THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CHRISTOPHER SANDERS,	)	
Employee	)	OEA Matter No. 1601-0060-15
	)	
v.	)	Date of Issuance: October 31, 2016
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	ERIC T. ROBINSON, Esq.
	)	Senior Administrative Judge

Michael G. Kane, Esq., Employee Representative
Ronald Harris, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 20, 2015, Christopher Sanders ("Employee") filed an appeal with the District of Columbia Office of Employee Appeals ("OEA" or "the Office") contesting the loss of his last position of record, Lieutenant, with the District of Columbia Metropolitan Police Department ("MPD" or "the Agency"). The series of events that gave rise to the instant appeal were best described in the following excerpt:

> On April 7, 2015, a federal judge issued an opinion in *Christopher Sanders v. District of Columbia, et al*., Civil action No. 06-1411… The court recounted the history of the lawsuit as beginning with the Employee's tenure with the Metropolitan Police Department from 1990 until September or October 2002. Employee rose to the position of a supervisor in the department's Special Emphasis Unit which was within the Narcotics and Special Investigations Division. While there, Employee noticed some employees abusing time and attendance policies. Employee reported this conduct to MPD officials and in testimony before the D.C. City Council. Following his testimony, Employee filed a lawsuit (*Christopher Sanders v. District of Columbia*, Civil Action No. 97-2938),

> contending that officials retaliated against him in violation of his free speech rights. That lawsuit was settled by the parties on September 3, 2002. The settlement included a monetary payment and a promotion to lieutenant… Employee had returned from Florida after being on extended leave since January, 2002. He was due to report for duty in August but failed to appear as scheduled. On September 5, 2002, Employee met with his supervisor, Captain Jeffrey Herold and then Commander Cathy Lanier to request a leave of absence to pursue a graduate degree… Later that day Employee submitted a resignation letter and asked that the thirty day notice requirement be waived.[1]

From this point the parties differ as to the salient events. Agency contends that Commander Lanier told Employee that if he resigned he could always reapply to return within one year. Agency further notes that then MPD Police Chief Charles Ramsey accepted Employee's resignation request on September 6, 2002. Employee readily admits that he submitted the resignation letter and that it contained the 30 day waiver request. Notwithstanding Agency's assertion that Ramsey had executed his acceptance of Employee's resignation on September 6, 2002, Employee contends that Agency did not act on his request for several weeks during which time he changed his mind and requested that his resignation be rescinded. As was mentioned above, this matter has undergone a lengthy review at the District of Columbia Superior Court ("Superior Court") wherein it was ordered that the parties exhaust all administrative remedies before continuing with civil litigation. Hence, the instant matter was filed and eventually assigned to the undersigned on or around June 11, 2015. Thereafter, the parties appeared for a Status Conference. During this conference, it was apparent that there existed a genuine issue as to whether the OEA may exercise jurisdiction over this matter. Accordingly, I ordered the parties to provide legal briefs regarding said issue. The parties have complied with my order. 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

Whether the Office may exercise jurisdiction over this matter.

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:

[1] *See* Agency's Reply Brief at 2 -3 (December 22, 2015).

> 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

Jurisdiction

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 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[2], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(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) A placement on enforced leave for ten (10) days or more.

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.[3] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[4] Agency correctly notes that Employee did not endure any adverse action. An employee that has standing to pursue an adverse action before the OEA must be in the Career or Educational service and must have been subjected to one of the adverse actions listed above. Of note, the impetus for all of the machinations that led to his removal started with Employee's decision to resign. If Employee had not submitted his resignation letter opting to resign and waived the 30 day waiting period he possibly could have avoided this protracted

[2] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[3] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[4] *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).

litigation effort. I find that Employee herein was not subjected to any of the enumerated final agency decisions that would provide standing to pursue a claim at the OEA. Accordingly, I further find that OEA lacks jurisdiction over this matter.

Resignation

The law is well settled with this Office, that there is a legal presumption that resignations and retirements are voluntary.[5] 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.[6] A resignation is considered involuntary "when the employee shows that resignation was obtained by agency misinformation or deception." [7] 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 resign. He must also show "that a reasonable person would have been misled by the Agency's statements."[8]

The relevant facts of this matter are that Employee was not subjected to an adverse action and on his volition opted to resign from service. Employee even went so far as to ask that the 30 day waiting period be waived. Notwithstanding Employee's contention to the contrary, the next calendar day, Chief Ramsey accepted Employee's request. Eventually, Employee regretted his decision and tried to rescind his request but at that point it was too late. MPD had already accepted his resignation and was moving forward without Employee as part of its ranks.[9] I find that Employee voluntarily initiated his request to resign.[10] I further find that he was not under a

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[5] *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975)

[6] *Id*. at 587.

[7] *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).

[8] *Id.*

[9] Once an employee voluntarily resigns from her job, the employer's decision not to accept a subsequent withdrawal of that resignation does not transform the employee's act into an involuntary one. *Watson v. D.C. Water & Sewer Auth.*, 923 A.2d 903, 906-07 (D.C. 2007) (quoting *Wright v. d.C. Dep't of Employment Servs.*, 560 A.2d 509, 513 (D.C. 1989))); *see also Settlemire v. D.C. Office of Employee Appeals*, 898 A.2d 902, 906 (D.C. 2006) (citing analogous federal authority that "voluntary retirement, like a resignation, results in the employee's complete separation from the Federal service – a separation which, after it becomes effective, may not thereafter be revoked or withdrawn at his option") (quoting *Taylor v. United States*, 591 F.2d 688, 690 (Ct. Cl. 1979) (affirming OEA decision that it lacked jurisdiction to review employee's reduction-in-force claim because he had voluntarily retired rather than be terminated).

[10] "[A] retirement request initiated by an employee is presumed to be a voluntary act." *Keyes v.District of Columbia*, 372 f.3d 434, 439 (D.C. Cir. 2004) (quoting *Schultz v. United States Navy*, 810 F.2d 1133, 1136 (Fed. Cir. 1987)). "A resignation, when voluntary, is essentially an unconditional event the legal significance and finality of which cannot be altered by the measure of time between the employee's notice and the actual date of departure from the job. An employer who accepts an unequivocal notice of resignation from an employee is entitled to rely upon it . . . unless, of course, the employer chooses to return to status quo by rehiring the employee, or accepting a retraction of the notice." *Wright v. D.C. Dep't of Employment Servs.*, 560 A.2d 509, 512 (D.C. 1989) (quoting *Guy Gannett Publ'g Co. v. Maine Employment Sec. Comm'n*, 317 A.2d 183, 187 (Me. 1974)).

credible threat of a pending adverse personnel action. I also find that this represents another reason why this matter should be dismissed.

Conclusion

Taking into account the discussion above, I find that Employee has failed to meet his burden of proof regarding the OEA's ability to exercise jurisdiction over the instant matter.[11][12] Accordingly, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

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

FOR THE OFFICE:

_____
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[11] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[12] Since I have found that he OEA lacks jurisdiction over this matter, I am unable to address the factual merits, if any, contained within Employee's petition for appeal.