THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CARMELITA CARTER-SYKES,	)	
Employee	)	OEA Matter No. 2401-0235-10
	)	
v.	)	Date of Issuance: April 3, 2012
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Administrative Judge

Carmelita Carter-Sykes, Employee *Pro Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 2, 2009, Carmelita Carter-Sykes ("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 Math Teacher at Anacostia Senior High School ("Anacostia"). Employee was serving in Educational Service status at the time her position was abolished. On January 7, 2010, Agency filed an Answer to Employee's appeal.

I was assigned this matter on or around February 6, 2012. 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. On February 17, 2012, Employee's copy of this Order was returned to this Office marked "Not Deliverable as Addressed." On February 21, 2012, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause on her failure to update her address with this Office as required under OEA Rule 608.5 59 DCR 2129 (March 16, 2012). Employee had until March 1, 2012, to provide this Office with her updated address. Employee did not comply. On March 5, 2012, Agency submitted its brief in response to the February 10, 2012, asserting that

OEA does not have jurisdiction in this matter since Employee voluntarily retired.[1] Subsequently, on March 13, 2012, Agency's representative emailed the undersigned noting that the copy of its brief that was mailed to Employee's address of record was returned as 'undeliverable'.[2] Employee's brief was due March 26, 2012. As of the date of this decision, Employee has not responded to this Order. 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.[3]

In her petition for appeal, Employee submits that "there was an error in my service computation date and years of experience." Employee also noted that her competitive level was listed as "Special Education Coordinator…rather than Math Teacher."[4] Employee contends that the statements in her Competitive Level Documentation Form ("CLDF") are false, and as such, an evidentiary hearing is needed. Employee further asserts that the RIF caused her to involuntarily retire.[5] Agency contends 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.[7]

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated in her petition for appeal that she retired from Agency after receiving the RIF notice. However, 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:

---

[1] *District of Columbia Public Schools' Brief* at p. 2 (March 5, 2012).
[2] *See* March 13, 2012, email from Sara White to the undersigned.
[3] *See Agency's Answer*, Tab 1 (January 7, 2010); *Agency's Brief* dated March 5, 2012.
[4] *Petition for Appeal* at p. 5 (December 2, 2009).
[5] *Id*. at Employee's handwritten attachments.
[6] *District of Columbia Public Schools' Brief Supra*.
[7] *Id*.

> (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 628.1, 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.[8] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[9] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office, and the law is well settled with this Office that, there is a legal presumption that retirements are voluntary.[10] 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.[11] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[12] 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 she relied when making a decision to retire. An employee must also show "that a reasonable person would have been misled by the Agency's statements."[13]

Here, Employee contends that the RIF caused her to involuntarily retire. Employee was given the opportunity to address the jurisdiction issue raised in her petition for appeal, but Employee failed to comply. Regardless of Employee's protestation, the fact that she chose to retire instead of continuing to litigate her claims voids the Office's jurisdiction over her appeals. Moreover, the facts and circumstances surrounding Employee's retirement was her own choice. Employee has also enjoyed the benefits of retiring. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. Based on the foregoing, I find that Employee's retirement was voluntary.[14] As such, this Office

---

[8] *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[9] *See Brown v. District of Columbia Pub. Sch.*, 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).
[10] *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).
[11] *Id*. at 587.
[12] *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).
[13] *Id.*
[14] 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

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

In addition, OEA rule 621 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal. *Id.* This Office has held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission,[15] and/or failure to inform this Office of a change of address which results in correspondence being returned. Here, Employee was warned in the February 10, 2012, and February 21, 2012, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order or submit a change of address. Both were required for a proper resolution of this matter on its merits. I conclude that, Employee's failure to prosecute her appeal is consistent with the language of OEA rule 621. Employee violated this rule when she did not submit a required document after receiving notice in both the February 10, 2012, and February 21, 2012, Order, and when she failed to update her address with this Office. Employee was notified of the specific repercussions of failing to comply with these Orders. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and this represents another reason for dismissal.

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

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).

[15] *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).