THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
THERESA FRALEY,	)	OEA Matter No. J-0048-08R10
Employee	)	
	)	Date of Issuance: July 16, 2012
	)	
D.C. PUBLIC SCHOOLS	)	
(DIVISION OF TRANSPORTATION),	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Theresa Fraley ("Employee") worked as a Bus Attendant with the D.C. Public Schools, Division of Transportation ("Agency"). On January 30, 2008, Employee was terminated from her position.[1] She challenged the termination by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on February 19, 2008. The matter was assigned to an OEA Administrative Judge ("AJ") who informed Employee that her Petition for Appeal was incomplete and ordered her to submit additional information.[2] The AJ further alerted Employee

[1] It is unclear from the record why Employee was terminated. Attached to Employee's Petition for Appeal is a letter from Agency which provides that "by mutual agreement[,] your employment with the Division of Transportation is hereby terminated immediately. You have agreed to voluntary[ily] waive any grievance and appeal rights [as] so indicated by your signature below. You are advised that should you apply for unemployment compensation[,] the Division of Transportation will not oppose your claim." *Petition for Appeal*, p. 7 (February 19, 2008).

[2] The Order stated that Employee did not sign the appeal form or describe the action being appealed. Therefore, pursuant to OEA Rule 609.3, the AJ ordered Employee to submit:

a) a statement as to whether the employee requests an evidentiary hearing or oral argument;
b) a concise statement of the facts giving rise to the appeal;

that failure to submit the information requested could result in her appeal being dismissed.

Employee did not respond to the Order or submit any additional information. Consequently, on June 17, 2008, the AJ issued an Initial Decision which dismissed the matter. The AJ ruled that Employee's noncompliance with the Order constituted a failure to prosecute her appeal.[3]

Employee filed a Petition for Review with the OEA Board on November 3, 2009. She argued that she "did not receive the two letter[s] that were sent to [her]" and requested that the matter be reopened.[4] Because the Board could not definitively conclude that Employee received the AJ's Order or the Initial Decision, it granted her petition and remanded the matter to an AJ for further adjudication.[5]

On remand, the case was assigned to a new AJ, who again, noted that the appeal was incomplete. The AJ explained that Employee's appeal included a signed agreement between her and Agency which stated that she agreed to have her employment terminated. Additionally, she agreed to waive her grievance and appeal rights. Thus, the AJ issued an Order requiring Employee to submit additional information by December 27, 2010.[6]

Employee did not file any documents as requested by the AJ. Therefore, on February 1, 2011, he issued an Order for Good Cause Statement for Employee to explain her failure to respond by the ordered deadline. In response to the Order for Good Cause, Employee submitted

---

c) an explanation as to why the employee believe[d] the agency's action was warranted; and
d) a statement of the specific relief the employee [was] requesting.

Order to Employee to Submit Information, (May 19, 2008).

[3] *Initial Decision* (June 17, 2008).

[4] *Employee's Petition for Review (*November 3, 2009).

[5] *Theresa Fraley v. D.C. Public Schools (Division of Transportation), Opinion and Order on Petition for Review,* p. 2 (December 6, 2010).

[6] *Order to Employee* (December 17, 2010).

a letter to the AJ that stated "[o]n this day I was under a lot of stress. I took my medicine and [fell] asleep on the job. . . "[7] She also submitted a doctor's note dated March 8, 2008, which provided that she suffered from severe hypertension which was possibly stress induced.[8] Ultimately, Employee believed that Agency failed to investigate the incident which led to her removal. Therefore, she requested that she be reinstated and have her leave restored.[9]

On February 7, 2011, the AJ issued an Order Scheduling a Pre-hearing Conference and an Order to Agency. Both parties were required to file a Pre-hearing Statement by February 24, 2011. Agency was also ordered to submit its Answer to Employee's Petition for Appeal. Neither party responded, and the AJ issued an Order for Good Cause Statement for Agency to submit its Answer to Employee's Petition for Appeal by March 11, 2011.

On March 21, 2011, the AJ issued his Initial Decision. He ruled that Employee's resignation was voluntary. He reasoned that retirements are deemed voluntary unless an employee establishes that their retirement was the result of duress or coercion brought on by government action, misleading or deceptive information, or that they were mentally incompetent. Employee noted that she was under a lot of stress, but she failed to raise any of the arguments under the voluntary retirement exception. Therefore, the AJ dismissed her appeal for lack of jurisdiction.[10]

Employee filed a Petition for Review with the OEA Board on April 28, 2011. She did

---

[7] It is unclear which day Employee is speaking of in her response. *Employee's Good Cause Statement,* p.3 (February 4, 2011)
[8] It is also unclear why Employee included this particular physician's note with her filing. The date of her visit, March 8, 2008, was thirty-eight (38) days after she signed the termination of employment agreement with Agency. Further, the filing of her March 8, 2008 response was more than two years after the AJ's Order for Good Cause Statement. *Id.* at 1.
[9] *Id.* at 3.
[10] *Initial Decision,* p. 3-4 (March 21, 2011).

not present any legal arguments or claims for which relief could be granted. The petition simply stated that she " . . . would like to have the court decision appeal[ed]. This is a [P]etition for [R]eview."[11]

There are several reasons why this Board must dismiss Employee's Petition for Review. The first, is that jurisdiction has not been established in this case. D.C. Official Code § 1-606.03 and OEA Rule 604.1 provide that employees may appeal a final agency decision of a reduction-in-force ("RIF"); a performance rating which results in removal; or an an adverse action for cause that results in removal, reduction in grade, or suspension for ten (10) days or more.[12] It is unclear from the record which jurisdictional basis applies to the current case because Employee offers no arguments regarding her removal. The agreement signed by Employee and Agency simply provides that Employee is terminated immediately, and Agency would not interfere with

[11] *Petition for Review* (April 18, 2011).

[12] D.C. Official Code § 1-606.03 provides that

> An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which 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.

OEA Rule 604.1 states that

> Except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.1 et seq. or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:
> (a) a performance rating which results in removal of the employee;
> (b) an adverse action for cause that results in removal;
> (c) a reduction in grade;
> (d) a suspension for ten (10) days or more;
> (e) a reduction-in-force; or
> (f) a placement on enforced leave for ten (10) days or more.

Employee receiving unemployment compensation. This Board is unaware if Employee's removal was a performance evaluation resulting in removal, an adverse action taken for cause, or a RIF action. Hence, Employee failed to establish OEA's jurisdiction to consider her case.

Similarly, Employee's Petition for Review fails to provide any objections to the Initial Decision. OEA Rule 633.3 provides the objections that all Petitions for Review must have for the Board to grant it. OEA Rule 633.3 provides that

> the petition for review *shall* set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:
> (a) new and material evidence is available that, despite due diligence, was not available when the record closed;
> (b) the decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation, or policy;
> (c) The findings of the Administrative Judge are not based on substantial evidence; or
> (d) The initial decision did not address all material issues of law and fact properly raised in the appeal (emphasis added).

Because Employee's Petition for Review simply provides that she would like to have the court's decision appealed, it fails to raise any of the four objections listed. There was no evidence accompanying Employee's Petition for Review; thus, OEA Rule 633.3(a) is not applicable. Employee does not present any statutes, regulations, or policies in her Petition for Review to trigger OEA Rule 633.3(b). Similarly, Employee makes no substantial evidence arguments, nor does she take a position that the AJ failed to address any material issues of law and fact.[13]

[13]It should be noted that although Agency violated OEA Rule 609.1 which requires it to submit an Answer to Employee's Petition for Appeal, the AJ was still within his authority to render a decision that he deemed fit. OEA Rule 609.3 provides that "failure by the agency to file an answer within the time limit set forth in 607.2 shall constitute a default, and the Administrative Judge may, without further notice, render an appropriate decision." However, employees have the burden of proving OEA's jurisdiction over their case. OEA Rule 629.2 provides that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The Agency

The AJ also ruled that Employee voluntarily resigned from her position, and as a result, OEA lacked jurisdiction to consider the merits of her case. The Courts in *Bagenstose v. D.C. Office of Employee Appeals*, 888 A.2d 1155 (D.C. 2005) and *Keyes v. District of Columbia*, 362 U.S.App. D.C. 67, 372 F.3d 434 (2004) held that "for a resignation to be rendered involuntary on account of duress, three criteria must be met: [1] an agency imposes the terms of an employee's resignation, [2] the employee's circumstances permit no alternative but to accept, and [3] those circumstances were the result of improper acts of the agency."[14] Employee did not raise any of these arguments for us to assess if any of the exceptions for involuntary resignation are applicable.

Employee has not proven that OEA has the requisite jurisdiction to consider her case. She failed to provide even the basic information necessary to process her Petition for Appeal. Likewise, she offered no viable objections to the Initial Decision. Employee also neglected to raise an involuntary resignation argument, and her case lacked evidence to prove that she was removed for any reasons listed under D.C. Official Code § 1-606.03 and OEA Rule 604.1. Accordingly, we must dismiss Employee's Petition for Review.

---

shall have the burden of proof as to all other issues." Because Employee did not prove OEA's jurisdiction, the AJ properly dismissed her case.

[14] Citing *Schultz v. United States Navy*, 810 F.2d 1133, 1136 (Fed.Cir.1987); and *Edgerton v. Merit Sys. Protection Board*, 768 F.2d 1314, 1317 (Fed.Cir.1985).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

_____
Clarence Labor, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.