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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
CATHERINE DUVIC,	
Employee	OEA Matter No. J-0012-15
v.	Date of Issuance: February 27, 2015
ST. ELIZABETH'S HOSPITAL	
DEPARTMENT OF BEHAVIORAL	
HEALTH,	
Agency	ERIC T. ROBINSON, Esq.
	Senior Administrative Judge

Alan Lescht, Esq., Employee Representative
Maureen Dimino, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 3, 2014, Catherine Duvic ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the action taken by the Department of Behavioral Health ("Agency"). I was assigned this matter on or about November 19, 2014. After reviewing the documents of record, I determined that there existed an issue as to whether the OEA may exercise jurisdiction over this appeal. Accordingly, I issued an Order dated December 15, 2014 requiring Employee to address this issue. Employee has complied. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Should this matter be dismissed for lack of jurisdiction?

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

> 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 629.2, *id*., states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Included with the Employee's petition for appeal is a letter, dated September 16, 2014, authored and signed by Employee, and addressed to Dr. Vidoni Clark, RN PhD, wherein Employee states the following, in relevant part:

> Dear Dr. Vidoni Clark, RN, PhD
>
> This letter serves to inform you and the nursing staff of my intent to resign from St. Elizabeth's Hospital.
>
> I am providing two weeks notice as of today.

Employee contends that she was coerced by the Agency into resigning involuntarily. Employee explains that her issues with the Agency stem from the unfortunate death of one of the patients under her care in February 2014. Employee contends that the patient's death was the result of a dubious hospital policy that has since been revised in the wake of this tragic incident. Employee alleges that from that time through her resignation she was constantly harassed by hospital management.[1] At the time that Employee tendered her resignation, she had just finished serving a suspension from August 30, 2014, through September 14, 2014, for a first offense of dozing off.[2] Immediately thereafter, Employee tendered her two weeks' notice on September 16, 2014. Employee was then placed on administrative leave for the final two weeks of her tenure with the Agency.

The law is well settled with this Office, that there is a legal presumption that resignations and retirements are voluntary. *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), ___ D.C. Reg. ___ (   ). This Office lacks jurisdiction to adjudicate a voluntary

[1] *See* Employee's Brief in Support of Jurisdiction at 3 (December 30, 2014).
[2] *Id*. at 5 – 6.

resignation. However, a resignation where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office. *Id*. at 587. A resignation is considered involuntary "when the employee shows that resignation was obtained by agency misinformation or deception." *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). The Employee must prove that his resignation was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he relied when making his decision to retire. He must also show "that a reasonable person would have been misled by the Agency's statements." *Id.*

Employee herein was suspended for the offense of "dozing off".[3] Upon return, she opted to resign. In Employee's Brief, there is no mention of any intervening act or omission by the Agency from the time she returned from suspension to the time that she opted to resign. Employee only mentions that after tendering her two weeks' notice she was immediately placed on administrative leave. What Employee neglects to consider is that being placed on administrative leave has no effect on her job status or her accruing pay or benefits. It is merely a designation that anticipates that an employee will not be at her duty station. In this type of scenario, it is a recognition that Employee herein is in a safety sensitive position. It is rightfully management's prerogative to opt to acquiesce to Employee's request and at the same time not expose her colleagues or the public to a potentially disgruntled employee. In the matter at hand, I find no credible evidence that her resignation was the result of coercion. As a result, I further find that Employee's resignation was voluntary.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ ( ). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ ( ); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ ( );

[3] Employee's petition for appeal was solely for the purposes of contesting her resignation. Employee did not contest her suspension in this matter.

Maradi v. District of Columbia Gen. Hosp., OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ( ).

The jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade; suspensions or enforced leave of ten days or more; or reductions in force. *See* OEA Rule 604.1. The OEA does not have jurisdiction over voluntary resignations. Accordingly, I find that I must dismiss this matter over a lack of jurisdiction

ORDER

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

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge

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