Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
PENELOPE MINTER,	)	OEA Matter No. J-0116-07
Employee	)	
	)	Date of Issuance: July 22, 2009
	)	
	)	
DISTRICT OF COLUMBIA OFFICE OF	)	
THE CHIEF MEDICAL EXAMINER,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Penelope Minter ("Employee") worked as a secretariat with the D.C. Office of the Chief Medical Examiner ("Agency"). On July 24, 2007, Employee received a notice of termination. The letter provided that because Employee was a Management Supervisory Service ("MSS") appointee, she was an at-will employee and entitled to 15 days notice.[1] As a result, Employee could not file a grievance, nor could she appeal the termination action taken against her.[2]

However, Employee filed a Petition for Appeal with the Office of Employee

[1] The notice provided that Employee's separation date was August 8, 2007.
[2] *Petition for Appeal*, p. 8-9 (September 6, 2007).

Appeals ("OEA") on September 6, 2007. She argued that Agency terminated her while she had a pending disability compensation claim that arose from an on the job injury. Therefore, she requested that she be reinstated to her position of record.[3]

On October 15, 2007, the Administrative Judge ("AJ") issued an Initial Decision. He held that because Employee was an at-will employee, OEA lacked jurisdiction to consider her case. Consequently, he dismissed her case for lack of jurisdiction.[4]

Employee disagreed with the Initial Decision and filed a Petition for Review on November 19, 2007. She argued that she did not receive counseling regarding the terms of a MSS position. She also provided that although she signed a document agreeing to relinquish her Career Service rights, she did so under duress and because she thought she would be terminated if she did not. Additionally, she provided that she applied for two positions within Agency – one was the MSS position and the other was a Career Service position. Employee asserted that her supervisor, who would have been supervisor over both positions for which she applied, coerced her into withdrawing her application for the Career Service position. The remainder of Employee's petition discussed how Agency interfered with her Disability Compensation hearing by terminating her.[5]

According to Employee, she was faced with a tough decision to withdraw her application from the Career Service position and accept the MSS position. If Employee truly felt coerced by her supervisor to accept the MSS position, it would have been appropriate for her to raise that particular issue at the Agency level. By the time she

[3] *Petition for Appeal*, p. 3 (September 6, 2007).
[4] *Initial Decision*, p. 2-3 (October 15, 2007).
[5] *Petition for Review* (November 19, 2007).

filed her Petition for Appeal with OEA, there is no question that she is a MSS employee and not afforded the Career Service protections that she once held.

The AJ correctly provided that in accordance with D.C. Official Code §1-609.54(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. . . ."

OEA has consistently held that it lacks jurisdiction over at-will employees.[6] As the AJ provided, the D.C. Court of Appeals in *Grant v. District of Columbia*, 908 A.2d 1173 (D.C. 2006) provided that procedural protections are afforded to Career Service employees. However, MSS employees are statutorily excluded from Career service protections.

Furthermore, 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

[6] *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).

the issue of severance pay by the personnel authority."[7] Applying this reasoning to the present case, Agency clearly fulfilled its obligation by providing Employee with a written notice of her impending termination. Employee made no arguments regarding severance payments.

Accordingly, we cannot address any issues on the merits raised in Employee's Petition for Review because she failed to establish OEA's jurisdiction. Therefore, Employee's Petition for Review is denied.

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

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

_____
Hilary Cairns

_____
Clarence Labor, Jr.

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.