THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
BARBARA LAPPIN,	)	
Employee	)	OEA Matter No. 2401-0135-10
	)	
v.	)	Date of Issuance: April 25, 2012
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Administrative Judge

Donielle Powe, Esq., Employee's Representative
W. Iris Barber, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 5, 2009, Barbara Lappin ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Public Schools' ("Agency" or "DCPS") action of abolishing her position through a Reduction-In-Force ("RIF"). Employee received her RIF notice on October 2, 2009. The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was a Special Education Teacher at Tubman Elementary School ("Tubman"). Employee was serving in Educational Service status at the time her position was abolished. On December 9, 2009, Agency filed an Answer to Employee's appeal. I was assigned this matter on or around February 6, 2012. Thereafter, on February 10, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Both parties complied. 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

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[1]

Employee submits that Agency failed to follow appropriate RIF procedures and that her termination was based on age discrimination.[2] Additionally, Employee contends that she involuntarily retired after receiving the RIF Notice.[3] Employee explains that "she involuntarily retired after being RIF'd and did not retire in lieu of separation."[4] Employee also asserts that she "was led to believe that the only way to get any income was to involuntarily retire…since this Office had not given her a hearing date, Ms. Lappin faced financial hardship and had to involuntarily retire to continue to receive income."[5] Agency submits that because Employee voluntarily retired, this Office lacks jurisdiction in this matter.[6] Agency also submits 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.

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated in her brief that she retired from Agency after being RIFed. And as such, Employee contends that her retirement was not voluntary. 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, *id.*, 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."

---

[1] See *Agency's Answer*, Tab 1 (December 9, 2009); *Agency's Brief* dated March 5, 2012.
[2] *Petition for Appeal* (November 5, 2009).
[3] *Employee's Brief in response to District of Columbia Public Schools' Brief*, p. 6 (March 20, 2012).
[4] *Id.*
[5] *Id.*
[6] *District of Columbia Public Schools' Brief* at p. 2 (March 5, 2012).

This Office has no authority to review issues beyond its jurisdiction.[7] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[8] 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.[9] 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.[10] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[11] The Employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making her decision to retire. She must also show "that a reasonable person would have been misled by the Agency's statements."[12]

Here, Employee contends that this Office has jurisdiction over her appeal because she involuntarily retired after being RIFed and not in lieu of being RIFed. Employee explains that, she felt that she had no option other than to retire in order to have some income and she believed that the only way to get any income was to involuntarily retire since she was faced with financial hardship. Employee also alleges that since this Office had not given her a hearing date, she was faced with financial hardship and had to involuntarily retire to continue to receive income.[13] The effective date of the RIF was November 2, 2009, and the effective date of Employee's retirement was November 3, 2009. While it is obvious from these dates that Employee retired after the RIF, this Office lacks jurisdiction over any voluntary retirement. Here, Employee initiated contact with the DC Retirement Office to inquire about her options for income and retirement status. Additionally, after being presented with her options by the Retirement Office, Employee chose to retire in order to continue to receive income.[14] Although motivated by a financial hardship, Employee's decision to retire was voluntary and as such, this Office lacks jurisdiction over her appeal, irrespective of the retirement effective date.

Regardless of Employee's protestations, I find that the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Employee's choice to retire in the face of a seemingly unpleasant situation – financial hardship, does not make Employee's retirement involuntary. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her

---

[7] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[8] *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).
[9] *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).
[10] *Id*. at 587.
[11] *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).
[12] *Id.*
[13] *Employee's Brief in response to District of Columbia Public Schools' Brief*, *Supra*, at p. 6.
[14] *Id*.

option to retire. Based on the foregoing, I find that Employee's retirement was voluntary.[15] I further find that, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

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

[15] 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).