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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
LAXMI NAGARAJ,)	
Employee)	OEA Matter No. J-0045-12
)	
v.)	Date of Issuance: March 19, 2012
)	
DEPARTMENT OF HOUSING AND)	MONICA DOHNJI, Esq.
COMMUNITY DEVELOPMENT,)	Administrative Judge
Agency)	
)	

Laxmi Nagaraj, Employee *Pro se*
Vonda J. Orders, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 28, 2011, Laxmi Nagaraj ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Department of Housing and Community Development's ("DHCD" or "Agency") decision to terminate her from her position as an Inclusionary Zoning Program Manager, effective December 2, 2011. On February 6, 2012, Agency filed a Motion to Dismiss for Lack of Jurisdiction ("MTD"). Agency noted in its MTD that, because Employee was a probationary employee at the time of her termination, OEA does not have jurisdiction over this appeal, and therefore, the matter should be dismissed for lack of jurisdiction.

This matter was assigned to me on or about February 13, 2012. Thereafter, I issued an Order wherein I required Employee to address whether OEA may exercise jurisdiction over this matter because Employee was a probationary employee when she was terminated. Employee had until February 23, 2012, to respond, while Agency had until March 6, 2012, to submit a response to Employee's reply. On February 23, 2012, the undersigned Administrative Judge ("AJ") received a letter from a Mr. Rahsaan J. Coe field, Equal Opportunity Manager with the D.C. Department of Employment Services, noting that Employee has a pending discrimination case with that office. On March 6, 2012, Agency, via e-mail, requested a one (1) week extension to files its reply to Employee's brief on jurisdiction. This request was granted, and Agency's brief was due on March 13, 2012. Both parties complied. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In a letter dated October 6, 2010, Agency extended an offer of Employment to Employee for the position of Inclusionary Zoning Program Manager.¹ This letter listed Employee's effective date of employment as December 6, 2010. Employee signed the letter on October 13, 2010. Among other things, the letter stated that Employee was subject to a one (1) year probationary period. On December 2, 2011, Employee received a notice of termination of her probationary appointment effective immediately. The letter advised Employee that termination during a probationary period is neither appealable nor grievable, unless the termination resulted from a public policy violation, whistle bower protection laws or District of Columbia or federal anti-discrimination laws. According to a February 23, 2012, letter from the Department of Employment Services, Employee filed a discrimination claim with the Office of Equal Opportunity at the D.C. Department of Employment Services alleging employment discrimination (race, sex, color, age and national origin), hostile work environment, harassment as well as termination during probationary period. This complaint is still pending.

Employee concedes in her petition for appeal that her appointment with Agency was probationary. However, she argues that she was terminated for no reason and therefore, should be reinstated. Employee further argues that her termination was a wrongful termination and an adverse action for cause that resulted in her removal and as such, appealable under Chapter 6, Title 6 of the District of Columbia Municipal Regulations ("DCMR") § 604-1(b). Employee goes on to explain that her termination was wrongful because Agency violated several District of Columbia regulations and procedures. She also notes that discrimination was the reason for her termination.² Employee further maintains that, throughout her employment with Agency, she was never assessed, did not receive a written performance evaluation, and she was terminated without notice, all in violation of District Personnel Regulations ("DPR") §§ 813, 814. In sum, Employee contends that Agency's actions during her employment were not in compliance with District personnel laws afforded to probationary employees.

Agency notes in its MTD and its response to Employee's brief regarding jurisdiction that Employee was a probationary employee at the time of her termination. Moreover, Agency contends that Employee has not offered any credible evidence to dispute that. Agency also maintains that, since Employee was a probationary employee when she was terminated,

¹ *Agency's Response to Employee's Brief Regarding Jurisdiction*, attachment 1 (October 6, 2010).

² *Brief by Laxmi Nagaraj (Employee) in Response to Office of Employee Appeals ("OEA") to Submit Written Brief*. (February 27, 2012).

Employee's appeal rights are limited to an appeal in accordance with the D.C. Human Rights Act, and that therefore, OEA is not the proper venue to address such grievances.

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.

District Personnel Manual ("DPM") § 813.2 states that:

A person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall be required to serve a probationary period of one (1) year, except in the case of individuals appointed on or after the effective date of this provision to the positions listed below, who shall serve a probationary period of eighteen (18) months:

- (a) Individuals hired into entry-level police officer positions in the Metropolitan Police Department;
- (b) Individuals hired into entry-level correctional officer positions in the Department of Corrections or the Department of Youth Rehabilitation Services; and
- (c) Individuals hired into emergency or non-emergency operations positions in the Office of Unified Communications.

Here, Employee was hired as an Inclusionary Zoning Program Manager with an effective date of December 6, 2010. Employee's appointment as a Career Service employee was subject to the completion of a one (1) year probationary period. Agency issued Employee a notice of termination by letter dated December 2, 2011. Moreover, Employee's offer letter dated October 6, 2010, and signed by Employee on October 13, 2010, noted that Employee was subject to a one

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).

(1) year probationary period. Employee did not complete the one (1) year probationary period as required by DPM § 813.2 and therefore remained in a probationary status at the time she was terminated on December 2, 2011. District Personnel Manual §§ 814.1-814.3 states that:

814.1 Except for an employee serving a supervisory or managerial probationary period under section 815 of this chapter, an agency shall terminate an employee during the probationary period whenever his or her work performance or conduct fails to demonstrate his or her suitability and qualifications for continued employment.

814.2 An employee being terminated during the probationary period shall be notified in writing of the termination and its effective date.

814.3 A termination during a probationary period is not appealable or grievable. However, a probationer alleging that his or her termination resulted from a violation of public policy, the Whistleblower protection law, or District of Columbia or federal anti-discrimination laws, may file action under any such laws, as appropriate.

I find that Agency complied with District Personnel Manual §814.2 and §814.3 by providing Employee with written notice of her termination on December 2, 2011, which was effective immediately, and informed Employee of her appeal rights. DPM § 814.1 does not require Agency to provide the specific reasoning for an employee's termination. Instead, it offers a general reason why termination is allowable during the probationary period.

Employee argues that, although she was a probationary employee at the time of her termination, she does have appeal rights because her termination was based on discrimination allegations. Pursuant to DPM § 814.3, termination during a probationary period is not appealable or grievable unless the termination stems from a violation of public policy, the whistle blower protection laws, or District of Columbia or federal anti-discrimination laws. However, I find that OEA does not have the authority to adjudicate Employee's arguments pertaining to claims of discrimination or violations of other District laws under DPM §814.3.⁵ Consequently, Employee's petition for appeal must be dismissed.

The crux of Employee's arguments pertain to her belief that Agency did not comply with the DPM because it failed to provide her with a proper assessment of her work, adequate written notice and a written performance plan and evaluation prior to terminating her. It is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform

⁵ See, *Rebecca Owens v. Department of Mental Health*, OEA Matter No. J-0097-03 (April 30, 2004), holding that when OEA lacks jurisdiction to adjudicate the merits of an employee's petition for appeal, this Office was unable to address the merit(s) of Employee's Whistleblower claim(s) contained therein.

Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. I find that Employee's arguments are all grievances outside of OEA's purview. Based on the foregoing, I further find that Employee was a probationary employee at the time of her termination.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012). 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." I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED and Agency's Motion to Dismiss is GRANTED.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge