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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
PAMELA JONES,)	
Employee)	
)	OEA Matter No.: 1601-0394-10
v.)	
)	Date of Issuance: August 23, 2012
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge
Pamela Jones, Employee, <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 30, 2010, Pamela Jones (“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 based on an “Ineffective” rating under Agency’s Effectiveness Assessment System for School-Based Personnel program (“IMPACT”). The effective date of Employee’s termination was August 13, 2010.

I was assigned this matter in July of 2012. On July 19, 2012, I ordered the parties to submit briefs on the issue of whether this Office may exercise jurisdiction over Employee’s appeal because she retired in lieu of being terminated. Employee was required to submit a brief on or before August 2, 2012. On August 8, 2012, I issued an Order for Statement of Good Cause to Employee because she had failed to submit a brief by the required deadline. Employee was required to submit a statement to establish good cause on or before August 15, 2012. Employee failed to submit a brief; therefore, this appeal will be decided based on the documents of record. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office 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."

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.

This Office has no authority to review issues beyond its jurisdiction.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.² 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.³ 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.⁴ A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."⁵ In these cases, the employee must prove that their retirement was involuntary by proving that the retirement resulted from undue coercion or misrepresentation (mistaken

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

² 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).

³ 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).

⁴ *Id.* at 587.

⁵ 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).

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.”⁶

Here, Employee has the burden of proof in proving that her retirement was not voluntary; however, she has not submitted a written response to this Administrative Judge’s July 19, 2012 Order or August 8, 2012 Order for Statement of Good Cause. I find that there is no evidence in the record to support a finding that Employee’s retirement was involuntary. I further find that the jurisdictional burden of proof as required under OEA Rule 628.2 has not been satisfied.⁷ 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.

OEA Rule 621.3 provides that “if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant.” Failure of a party to prosecute an appeal includes, but is not limited to “a failure to submit required documents after being provided with a deadline for such submission.”⁸

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Employee failed to submit a written brief in response to the Order issued on July 19, 2012. Employee also failed to provide a Statement of Good Cause on or before August 15, 2012 to explain her failure to submit a brief.⁹ Under OEA Rule 608.5, an employee's failure to include a complete address, or to advise the Office of a change in address in writing, shall constitute a waiver of any right to notice and service, and may result in the appeal being dismissed. Employee has failed to inform this Office, in writing, of a change in her mailing address.

Based on the foregoing, I find that Employee’s lack of diligence in pursuing her appeal before OEA constitutes a failure to prosecute and serves as an alternate ground for the dismissal of this matter.

⁶ *Id.*

⁷ 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).

⁸ *Id.*

⁹ The Undersigned’s July 19, 2012 Order was returned to this Office on July 26, 2012 as “Return to Sender, Attempted – Not Known, Unable to Forward.”

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