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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0046-10
AZEAL WILSON,)	
Employee)	
)	Date of Issuance: March 28, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Donielle Powe, Esq., Employee Representative)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 19, 2009, Azeal Wilson (“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 Counselor at Eastern Senior High School. 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 because her retirement was involuntary, OEA retains jurisdiction to consider the merits of her appeal. According to Employee, her retirement was a result of coercion from the D.C. Retirement Office. Employee submits that she faced financial hardship at the time she was terminated and therefore had no other viable option except to retire.

Agency argues that OEA 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.

This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA

² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ 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).

has consistently held that there is a legal presumption that retirements are voluntary.⁴ 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.⁵ A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”⁶ 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.”⁷

Here, Employee contends that her retirement was not voluntary because she was advised to retire by an employee of the D.C. Retirement office “so that she could receive some type of income as she would not be compensated otherwise.”⁸ Employee also indicated that her retirement was involuntary on the Retirement Application she submitted to Agency. However, after reviewing the documents submitted throughout the course of this appeal, I find no evidence in the record to support Employee’s assertions that her retirement was involuntary. Agency’s October 2, 2009 notice of termination provided Employee with instructions regarding appealing the adverse action as well as information relevant to retiring in lieu of being terminated under the RIF. Employee’s choice to retire in the face of an extremely unpleasant situation – financial hardship, instead of being RIFed does not rise to the level of an involuntary retirement. Furthermore, I find no credible evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. In addition, there is no evidence to suggest that Agency misinformed Employee about her option to retire. 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.⁹ Accordingly, this Office lacks jurisdiction over Employee’s appeal, and for this reason, I am unable to address the factual merits of this matter.

⁴ 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).

⁵ *Id.* at 587.

⁶ 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).

⁷ *Id.*

⁸ Employee Brief at p. 2 (March 9, 2012).

⁹ 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).

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE