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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
FANNIE PLAIN,)	
Employee)	OEA Matter No.: 1601-0204-11
)	
v.)	Date of Issuance: May 27, 2014
)	
DISTRICT OF COLUMBIA)	STEPHANIE N. HARRIS, Esq.
PUBLIC SCHOOLS,)	Administrative Judge
Agency)	
)	

Fannie Plain, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 30, 2011, Fannie Plain (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) decision to terminate her. On September 30, 2011, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter in June 2013. On September 3, 2013, I ordered the parties to attend a Prehearing Conference scheduled for October 1, 2013. Agency was present for the Prehearing Conference; however, Employee failed to appear. On October 1, 2013, Employee requested a continuance and asked that the Prehearing Conference be rescheduled. Employee’s request was granted and on November 18, 2013, the undersigned issued an Order rescheduling the Prehearing Conference for December 13, 2013. However, due to scheduling conflicts, the undersigned issued another Order rescheduling the Prehearing Conference for January 28, 2014, where both parties were in attendance.

On January 28, 2014, the undersigned issued a Post Prehearing Conference Order, wherein the parties were directed to submit briefs in this matter. Specifically, the parties were required to address Employee’s retirement. Employee timely submitted her brief on February 24, 2014. On April 17, 2014, the undersigned determined that additional information was needed and

ordered Agency to submit additional documentation concerning Employee's retirement. Agency timely submitted its brief on April 14, 2014 and the additional documentation required on May 7, 2014 and May 15, 2014. After reviewing the record, I have determined that there are no material facts in dispute and therefore, a hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

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:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Employee asserts in her brief that she wrote on her retirement papers that she was forced out of DCPS.¹ She also requested that agency submit her retirement paperwork for the record. Employee's assertion that she retired raises a question as to whether OEA has jurisdiction over this appeal.

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:

- (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,

¹ Employee's Brief at p. 3 (February 24, 2014).

reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to OEA Rule 621.1, *id.*, 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.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ The issue of an employee’s voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. The law is well settled with this Office that there is a legal presumption that retirements are voluntary.⁴ Furthermore, OEA has consistently held that it lacks jurisdiction to adjudicate a voluntary retirement.⁵

However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.⁶ A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”⁷ The Employee must prove that her retirement was involuntary by showing that (1) the retirement resulted from undue coercion or misrepresentation by Agency; (2) Employee relied upon such information when making her decision to retire; and (3) a reasonable person would have been misled by Agency’s statements.⁸

Here, Employee contends that she was forced to retire from Agency and that this affected the amount of money she would have received because she was terminated four years prior to her thirty (30) year retirement service date.⁹ While Employee faced the difficult choice between retiring or facing termination, I disagree with Employee’s contention that she was forced to retire. In her brief, Employee merely states that she was forced to retire and that she wrote on her retirement papers that she was forced out. However, Employee did not submit any documents to support these contentions. Further, Agency submitted paperwork showing that Employee elected

² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ 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).

⁴ 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).

⁵ See *Deborah Gray-Avent v. D.C. Department of Human Resources*, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2008); *Adele LaFranque v. D.C. Public Schools*, OEA Matter No. 2401-0032-10 (February 8, 2011); *Curtis Woodward v. D.C. Public Schools*, OEA Matter No. 2401-0029-10 (February 8, 2011).

⁶ *Christie*, 518 F.2d at 587.

⁷ See *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984); *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995).

⁸ *Covington*, 750 F.2d. at 942.

⁹ Employee’s Brief, p. 3 (February 24, 2014).

the ‘service’ and ‘regular’ retirement options.¹⁰ None of the retirement paperwork in the record suggests or corroborates that Employee’s retirement was involuntary.

The record shows that Agency provided Employee with a termination notice, which stated that her termination would be effective on August 12, 2011 and relayed information regarding appealing to OEA.¹¹ Additionally, Agency has submitted Employee’s Notification of Personnel action (“SF-50”), which reflects that Employee elected to retire with the ‘Discontinued Service Retirement’ option, which was effective August 12, 2011.¹² Moreover, nothing in the record, the termination notice, or SF-50 indicates that Employee was threatened, coerced, deliberately misled, or given a *mandate to retire* by Agency (emphasis added).

Additionally, I find no credible evidence of misrepresentation, coercion, or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire; that she relied on Agency misinformation to her detriment; or that her retirement was tantamount to a constructive discharge. Additionally, Employee’s choice to retire in the face of a seemingly unpleasant situation – financial hardship, instead of being terminated does not make Employee’s retirement involuntary.¹³

Based on the foregoing, I find that Employee elected to voluntarily retire in lieu of being terminated.¹⁴ Additionally, despite Employee’s protestations, the fact that she chose to retire instead of continuing to litigate her claims voids OEA’s jurisdiction over her appeal. As such, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

¹⁰ Agency Brief, Tabs 3, 4 (May 20, 2014).

¹¹ Petition for Appeal, p. 4 (August 30, 2011); Agency Answer, Tab 1 (September 30, 2011).

¹² Agency Brief, Tab 2 (May 20, 2014).

¹³ The court in *Covington* held that “[t]he fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives does not make an employee's decision any less voluntary.” *Covington*, 750 F.2d at 942.

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 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*, 518 F.2d at 587-588. (citations omitted).