THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
Lorraine Riley	)	Matter No. J-0124-09
Employee	)	
	)	Date of Issuance:
v.	)	December 21, 2009
	)	
District Department of the Environment	)	Senior Administrative Judge
Agency	)	Joseph E. Lim, Esq.
	)	

Andrea Comentale, Esq., Agency Representative
Lorraine Riley, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

On May 26, 2009, Employee, an Administrative Services Manager, Grade 15-05, filed a petition for appeal with this Office. She appealed from Agency's action separating her from service. On December 1, 2009, I issued an order for the Employee to brief the jurisdictional issue of whether she was a Management Supervisory Service (MSS) employee. I explained that MSS employees are at-will employees. Thus, they may be terminated for any reason or no reason. Both parties submitted their responses by their December deadlines. I have determined that a decision can be made on the basis of the record before me. The record is closed.

JURISDICTION

This Office's jurisdiction has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts were submitted by the parties and are uncontroverted:

1. Employee was appointed an Administrative Services Manager, MS 301, Grade 15, Step 5, for the District in an MSS Position on August 9, 2004.

2. Effective July 24, 2006, Employee's position was eliminated in a Reduction-in-Force (RIF) action. Employee was given a fifteen-day (15-day) notice prior to termination

ANALYSIS AND CONCLUSION

Based on a review of the petition for appeal, a question arose as to whether this Office had jurisdiction over this matter. The rules of this Office require that the employee bear the burden of proof as to matters of jurisdiction. OEA Rule 629.3, 46 D.C. Reg. 9317 (1999).

The removal of MSS employees is governed by D.C. Code *Ann.* § 1-609.54 (2006 *rep*l.), "Employment-at-will" which states:

> (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.

The District of Columbia Personnel Manual (DPM), § 3813 states: "An appointment to the Management Supervisory Service is an at will appointment. A person appointed to a position in the Management Supervisory Services 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-day) notice prior to termination."

It is well settled that at-will employees may be terminated "for any reason at all." *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ ( ). Further, at-will employees may be removed without cause. *See e.g. Leonard et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0241-96 *et al.* (February 5, 1997), ___ D.C. Reg. ___ ( ).

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." *Evans v. District of Columbia,* p. 166 (2005).

Section § 1-606.3 of the D.C. Code *Ann.* (1999 *ed.*) establishes the jurisdiction of this Office. Section 606.3(a) provides, *inter alia,* that an employee may appeal to this Office "a final agency

decision effecting . . . an adverse action for cause that results in removal."[1] However, as an at-will employee, Agency can remove Employee without cause. We have no jurisdiction over removals without cause. Therefore, this case must be dismissed for lack of jurisdiction.

Employee raised the argument that because her Form 50 indicated that she was separated pursuant to a RIF and because this Office has jurisdiction over RIF appeals, the Office has jurisdiction over her appeal. Agency responded that the RIF designation on Employee's Form 50, contradicts her notice of termination, which stated that she was "terminated." Among other immaterial arguments, Employee countered that the Form 50 prevails and thus she is entitled to RIF appeal rights, such as a timely notice of termination. Be that as it may, there is no law, rule or regulation expanding the jurisdiction of this Office over an at-will employee. Besides, the jurisdiction of this Office is defined by statute and not by the method an agency uses to terminate the employee. That is to say, an agency action cannot define the jurisdiction of this Office.

In view of the above, I have no choice but to dismiss this appeal for lack of jurisdiction.

ORDER

It is hereby ORDERED that Employee's petition for appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge

[1] Section 606.3(a) limits the jurisdiction of this Office as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . [or] an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force . . . .