THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
KENNETH R. THAU	)	
Employee	)	
	)	OEA Matter No. 1601-0050-99
	)	
v.	)	Date of Issuance: October 15, 2003
	)	
D.C. CHILD AND FAMILY SERVICES AGENCY	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency removed Employee from his position as a Supervisory Social Worker effective November 11, 1998. Employee filed an appeal with the Office of Employee Appeals (OEA) on December 23, 1998. Finding that Employee had filed his appeal beyond the time limit permitted under D.C. Code Ann. § 1-606.3(a), the Administrative Judge, in an Initial Decision issued July 23, 2002, dismissed the appeal for lack of jurisdiction.[1] Thereafter Employee filed a timely Petition for

[1] Pursuant to D.C. Code § 1-606.3(a) (1999 repl.) an appeal from a final agency decision must be filed with OEA within thirty (30) days of the effective date of the appealed agency action. In this case Employee's appeal of

Review with the OEA Board.

The record reveals that Employee began work as a Supervisor Social Worker for the LaShawn General Receivership (Receivership) on November 25, 1996.[2] In the letter appointing him to this position Employee was informed that he would have to serve a three-month probation period. After successfully completing the probation period, Employee continued working for the Receivership until February 1998 at which time the General Receiver informed all supervisor social workers that they would have to reapply for their positions. The re-application was necessary so that the supervisor social workers could be considered for a position with the District government.

On March 16, 1998 Agency appointed Employee to the position of Supervisory Social Worker. In the "Remarks" section of the personnel action form effectuating this appointment, there was a notation that the appointment was subject to the successful completion of a one-year probation period beginning March 16, 1998. Subsequently in a letter dated October 20, 1998 Agency informed Employee that, effective November 6, 1998, he would be terminated from his position. Agency went on to state in this letter that as a probationary employee, Employee did not have the right to appeal his termination.

In his Petition for Review Employee argues that the Initial Decision is based on an erroneous interpretation of the statute and that the Initial Decision did not address all the issues of law and fact properly before it. Specifically Employee argues that Agency's letter of termination did not inform

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Agency's removal action was filed on December 23, 1998, more than thirty (30) days after the effective date of the removal.

[2] As the result of a protracted lawsuit brought in federal court on behalf of children in the District's foster care system and children known to the District to be in danger of abuse or neglect, the District's child welfare system was placed in general receivership on May 22, 1995. The resulting system was renamed the LaShawn General Receivership, after one of the parties to the lawsuit.

him of the appeal procedures nor of the filing deadlines associated with those procedures. Further Employee states that he did not become aware of the appeal procedures until he came to OEA on December 11, 1998 and was informed at that time of the appeal process. Employee does not, however, dispute the fact that he was a probationary employee at the time of his termination.[3] Because Employee was still serving in a probationary status at the time of his removal, the Administrative Judge correctly states in the Initial Decision that the threshold issue to be decided is whether this Office has jurisdiction over Employee's appeal. While we agree with the outcome of the appeal below–that this Office lacks jurisdiction over Employee's appeal–we reach our decision on a different basis.

Pursuant to D.C. Code § 1-606.03(a) a District government employee may appeal a final agency decision affecting the following actions: (1) a performance rating which results in removal of the employee; (2) an adverse action *for cause* that results in removal of the employee; (3) a reduction in grade; (4) a suspension for ten (10) days or more; and (5) a reduction-in-force. Additionally, D.C. Code § 1-617.51 makes clear that disciplinary action against an employee can only be taken *for cause* and when an agency takes such action, the agency is required to notify the employee his or her appeal rights. In the regulations promulgated to implement these laws, at the outset it is stated that these regulations apply to each employee of the District government in the Career Service, who has completed a probationary period. Thus, probationary employees do not

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[3] At other times during the appeal of this case Employee has argued that he should not have been serving a probationary period because he successfully completed such a period when he worked for the LaShawn General Receivership. We note that this argument would be the subject of a grievance over which this Office no longer has jurisdiction pursuant to the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective October 22, 1998.

enjoy the protections accorded Career Service employees.

Therefore, it is clear that a District government employee who is serving a probationary period does not have a statutory right to be removed for cause and, as such, cannot utilize the adverse action procedures outlined in the law. Likewise, a probationary employee cannot avail himself of the appeal process which includes appealing an adverse action to this Office. Consequently, an appeal of an adverse action filed in this Office by an employee still serving a probationary period must be dismissed for lack of jurisdiction. *See Davis v. Lambert*, MPA #17-89, 119 DWLR 305 (1991) (regardless of agency regulations and advice to the contrary, probationary employees may be discharged at-will and they do not have any statutory right to appeal their termination to the OEA); *Day v. Office of People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (July 10, 1995), ___D.C. Reg.___ ( ); *Employee v. Agency*, OEA Matter No. 1601-0057-83, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 6057 (1985); *Jones v. District of Columbia Lottery Board*, OEA Matter No. J-0231-89, *Opinion and Order on Petition for Review*, (Aug. 19, 1991), ___D.C. Reg.___ ( ); *Jordan v. Metropolitan Police Dep't*, OEA Matter No. 1601-0314-94, *Opinion and Order on Petition for Review* (Sept. 29, 1995), ___D.C. Reg.___ ( ); and *Ramos-McCall v. District of Columbia Pretrial Services*, OEA Matter No. J-0197-93, *Opinion and Order on Petition for Review* (March 18, 1994), ___D.C. Reg.___ ( ).

As discussed above, Employee was appointed on March 16, 1998 to serve as a Supervisory Social Worker subject to a one-year probationary period. Agency removed Employee from this position effective November 6, 1998. Thus, Employee had not completed the probationary period at the time of his termination from District government service and, in view of Employee's

probationary status, Agency was under no obligation to inform Employee of the appeal process upon termination. Based on the foregoing, we believe this Office lacks jurisdiction to consider Employee's appeal and therefore we deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

Erias A. Hyman, Chair

Horace Kreitzman

Brian Lederer

Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance 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.