THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SUBRATA SANYAL	)	OEA Matter No. J-0070-08
Employee	)	
	)	Date of Issuance: June 23, 2008
v.	)	
	)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA OFFICE OF CHIEF TECHNOLOGY OFFICER	)	Administrative Judge
Agency	)	
	)	

Dr. Sanyal Subrata, Employee
Brender L. Gregory, Director, Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on April 18, 2008, appealing Agency's final decision to terminate her employment, effective April 12, 2008. According to the March 28, 2008 notice, at the time of her removal, Employee was in the Management Supervisory Service (MSS).

This matter was assigned to me on May 27, 2008. After reviewing the file, I determined that this Office's jurisdiction was at issue, and on May 30, I issued an Order directing Employee to submit legal and/or factual argument to support her position regarding this Office's jurisdiction. Employee was advised that the record would close on June 20, 2008 unless she was notified to the contrary. Employee submitted her response in a timely manner. The record closed on June 20, 2008.

JURISDICTION

This Office's jurisdiction was not established.

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

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); and 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 the Career or Education Service. Section 1-609.54 of the D.C. Official Code provides that an appointment to a position in the Management Supervisory Service "shall be an at-will appointment". In *Grant v. District of Columbia,* 908 A2d 1173, 1178 (D.C. 2006), the District of Columbia Court of Appeals concluded that "MSS employees are statutorily excluded from the Career Service and thus cannot claim [the] protections" afforded to Career Service employees who are subject to adverse employment actions, such as notice, hearing rights, and the right to be terminated only for cause.

Employee contends that she was never notified that her employment was "at will". She asserts that during the hiring process, in approximately September 2007, when she submitted her "conditional appointment letter for the Job posting" on-line, she was "prompted to add MS/15" after she wrote in "Program Manager". She contends when she asked what "MS" meant, she was told only that it was the "full name of the position. Employee asserts that she first became aware of her "at will" status on February 21, 2008.

Employees have the burden of proof on all issues of jurisdiction, pursuant to OEA Rule 629.2, 46, D.C. Reg. 9317 (1999). This burden must be met by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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". The Administrative Judge concludes that Employee did not meet the burden of proving that this Office has jurisdiction over this appeal. Employee was aware that the position was "MS" at the time she was hired, although she did not pursue questioning the designation. Employee did not submit anything that would establish that the position was not an MSS position.

As an MSS employee, Employee was "at-will" employee with no expectation of continued employment. It is well established that in the District of Columbia, an employer may discharge an "at-will" employee "at any time and for any reason, or for no reason at all". *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). *See also, Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006). In "at will" status, Employee did not have job tenure or protection from removal. *See* Code § 1-609.05 (2001). She therefore had no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991). *See also, Leonard et al v. Office of Chief Financial Officer*, OEA

Matter Nos. 1601-0241-96 *et al.* (February 5, 1997), ___ D.C. Reg.____. ( ), The District Personnel Manual (DPM) mirrors this language at Chapter 38, § 3819.1:

> An appointment to the Management Supervisory Service [MSS] shall be an at-will appointment. A person appointed to a position in the Management Supervisory Service shall not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at anytime.

After carefully reviewing the arguments and the applicable laws, rules and regulations in this matter, the Administrative Judge concludes that Employee did not meet his burden of proof, thus this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE: Lois Hochhauser, Esq.
Administrative Judge