

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. 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:)	
)	OEA Matter No.: J-0024-18
RANDOLPH BROWN,)	
Employee)	
)	Date of Issuance: February 26, 2018
v.)	
)	Arien P. Cannon, Esq.
DISTRICT OF COLUMBIA)	
DEPARTMENT OF TRANSPORTATION,)	Administrative Judge
Agency)	
_____)	
Randolph Brown, Employee, <i>Pro se</i>)	
Michael F. O'Connell, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Randolph Brown (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on January 16, 2018, challenging the District of Columbia Department of Transportation’s (“Agency”) decision to remove him from his position as a Roadway Maintenance Superintendent.¹ The effective date of Employee’s termination was the close of business on December 29, 2017. Agency filed its Answer on January 18, 2018.

Agency also filed a Motion for Summary Disposition on January 18, 2018, asserting that Employee’s position was a Management Supervisory Service (“MSS”) position, and thus at-will. An Order on Jurisdiction was issued on February 5, 2018, which required Employee to submit a brief addressing why he believed this Office may exercise jurisdiction over his appeal. Employee submitted a response to the Order on Jurisdiction on February 20, 2018. Based on the filings of both parties, I have determined that an evidentiary hearing is not warranted. The record is now closed.

¹ Agency Answer, Exhibit 1 (January 18, 2018).

JURISDICTION

As discussed below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office has jurisdiction over Employee's appeal

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.² "Preponderance of the evidence" shall mean:

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 employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.³

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 628.2 provides that employees have the burden of proof for establishing jurisdiction.⁴ OEA's jurisdiction is generally "limited to permanent employees who are serving in the career or educational services and who have successfully completed their probationary periods."⁵ Further, 6-B DCMR § 3813.1 provides that an appointment to a Management Supervisory Service ("MSS") position is an at-will appointment and may be terminated at any time. Also, under D.C. Code § 1-609.54, an appointment to a position in the MSS shall be an at-will appointment. Terminations from the MSS are not subject to administrative appeals.⁶

It is undisputed that Employee was appointed to a MSS appointment on April 18, 2016, and remained in this position until his termination.⁷ Employee acknowledges that he was a MSS Employee and served at-will.⁸ However, Employee argues that his termination was in retaliation for him seeking back pay for money owed to him while serving as an Interim Chief with Agency. While the undersigned does not give a view on whether Employee was entitled to certain monies while serving in an interim capacity, I do not find that OEA is the appropriate forum for this claim.

² 59 DCR 2129 (March 16, 2012).

³ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

⁴ *Id.*

⁵ *Roxanne Smith v. D.C. Department of Parks and Recreation*, Initial Decision, OEA Matter J-0103-08 (October 5, 2009).

⁶ 38 DPM § 3813.7

⁷ Agency's Answer, Exhibit 1 and 2 (January 18, 2018).

⁸ *See* Employee's Response (February 20, 2018).

The District's Municipal Regulations make clear that terminations from the Management Supervisory Service are not subject to administrative appeals.⁹ Based on the aforementioned, I find that Employee was serving in a MSS position, and thus an at-will employee. I further find that Employee has failed to satisfy his burden of proof and has failed to establish that OEA may exercise jurisdiction over this matter.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Motion to Summary Disposition is hereby **GRANTED**, and Employee's Petition for Appeal be **DISMISSED**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁹ See D.C. Code § 1-609.54 ; See also 6B DCMR §§ 3813.7, 3813.1.