Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager 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:	)	
	)	
MARY ROSS,	)	OEA Matter No. 2401-0208-10
Employee	)	
	)	Date of Issuance: August 2, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mary Ross ("Employee") worked as a Special Education Teacher with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that she was being separated from her position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on December 1, 2009. She asserted that Agency did not follow the RIF procedures. As a result, Employee requested an evidentiary hearing.[2]

In its answer to Employee's Petition for Appeal, Agency provided that it conducted the RIF pursuant to D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It argued that in accordance with 5 DCMR §

[1] *Petition for Appeal,* p. 6 (December 1, 2009).
[2] *Id.,* 4-5.

1501, Prospect Learning Center was determined to be the competitive area, and under 5 DCMR § 1502, the Special Education Teacher position was determined to be the competitive level subject to the RIF. Consequently, Employee was provided one round of lateral competition where the principal rated each employee through the use of Competitive Level Documentation Forms ("CLDF"), as defined in 5 DCMR § 1503.2.[3] After discovering that Employee was ranked the lowest in her competitive level, Agency provided her a written, thirty-day notice that her position was being eliminated. Thus, it believed the RIF action was proper.[4]

Prior to issuing the Initial Decision, the OEA Administrative Judge ("AJ") ordered the parties to submit briefs addressing whether Agency followed the District's statutes, regulations, and laws when it conducted the RIF.[5] In its responsive brief, Agency reiterated its position and submitted that OEA is limited to determining whether it followed D.C. Official Code § 1-624.02, 5 DCMR §§ 1503 and 1506.[6] Employee's brief provided that she did not receive a meaningful round of lateral competition because Agency classified her position as a Special Education Teacher, but her job title was Speech Therapist. She explained that because of this classification, the RIF criteria was incorrectly applied.[7] Further, she provided that she involuntarily retired due to financial constraints, but Agency did not list her retirement as involuntary on her personnel action form. Therefore, she requested that the AJ address these issues.[8]

The Initial Decision was issued on May 2, 2012. The AJ disagreed with Employee's contentions and found that her retirement was voluntary. She held that a retirement is considered

[3] Agency explained that its Office of Human Resources computed Employee's length of service, including credit for District residency, veteran's preference, and any prior outstanding performance rating when it conducted the RIF.
[4] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal* (December 31, 2009).
[5] *Order Requesting Briefs* (February 17, 2012).
[6] *District of Columbia Public Schools' Brief,* p. 8 (March 12, 2012).
[7] Employee claimed that the duties and responsibilities of a Special Education Teacher differ from that of a Speech Therapist.
[8] *Employee Mary F. Ross' Brief,* p. 4-5 (April 2, 2012).

involuntary when an employee shows that the retirement was obtained through misinformation or deception by the agency.[9] The AJ found no credible evidence to prove that Agency misrepresented or was deceitful in procuring Employee's retirement. Therefore, he held that Employee's decision to retire voided OEA's jurisdiction over her appeal. Accordingly, the matter was dismissed for lack of jurisdiction.[10]

On June 6, 2012, Employee filed a Petition for Review with the OEA Board. She asserts that OEA's jurisdiction was established when she submitted in her appeal that Agency made misrepresentations to her concerning the retirement. She explains that she proceeded with filing for retirement when Sheila Reid, an employee of Agency, informed her that her retirement would be classified as involuntary; therefore, she noted the word "involuntary" on her retirement form.[11] Employee further objects to the Initial Decision because it did not account for the materiality of Agency's misrepresentation. She states a reasonable person would have been misled by the misinformation and believes that because she established a *prima facie* case of involuntariness, her appeal cannot be summarily dismissed. Therefore, Employee requests an evidentiary hearing and that the OEA Board to reverse, modify, or vacate the Initial Decision.[12]

According to *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995),

---

[9] The AJ cited *Cecil E. Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995) and *Elias Covington v. Department of Health & Human Services*, 750 F.2d 937 (Fed. Cir. 1984) and explained that Employee needed to prove that her retirement was involuntary by showing that the retirement resulted from undue coercion or misrepresentation. Employee also needed to show that a reasonable person would have been misled by the statements.

[10] *Initial Decision,* p. 3-4 (May 2, 2012).

[11] Employee asserts that she relied on the misrepresentations of Agency, and if she were correctly informed of her retirement status, she would not have retired. However, the official Notification of Personnel Action, Standard Form 50 provides that ". . . Employee elected to retire on Discontinued Service Retirement." Similarly, the other official retirement documents in the record do not to indicate an involuntary retirement, as Employee contends. *Employee, Mary Ross's Petition for Review*, Exhibits #13 and Exhibit #14, p. 2-14 (June 6, 2012). The only documentation of an involuntary retirement is present in an exhibit provided by Employee. It is written from Employee to Agency, and the word "involuntary" is handwritten on the document. *Id.,* Exhibit #14, p. 1. This is not proof of misinformation by Agency. This Board believes that the AJ properly found that Employee failed to prove that she involuntary retired.

[12] *Id.,* 12-15.

an employee's decision to retire is deemed voluntary unless the employee presents sufficient evidence to establish otherwise. For a retirement to be considered involuntary, an employee must establish that the retirement was due to Agency's coercion or misinformation upon which they relied. OEA has held that the burden, therefore, rests on employees to show that they involuntarily retired.[13] Such a showing would constitute a constructive removal and allow OEA to adjudicate Employee's matter.

As for Employee's claims of Agency's misrepresentations concerning her retirement, she provided a document on Agency letterhead which is addressed to its Director regarding her retirement. The letter is typed but has the handwritten word "involuntary" with a check mark indicated.[14] However, this does not establish that Agency coerced or mislead her regarding her retirement. OEA has consistently held that a mere assertion of force or coercion is not enough to prove that Employee involuntarily retired.[15] As a result, Employee failed to provide any evidence to prove that Agency deceived her or gave her misleading information.

---

[13] *Esther Dickerson v. Department of Mental Health,* OEA Matter No. 2401-0039-03, *Opinion and Order on Petition for Review* (May 17, 2006); *Georgia Mae Green v. District of Columbia Department of Corrections,* OEA Matter No. 2401-0079-02, *Opinion and Order on Petition for Review* (March 15, 2006); *Veda Giles v. Department of Employment Services,* OEA Matter No. 2401-0022-05, *Opinion and Order on Petition for Review* (July 24, 2008); *Larry Battle, et al. v. D.C. Department of Mental Health,* OEA Matter Nos. 2401-0076-03, 2401-0067-03, 2401-0077-03, 2401-0068-03, 2401-0073-03, *Opinion and Orders on Petition for Review* (May 23, 2008); and Michael Brown, et al. v. *D.C. Department of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-09, 1601-0013-09, 1601-0014-09, 1601-0015-09, 1601-0016-09, 1601-0017-09, 1601-0018-09, 1601-0019-019, 1601-0020-09, 1601-0021-09, 1601-0022-09, 1601-0023-09, 1601-0024-09, 1601-0025-09, 1601-0026-09, 1601-0027-09, 1601-0052-09, 1601-0053-09, and 1601-0054-09, *Opinion and Orders on Petition for Review* (January 26, 2011).

[14] The letter bears Employee's signature. There are two boxes with typewritten words "regular" or "disability"; there are boxes next to each that are unmarked. Additionally, there is a handwritten word "involuntary" with a check mark next to it. On its face, it appears that Employee intended to indicate that her retirement was involuntary and not a regular retirement or the result of a disability.

[15] *Esther Dickerson v. Department of Mental Health,* OEA Matter No. 2401-0039-03, *Opinion and Order on Petition for Review* (May 17, 2006); *Georgia Mae Green v. District of Columbia Department of Corrections,* OEA Matter No. 2401-0079-02, *Opinion and Order on Petition for Review* (March 15, 2006); *Veda Giles v. Department of Employment Services,* OEA Matter No. 2401-0022-05, *Opinion and Order on Petition for Review* (July 24, 2008); *Larry Battle, et al. v. D.C. Department of Mental Health,* OEA Matter Nos. 2401-0076-03, 2401-0067-03, 2401-0077-03, 2401-0068-03, 2401-0073-03, *Opinion and Orders on Petition for Review* (May 23, 2008); and Michael Brown, et al. v. *D.C. Department of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-09, 1601-0013-09, 1601-0014-09, 1601-0015-09, 1601-0016-09, 1601-0017-09, 1601-0018-09, 1601-0019-019, 1601-0020-09, 1601-0021-09, 1601-0022-09, 1601-0023-09, 1601-0024-09, 1601-0025-09, 1601-0026-09, 1601-0027-09, 1601-0052-09, 1601-0053-09, and 1601-0054-09, *Opinion and Orders on Petition for Review* (January 26, 2011).

Employee also argued that after being unemployed for over a year, she was "forced to apply for . . . [retirement] benefits due to financial constraints."[16] OEA has held that financial hardship is not sufficient to make a retirement rise to the level of involuntariness.[17] Similar to the employee in *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975), Employee had the option of retiring or challenging the removal action taken against her by Agency. She chose to retire instead of standing firm and questioning the validity of the RIF.

Being faced with removal is a difficult position for most people. However, merely being faced with a difficult situation does not obviate the voluntariness of Employee's retirement. Employee failed to establish that Agency coerced her or gave her misleading information. Similar to the employees in *Jenson* and *Christie*, Employee had the option to retire or challenge the action. Because she failed to prove that she involuntarily retired from Agency, Employee's Petition for Review is DENIED.

---

[16] *Employee Mary F. Ross' Brief,* p. 4 (April 2, 2012).

[17] *Banner v. D.C. Public Schools,* OEA Matter No. 2401-0169-96 (August 20, 1998); *Veda Giles v. Department of Employment Services,* OEA Matter No. 2401-0022-05 (July 24, 2008); *Esther Dickerson v. Department of Health,* OEA Matter No. 2401-0039-03 (May 17, 2006); and *Frances Simmons v. D. C. Public Schools*, OEA Matter No. 2401-0030-10 (April 30, 2013).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

____
William Persina, Chair

____
Sheree L. Price, Vice Chair

____
Vera M. Abbott

____
A. Gilbert Douglass

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.