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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
ROBERT MILLS,	)	
Employee	)	OEA Matter No. 2401-0093-15
	)	
v.	)	Date of Issuance: September 29, 2015
	)	
DEPARTMENT OF GENERAL	)	
SERVICES,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Robert Mills, Employee <i>Pro-Se</i>	)	
C. Vaughn Adams, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On June 29, 2015, Robert Mills (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the Department of General Services (“DGS” or the “Agency”) action of abolishing his last position of record, Architect, ED-080814, through a Reduction in Force (“RIF”). The effective date of the RIF was July 2, 2015.

On August 7, 2015, DGS provided an Answer to Employee's petition for appeal. In its Answer, DGS explained that prior to the implementation of the instant RIF, Employee herein voluntarily retired from service. The undersigned was assigned this matter August 12, 2015. After review of the documents of record, I noted that Employee’s retirement calls into question whether the OEA may exercise jurisdiction over this matter. In order to properly ascertain the OEA’s authority to adjudicate this matter, I issued an order which required Employee to address whether the OEA may exercise jurisdiction over this matter since Employee elected to retire. On August 24, 2015, Employee submitted his brief in compliance with the aforementioned Order. Of note, Employee noted in his submission that he did indeed retired from service. After considering the parties arguments, along with the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

## JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

## ISSUE

Whether this Office may exercise jurisdiction over this matter.

## BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That 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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## FINDINGS OF FACTS, 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]. . . .

This Office has no authority to review issues beyond its jurisdiction.<sup>1</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>2</sup> The issue

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<sup>1</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>2</sup> 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*

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.<sup>3</sup> 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.<sup>4</sup> A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."<sup>5</sup> 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 he/she relied when making his/her decision to retire. He/she must also show "that a reasonable person would have been misled by the Agency's statements."<sup>6</sup>

Here, Employee contends that he had to retire in order to provide financial support for his family. Despite Employee's arguments to the contrary, I find no *credible* evidence of misrepresentation or deceit on the part of the Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about his option to retire. Employee's arguments regarding jurisdiction do not squarely cover the instant facts of this matter and fail to establish any legal precedent for allowing the OEA to proceed with further adjudication of this matter. I note that Employee admitted that he has retired from service. To date, Employee has enjoyed the benefits of retirement including the pension payment that is in direct correlation to his years of service. If Employee felt that his termination was carried out in error, he could have foregone his retirement and fought his removal through administrative and legal channels.

It is regrettable that Employee was faced with this difficult financial decision. Notwithstanding Employee's arguments to the contrary, I find that given the instant circumstances, Employee's retirement was voluntary.<sup>7</sup> Moreover, I deem Employee's remaining arguments concerning him not being on the proper pay scale and alleged violations of the Anti-Deficiency Act of 2002<sup>8</sup> as grievances. It is an established matter of public law that the OEA no longer has jurisdiction over grievance appeals.<sup>9</sup> That is not to say that Employee may not press his claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims.

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*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).

<sup>3</sup> 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).

<sup>4</sup> *Id.* at 587.

<sup>5</sup> 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).

<sup>6</sup> *Id.*

<sup>7</sup> 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).

<sup>8</sup> See Employee's Brief (August 24, 2015).

<sup>9</sup> Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.

I conclude that this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of his appeal.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.  
SENIOR ADMINISTRATIVE JUDGE