THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0043-10
LELIA PROCTOR,	)	
Employee	)	
	)	Date of Issuance: March 28, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Sommer J. Murphy, Esq.
	)	Administrative Judge

Kristin Dobbs, Esq., Employee Representative
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 16, 2009, Lelia Proctor ("Employee") filed a petition for appeal with the Office of Employee Appeals ("the OEA" or "the Office") contesting the District of Columbia Public School's ("Agency" or "DCPS") action of terminating her employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was a Science Teacher at Woodson Academy. Employee was in Educational Service status at the time she was terminated.

I was assigned this matter on or around November of 2011. On January 9, 2012, I held a Status Conference for the purpose of assessing the parties' arguments with respect to the instant appeal. During the conference, Agency stated that Employee elected to retire in lieu of being terminated under the RIF and submitted that this Office may not exercise jurisdiction over appeals from voluntary retirements. I subsequently ordered the parties to submit briefs on the issue of jurisdiction. Both parties submitted responses to the Order. Based on a review of the record, I determined that an evidentiary hearing was not required.[1] The record is now closed.

[1] OEA Rule 619.2, 59 DCR 2129 (March 16, 2012) provides that an Administrative Judge may regulate the course of a proceeding, which includes requiring an evidentiary hearing, if appropriate. Because there were no material issues of genuine fact at issue, this matter was decided based on the documents of record submitted throughout the course of Employee's appeal.

JURISDICTION

As will be explained below, jurisdiction has not been established.

ISSUE

Whether OEA may exercise jurisdiction over Employee's appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

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 628.2, 59 DCR 2129 (March 16, 2012) states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[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."

Employee argues that her decision to retire was involuntary; therefore, the OEA should retain jurisdiction to consider the merits of her appeal. According to the record, Employee filed for retirement on April 13, 2010. Because Employee submitted a retirement application after the effective date of the RIF, the corresponding SF-50 form was backdated to reflect a retire date of November 2, 2009.[2] As a result, Employee argues that retirement was the only viable option available to her if she wanted to continue to receive income and healthcare benefits from Agency. Employee filed an addendum to her petition for appeal on October 21, 2001. In the addendum, Employee argued that Agency violated section Chapter 42, section 1983 of the U.S. Constitution as well as several subsections of chapter 24 of the DC Municipal Regulations ("DCMR"). Employee requested that this Office consider the aforementioned claims as part of her appeal.

Agency argues that this Office does not have jurisdiction over Employee's appeal because her retirement was voluntary and was not the result of coercion, misleading information, or deceit. Agency further submits that it properly advised Employee of her right to retire if certain criteria were met. According to Agency, Employee voluntarily retired in lieu of being separated under the RIF with an effective retire date of November 2, 2009.

[2] Employee Brief, Exhibit 1 (March 12, 2012).

This Office has no authority to review issues beyond its jurisdiction.[3] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[4] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA has consistently held that there is a legal presumption that retirements are voluntary.[5] Therefore, 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.[6] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[7] In these cases, the employee must prove that their retirement was involuntary by proving that the retirement resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he or she relied when making a decision to retire. The employee must also show "that a reasonable person would have been misled by the Agency's statements."[8]

Here, Employee's decision to retire in the face of financial hardship instead of being RIFed, or as Employee argues, that "her back was up against the wall," does not rise to the level of an involuntary retirement. I find no credible evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. Although Employee characterizes the decision to retire as involuntary on the retirement application she submitted to Agency, Employee fails to proffer any evidence of coercion on Agency's part. In addition, there is no evidence to suggest that Agency misinformed Employee about her option to retire.

In the addendum to her Petition for Appeal, Employee argues that Agency violated § 42 USC 1983 (the Civil Rights Act of 1981) as well as Chapter 24 of the DCMR sections 20001.a, 2429 and 2430 when it terminated her employment; however, she has not provided any additional legal arguments or case law to support and/or clarify her position. D.C. Official Code § 2-1411.02 specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful discrimination in employment…for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.[9] Additionally, District Personnel Manual ("DPM") § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. In *Anjuwan v. D.C. Department of Public Works*, the D.C. Court of Appeals held that OEA's authority over RIF matters is narrowly prescribed[10]. The Court noted that this Office lacks the authority to broadly determine whether a RIF violated any law, except in cases where "the Agency has incorrectly applied…the rules and regulations issued pursuant thereto." The Court further stated that OEA's

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[3] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[4] *See Brown v. District of Columbia Public Schools*, 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).
[5] *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).
[6] *Id*. at 587.
[7] *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.2.d 937 (Fed. Cir. 1984).
[8] *Id.*
[9] D.C. Code §§ 1-2501 *et seq.*
[10] 729 A.2d 883 (December 11, 1998).

jurisdiction cannot exceed statutory authority; therefore, the OEA's authority in RIF cases is to "determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs."[11] However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*[12] stated that, OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he or she was retaliated against as a result of Whistle blowing activities outside the scope of the equal opportunity laws, or that his or her complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation…"[13]

Here, Employee's claims as described in addendum to her petition for appeal do not allege any Whistle blowing violations as defined under the Whistleblower Protection Act, nor does it appear that her termination under the RIF was retaliatory in nature. This is not a determination that Employees alleged violations of discrimination by Agency may not be pursued elsewhere; however, this Office is unable to address the merits of such claims. I therefore find that Employee's claims of allegations of discrimination fall outside the purview of OEA's jurisdiction.

Based on the foregoing, I find that Employee's retirement was voluntary and the jurisdictional burden of proof as required under OEA Rule 628.2 has not been satisfied.[14] Accordingly, this Office lacks jurisdiction over Employee's appeal, and for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby ORDERED that Employee's petition for appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

[11] *See Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).
[12] 730 A.2d 164 (May 27, 1999).
[13] *El-Amin*; *citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).
[14] 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).