

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

\_\_\_\_\_  
In the Matter of: )  
)  
James Kinard ) OEA Matter No. J-0036-11  
Employee )  
) Date of Issuance: April 19, 2011  
v. )  
) Senior Administrative Judge  
D.C. Department of Corrections ) Joseph E. Lim, Esq.  
Agency )  
\_\_\_\_\_)  
Mitchell Franks, Esq., Agency Representative  
James Kinard, Employee *pro se*

**INITIAL DECISION**

PROCEDURAL BACKGROUND

On December 6, 2010, Employee, a Correctional Officer, DS-9/7, filed a petition for appeal from Agency’s final decision demoting him from his position effective December 6, 2009. Employee was in a Management Supervisory Service (MSS) position. I informed Employee that because he was an MSS employee, it appeared that this Office has no jurisdiction over his appeal. Since OEA 629.2 provides that the employee shall have the burden of proof as to issues of jurisdiction, I afforded Employee a opportunity to submit a legal brief on jurisdiction. After the parties made their submissions, the record was closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts are undisputed:

1. Employee was a Lead Correctional Officer, DS-9/7, in the D.C. Department of Corrections (Agency.)
2. Employee’s Form 50 showed that Agency promoted Employee to a Management Supervisory Service (MSS) position as a Supervisor Correctional Officer, DS-11, with an effective date of August 2, 2009. The form also reveals that Employee was informed that this

was a temporary promotion.

3. Effective December 6, 2010, Agency terminated Employee's appointment and returned him to his former position. See Form 50 signed on February 4, 2010.

4. Employee's brief asserts that he suffered from post-traumatic stress disorder. None of his arguments were germane to the fact that he was in an MSS position.

### ANALYSIS AND CONCLUSIONS

An employee has the burden of proof as to issues of jurisdiction. OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee's employment status is pivotal to the outcome of this case. The record shows that he was an MSS employee when Agency removed him from his DS-11 position. D.C. Code § 1-609.54 (2001 *ed.*), states:

(a) An appointment to a position in the Management Supervisory Service shall be an at-will appointment.

Here, it is a matter of record that Employee was an MSS, at-will employee when Agency returned him to his former position. It is well settled that at-will employees may be terminated for no reason or "for any reason at all."<sup>1</sup> Further, at-will employees may be removed with or without cause.<sup>2</sup>

This Office has no jurisdiction over the termination or demotion of an at-will employee. Thus, I cannot address any arguments pertaining to Employee's termination. Therefore, I conclude that this Office has no jurisdiction over this appeal, and that it must be dismissed.

### ORDER

It is hereby ORDERED that this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

\_\_\_\_\_  
JOSEPH E. LIM, Esq.  
Senior Administrative Judge

<sup>1</sup> *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. \_\_\_ ( ). See *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991).

<sup>2</sup> 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. \_\_\_ ( ).