

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Sandra Maddox)	OEA Matter No. 2401-0124-04
Employee)	
)	Date of Issuance: June 22, 2005
v.)	
)	Sheryl Sears, Esq.
)	Administrative Judge
D.C. Public Schools)	
Agency)	

Sandra Maddox, Employee, Pro Se
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Employee was a Guidance Counselor at Elliott Junior High School. By letter dated May 26, 2004, Karen R. Jackson, Ph.D., Agency's Chief Human Resources Officer, notified Employee that Agency was "required to reduce staffing levels through abolishment." Employee was advised that her position would be "abolished on June 30, 2004." She filed a petition for appeal with this Office on June 28, 2004.

Agency responded with the claim that she retired in lieu of separation. On March 21, 2005, the parties were ordered to respond in writing to the following questions: "Did Employee retire from her position? Does this Office have jurisdiction over her appeal?" Agency submitted a copy of a D.C. government Personnel Action Form 1 that documents Employee's "involuntary retirement" effective June 30, 2004. Employee submitted a written statement recounting the events that led to her retirement.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

This Office does not have jurisdiction to review a voluntary retirement. However, an involuntary retirement is treated as a constructive removal and is within the jurisdiction of this Office. See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975) and *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-0224-96 (October 23, 2001), ___ D.C. Reg. ___ ().

There is no question that Employee retired. There is a presumption in the law that a retirement is voluntarily. Even when elected under difficult circumstances, a voluntary retirement does not constitute an adverse action. See *Bertha Dunham v. D.C. Public Schools*, OEA Matter No. 2401-0291-96 (March 9, 2000) affirmed by Opinion and Order on Petition for Review (September 28, 2000). A retirement is only considered involuntary when it has been “obtained by agency misinformation or deception” upon which a reasonable person would rely or is coerced from an employee. 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).

Employee submitted a written statement indicating that she “had not planned to retire from DC Public Schools for at least another ten years.” This statement supports a finding that Employee would have preferred to retire at a later date. However, absent evidence of misinformation or coercion, this Judge must also conclude that Employee chose to retire in lieu of removal when Agency served her with notice of the reduction-in-force. Thus, Employee’s retirement was voluntary and this appeal must be dismissed.

ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:



SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE

THE DISTRICT OF COLUMBIA

BEFORE

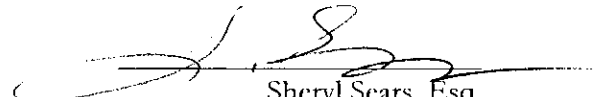
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Sandra Maddox, Employee, Pro Se
Harriet Segar, Esq., Agency Representative

ORDER CLOSING THE RECORD

Pursuant to OEA Rule 630.1, 46 D.C. Reg. 9317 (1999), it is hereby ORDERED that the record in the above-captioned matter will close effective immediately. Pursuant to OEA Rule 630.2, 46 D.C. Reg. 9317 (1999), once the record closes no additional evidence or argument shall be accepted unless the presiding official reopens the record.


Sheryl Sears, Esq.
Administrative Judge