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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
RUBY WILLIAMS-STAGGS,)	
Employee)	OEA Matter No. 2401-0384-10
)	
v.)	Date of Issuance: October 19, 2012
)	
DISTRICT DEPARTMENT)	
OF TRANSPORTATION,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
Ruby Williams-Staggs, Employee <i>Pro Se</i>		
Melissa Williams, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 25, 2010, Ruby Williams-Staggs (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of Transportation’s (“Agency” or “DCPS”) action of abolishing her position through a Reduction-In-Force (“RIF”). The effective date of the RIF was July 30, 2010. Employee’s position of record at the time her position was abolished was a Transportation Data Analyst. On September 23, 2010, Agency filed an Answer to Employee’s Petition for Appeal.

I was assigned this matter on or around July 18, 2012. Thereafter, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations. Agency submitted its brief on August 27, 2012, noting that Employee voluntarily retired around July 30, 2010. On August 28, 2012, Employee submitted a request for an Extension of time to submit her brief. This request was granted in an Order dated August 29, 2012. According to this Order, Employee had until September 18, 2012, to submit her brief. Employee did not comply. On October 2, 2012, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause on her failure to submit her brief as required in the previous Orders. Employee had until October 10, 2012, to respond to the October 2, 2012, Order. As of the date of this decision, Employee has not responded to this Order. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

In her Petition for Appeal, Employee submits that the competitive level in the instant RIF was too narrow and Agency failed to consider reducing documented vacancies.¹ Agency submits in its Answer that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation.² Agency further states in its brief that Employee voluntarily retired on or around July 30, 2010, and as such, OEA does not have jurisdiction to hear Employee's appeal.³

There is a question as to whether OEA has jurisdiction over this appeal. Agency stated in its brief that Employee voluntarily retired from Agency after receiving the RIF notice. Agency attached Employee's Personnel Action ("SF-50") in support of this contention. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. 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 grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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."

This Office has no authority to review issues beyond its jurisdiction.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵ The issue

¹ Petition for Appeal (August 25, 2010).

² Agency's Answer (September 23, 2010).

³ Agency's Brief (August 27, 2012).

⁴ See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ See *Brown v. District of Columbia Pub. Sch.*, 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*

of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office, and the law is well settled with this Office that, there is a legal presumption that retirements are voluntary.⁶ Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.⁷ A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."⁸ The employee must prove that his/her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making a decision to retire. An employee must also show "that a reasonable person would have been misled by the Agency's statements."⁹

Here, Employee was given the opportunity to address the voluntary retirement issue raised in this matter, but Employee failed to comply. According to the SF-50 effective July 30, 2010, Employee's retirement from Agency was processed on September 1, 2010, and Employee has received the benefits of retiring. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. Based on the foregoing, I find that Employee's retirement was voluntary.¹⁰ Consequently, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this matter.

In addition, OEA rule 621,¹¹ grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.¹² This Office has held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.¹³ Here, Employee was warned in the July 18, 2012, August 29, 2012, and October 2, 2012, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These were required for a proper resolution of this matter on its merits. I therefore conclude that, Employee's failure to prosecute her appeal is consistent with the language of OEA rule 621. Employee was notified of

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).

⁶ See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).

⁷ *Id.* at 587.

⁸ See *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984).

⁹ *Id.*

¹⁰ The Court in *Christie* stated that "[w]hile it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC's finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff *had a choice*. She could stand pat and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation." *Christie, supra* at 587-588. (citations omitted).

¹¹ 59 DCR 2129 (March 16, 2012).

¹² *Id.*

¹³ *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

the specific repercussions of failing to comply with these Orders. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and this represents another reason for dismissal.

ORDER

It is hereby **ORDERED** that the petition in this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge