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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DORIS WILLIAMS,)	
Employee)	OEA Matter No. J-0054-17
)	
v.)	Date of Issuance: August 16, 2017
)	
DEPARTMENT OF HUMAN SERVICES,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Doris Williams, Employee, <i>Pro Se</i>		
Robert Warren, Jr., Esq., Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 31, 2017, Doris Williams ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting her separation from the District of Columbia Department of Human Services' ("Agency" or "DHS"). I was assigned this matter on or around June 19, 2017. On July 3, 2017, Agency submitted its Response to Employee's Petition for Appeal noting that Employee was separated from Agency by way of resignation.

Subsequently, on July 7, 2017, the undersigned Administrative Judge ("AJ") issued an Order requiring Employee to address the jurisdiction issue in this matter no later than July 21, 2017. Agency was also afforded the option to submit a reply brief no later than July 31, 2017. While Employee submitted a timely brief, as of the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

JURISDICTION

As will be discussed below, the jurisdiction of this office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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 628.2 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

ANALYSIS AND CONCLUSIONS OF LAW

In its response to Employee’s Petition for Appeal, Agency highlights that OEA lacks jurisdiction in this matter because Employee was separated from Agency by way of resignation. Agency explained that Employee emailed DHS Human Resources Officer, Wayne Swann, DHS Chief Operation Officer, Sharon Kershbaum, and DHS Union Official, Sabrina Brown on May 18, 2017, informing them of her decision to resign effective May 13, 2017.¹ Thereafter, Ms. Kershbaum replied to Employee’s email, accepting her resignation.² In a letter dated May 23, 2017, Mr. Swann confirmed Employee’s resignation.³

In her response to the July 7, 2017, Order on jurisdiction, Employee notes that “[o]n the advice of my union president, Ms. Sabrina Brown, who advised me to resign because my timeframe had expired and she could not assist me, therefore I had no legal advice and I felt that I had no other recourse than to resign.”⁴

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 Title 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1⁵, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;

¹ Agency’s Response to Employee’s Petition for Appeal at Attachment 1 (July 3, 2017).

² *Id.*

³ *Id.* at Attachment 2.

⁴ See Employee’s July 17, 2017 submission.

⁵ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

- (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) Placement on enforced leave for 10 days or more.

As previously noted, 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.⁶ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁷

Employee argues that she was advised by the union president, Ms. Sabrina Brown to resign. Agency on the other hand asserts that because Employee resigned, OEA does not have jurisdiction over her appeal. The issue of an employee’s voluntary or involuntary resignation 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/resignations are voluntary.⁸ Furthermore, I find that 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.⁹ A resignation is considered involuntary “when the employee shows that [resignation] was obtained by agency misinformation or deception.”¹⁰ The employee must prove that his/her retirement/resignation was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he/she relied on when making a decision to resign. An employee must also show “that a reasonable person would have been misled by the Agency’s statements.”¹¹ In *District of Columbia Metropolitan Police Department v. Stanley*, 942 A.2d 1172, 1175-1176 (2008), the D.C. Court of Appeals provided that the test to determine voluntariness is an objective one that, considering all the circumstances, the employee was prevented from exercising a reasonably free and informed choice. As a general principle, an employee’s decision to resign is considered voluntary if the employee is free to choose, understands the transaction, is given a reasonable time to make his/her choice, and is permitted to set the effective date. OEA has consistently held

⁶ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁷ 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 General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁸ See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Bagenstose v. District of Columbia Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).

⁹ *Id.* at 587.

¹⁰ 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).

¹¹ *Id.*

that a mere assertion of force or coercion is not enough to prove that the employee involuntarily resigned.¹²

In the current case, Employee does not assert that her resignation was involuntary. She however, stated that she was informed by the union president that she had to resign. The union president is not an agent of DHS. Additionally, Employee has not provided any evidence in support of her assertion that she was informed by the union president that she had to resign. On May 18, 2017, Employee voluntarily submitted an email to Agency officials informing them of her decision to resign from her position effective May 13, 2017.¹³ Upon receiving Employee's resignation email, Agency's Chief Operation Officer, Sharon Kershbaum, accepted Employee's resignation via email, and on May 23, 2017, Agency issued an official letter to Employee confirming her resignation.

At no time does Employee allege that Agency procured her resignation through deceit, misrepresentation or undue coercion. Accordingly, I find no *credible* evidence of misrepresentation, misinformation or deceit on the part of Agency in procuring Employee's resignation. Further, Employee has failed to provide any evidence to prove that Agency deceived her or gave her misleading information with regards to her resignation. Regardless of Employee's protestations, I find that the facts and circumstances surrounding Employee's resignation was Employee's own choice. Based on the documents on record, Employee's resignation can only be deemed voluntary.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, ESQ.
SENIOR ADMINISTRATIVE JUDGE

¹² *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, 1601-0019-09, 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).

¹³ Agency's Response, *supra*, at Attachment 1.