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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
BARBARA JUMPER,)	
Employee)	OEA Matter No. J-0100-15
)	
v.)	Date of Issuance: July 12, 2016
)	
UNIVERSITY OF THE DISTRICT)	
OF COLUMBIA,)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Senior Administrative Judge

Kristin D. Alden, Esq., Employee Representative
Timothy D. Cheng, Esq., Employee Representative
Gary L. Leiber, Esq., Agency Representative
Jacquelyn Thompson, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 10, 2015, Barbara Jumper (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting her resignation from the University of the District of Columbia (“UDC” or the “Agency”). After this matter was assigned to the Undersigned, Employee requested a stay due to a parallel matter being considered by the Merit Systems Protection Board (“MSPB”). I have since received UDC’s Motion to Dismiss and Employee’s response. Moreover, the MSPB has issued an Initial Decision in the parallel matter, wherein it opted to deny Employee’s Civil Service Retirement claim with the Office of Personnel Management.¹ The parties were engaged in settlement talks, however, to date; those talks have not resulted in a settlement of this matter. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

¹ *Barbara De Laine Jumper v. Office of Personnel Management*, MSPB Docket No. DC-0831-0956-I-1 (January 11, 2016).

JURISDICTION

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

ISSUE

Whether the Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

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 629.2, *id.*, states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The law is well settled with this Office, that there is a legal presumption that resignations and retirements are voluntary.² This Office lacks jurisdiction to adjudicate a voluntary resignation. However, a resignation where the decision to resign was involuntary is treated as a constructive removal and may be appealed to this Office.³ A resignation is considered involuntary "when the employee shows that resignation was obtained by agency misinformation or deception."⁴ The Employee must prove that her resignation 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."⁵

In pertinent part, the facts of this matter show that on June 23, 2008, Employee made her initial application for early retirement. She then went to work for another District government agency. On January 1, 2009, Employee started working for UDC as its Associate Vice President of Facilities and Real Estate. Upon hire, Employee was allowed to participate in UDC's retirement plan, TIAA-CREF.⁶ On November 1, 2011, UDC complied with Employee's request

² See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975)

³ *Id.* at 587.

⁴ 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).

⁵ *Id.*

⁶ Teacher Insurance Annuity Association, College Retirement Equity Funds.

to have her retirement changed from TIAA-CREF to CSRS.⁷ Thereafter, Employee experienced an issue with her ability to participate in CSRS. UDC noting that error reimbursed Employee on October 14, 2014. Several months later, Employee tendered her resignation on April 6, 2015, with an effective date of April 17, 2015.

Agency correctly notes that Employee did not endure any adverse action, nor was she under credible threat of an adverse action at the time that she tendered her resignation. Moreover, the crux of Employee's argument with the OEA centers on her retirement benefits. I find that UDC did not commit deception, coercion or provide misinformation that would undermine Employee's ability to make a rational decision to resign her position with UDC. Employee was under no known duress to leave her position. I find that Employee voluntarily resigned from her position with UDC.

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1⁸, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, 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." This Office has no authority to review issues beyond its jurisdiction.⁹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹⁰ I find that the OEA does not have jurisdiction over voluntary resignations. I further find that the OEA does not have jurisdiction over CSRS or TIAA-CREFF retirement benefits. Accordingly, I find that I must dismiss this matter for a lack of jurisdiction.

⁷ Civil Service Retirement System.

⁸ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹⁰ 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).

ORDER

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

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge