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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
KENNETH TAYLOR,	)	
Employee	)	OEA Matter No. J-0042-12
	)	
v.	)	Date of Issuance: March 9, 2012
	)	
DEPARTMENT OF HOUSING AND	)	
COMMUNITY DEVELOPMENT,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
_____	)	
Kenneth Taylor, Employee <i>Pro se</i>		
Andrea Comentale, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On December 20, 2011, Kenneth Taylor (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Housing and Community Development’s (“DHCD” or “Agency”) decision to terminate him from his position as a Supervisory Compliance Specialist effective September 6, 2011. On February 6, 2012, Agency filed an Answer to Employee’s appeal requesting dismissal of the claim for lack of jurisdiction because Employee’s termination was from a Management Supervisory Service (“MSS”) position. Agency’s answer noted that Employee’s position was ‘at-will’ with no right to tenure at the time of his termination.

This matter was assigned to me on or around February 13, 2012. On February 14, 2012, I issued an Order wherein I required Employee to address whether OEA may exercise jurisdiction over this matter because employee was employed in an MSS position. According to the February 14, 2011 Order, Employee’s brief on jurisdiction was due on February 24, 2012, while Agency’s permissible brief was due on March 2, 2012. Both parties have 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

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.<sup>1</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>2</sup> 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.

D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part 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 ... , an adverse action for cause that results in removal, reduction in force ... , reduction in grade, placement on enforced leave, or suspension for 10 days or more ...

D.C. Official Code § 1-608.01 (a) excludes MSS employees from the Career Service. D.C. Official Code § 1-609.51 also provides in pertinent part that, "persons appointed to the Management Supervisory Service are not in the Career ...Service." Further, according to D.C. Personnel Regulations ("DPR"), Chapter 16, Part I, § 1600.2, adverse action protections are afforded only to Career Service Employees who have completed a probationary period. The DPR further states that employees in the MSS are not covered under the rules governing adverse actions, which includes appeals to the OEA.<sup>3</sup>

In his petition for appeal, Employee contends that he was terminated "for no reason."<sup>4</sup> Employee also stated that his termination was "not for any conduct or performance reasons."<sup>5</sup>

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<sup>1</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>2</sup> 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).

<sup>3</sup> D.C. Personnel Regulations, Chapter 16, Part 1, §§ 1600.3 (g), 1618.

<sup>4</sup> Petition for Appeal (December 20, 2011).

However, the record confirms that Employee's position was classified in the MSS.<sup>6</sup> D.C. Official Code §1-609.54(a) provides that, an appointment to a position in the MSS shall be an at-will appointment. It is also 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."<sup>7</sup> District Personnel Manual ("DPM") Chapter 38, § 3919.1 further highlights that a person serving in the MSS shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time. Moreover, OEA has consistently held that it lacks jurisdiction over 'at-will' employees.<sup>8</sup>

Additionally, Employee contends that there may be a bill before the D.C. Council converting some MSS employees to the Career Service. Despite Employee being unable to provide any information on the alleged pending regulation, the undersigned is bound to base the instant decision on the current regulations in place, which state that a person serving in the MSS is an 'at-will' employee. Based on the foregoing, I find that Employee was an 'at-will' employee at the time of his termination, and Agency's September 6, 2011, notice of termination was in accordance with the District of Columbia rules and regulations.

Employee further contends that he was terminated due to age discrimination and requests that his claim be referred to the appropriate Agency if dismissed for lack of jurisdiction.<sup>9</sup> D.C. Code § 2-1411.02 specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Pursuant to this statute, OHR is tasked with reviewing and investigating complaints of unlawful discrimination in employment matters.<sup>10</sup> While, this Office is unable to forward complaints to another Agency, the Employee may contact OHR to inquire about the appropriate appeals process.

Employees have the burden of proof on issues of jurisdiction pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, *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.

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<sup>5</sup> Employee's Brief (February 23, 2012).

<sup>6</sup> Agency Answer, Exhibit 1- Standard Form 50- 'Notification of Personnel Action' (March 2, 2012).

<sup>7</sup> *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).

<sup>8</sup> See *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).

<sup>9</sup> Petition for Appeal, p. 2-3 (December 20, 2011); Employee's Brief (February 23, 2012).

<sup>10</sup> See D.C. Code § 2-1411.03

**ORDER**

It is hereby ORDERED that the petition for appeal is DISMISSED for lack of jurisdiction.<sup>11</sup>

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge

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<sup>11</sup> Since this decision is predicated on the Office's lack of jurisdiction, I am unable to address the factual merits, if any, of the Employee's appeal.