals in *Grant v. District of Columbia*, 908 A.2d 1173 (D.C. 2006) held that procedural protections are afforded to Career Service employees. However, MSS employees are statutorily excluded from Career service protections. Accordingly, I find that effective May 27, 2007, this Office no longer had jurisdiction over Employee since Employee's appointment classification of MSS statutorily exclude her from Career or Educational Service protection.

Further, D.C. Personnel Regulations, Chapter 38, § 3800.3 highlights that, "[i]n accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54), an appointment to

[1]Standard Form 50 – "Notification of Personnel Action"

the Management Supervisory Service is an at-will appointment." Additionally, this Office has consistently held that it lacks jurisdiction over "at-will" employees.[2] And 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."[3] D.C. Personnel Regulations, Chapter 38, § 3813.1 further notes that "[a]person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen day (15) notice prior to termination." The Court in *Evans v. District of Columbia*, 391 F. Supp. 2d 160 (2005), reasoned that because MSS employees serve at-will, they have no property interest in their employment because there is no objective basis for believing that they will continue to be employed indefinitely. The Court provided that the only rights enjoyed by MSS employees are the "right to 15 days' notice before termination; a separate notice in the event of termination for disciplinary reasons describing the reason for termination; and if the employee requests in writing, a final administrative decision on the issue of severance pay by the personnel authority."[4] Applying this reasoning to the present case, Agency clearly fulfilled its obligation by providing Employee with a written notice of her impending termination on September 12, 2013.

Employee also states in her Petition for Appeal that as an MSS, she should not have been included in the Reduction-in-Force ("RIF") conducted by Agency. Employee also asserts that Agency had vacancies and it was hiring both non-licensed and licensed Social Workers with much less experience in the field than Employee. Employee also notes that her position was currently being advertised by Agency. However, for the reasons stated above, I conclude that this Office does not have jurisdiction over Employee's appeal. And for these reasons, I am unable to address the factual merits, if any, of this matter.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

[2] *Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, Opinion and Order on Petition for Review (February 10, 2004); *Jenkins v. Department of Public Works*, OEA Matter No. 1601-0037-01, Opinion and Order on Petition for Review (April 5, 2006); and *Minter v. D.C. Office of Chief Medical Examiner*, OEA Matter No. J-0116-07, Opinion and Order on Petition for Review (July 22, 2009).

[3] *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).

[4] *Evans v. District of Columbia*, p.166 (2005).