THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
LORETTA TRENT,	)	
Employee	)	OEA Matter No. 2401-0028-10
	)	
v.	)	Date of Issuance: December 6, 2011
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Loretta Trent, Employee *Pro Se*
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 8, 2009, Loretta Trent ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Public Schools'("DCPS" or "Agency") action of abolishing her position as a Custodian through a Reduction-In-Force ("RIF"). The effective date of the RIF was November 2, 2009.

This matter was assigned to me on or around October 21, 2011. Thereafter, I scheduled a Status Conference for November 9, 2011, in order to assess the parties' arguments, and to determine whether an Evidentiary Hearing was necessary. During the Status Conference, Employee noted that she retired from Agency after she was presented with the RIF notice. Subsequently, I issued an Order on November 9, 2011, wherein I required Employee to address whether OEA may exercise jurisdiction over this matter due to Employee's retirement. Employee had until November 25, 2011, to respond. As of today's date, Employee has not responded to this Order. 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

There is a question as to whether OEA has jurisdiction over this appeal. During the Status Conference, Employee mentioned that she retired after receiving the RIF notice. However, Employee contends that her retirement was not voluntary since the only reason she retired was because her position was being abolished by the RIF. Thereafter, Employee was given the opportunity to address the jurisdiction issue raised during the Status Conference, but Employee failed to comply.

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

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 629.1, *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.[1] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[2] The issue of an Employee's voluntary or involuntary retirement 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 are voluntary.[3] Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.[4] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[5] The Employee must prove that his retirement 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."[6]

Here, Employee contends that her retirement was not voluntary because she only retired after she had received the RIF notice. Regardless of Employee's protestation, the fact that she chose to

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[1] *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), __ D.C. Reg. __ ( ).
[2] *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* (January 22, 1993), __ D.C. Reg. __ ( ); *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. __ ( ).
[3] *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. ___ ( ).
[4] *Id.* at 587.
[5] *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).
[6] *Id.*

retire instead of continuing to litigate her claims voids the Office's jurisdiction over her appeals. And the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. Based on the foregoing, I find that Employee's retirement was voluntary.[7] 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 matter.

Additionally, OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

(a) Appear at a scheduled proceeding after receiving notice;
(b) Submit required documents after being provided with a deadline for such submission; or
(c) Inform this Office of a change of address which results in correspondence being returned.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.[8] Here, Employee was warned in the November 9, 2011, Order that failure to submit a response to the Order could result in sanctions including dismissal. Employee did not provide a written response to my Order. This was required for a proper resolution of this matter on its merit. I conclude that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for her failure to prosecute.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction and for Employee's failure to prosecute.

FOR THE OFFICE:

_____
MONICA DOHNJI, Esq.
Administrative Judge

[7] 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*, *supra* at 587-588. (citations omitted).

[8] *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010), ___ D.C. Reg. ___ ( ); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010), ___ D.C. Reg. ___ ( ).