THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
VEDA GILES,	)	OEA Matter No. 2401-0022-05
Employee	)	
	)	Date of Issuance: July 24, 2008
v.	)	
	)	
DEPARTMENT OF EMPLOYMENT SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Veda Giles ("Employee") worked as a secretary with the Department of Employment Services ("Agency"). On January 3, 2005, she received a notice terminating her employment with Agency due to a reduction-in-force ("RIF") action.[1] Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") in which she made several arguments. She requested a promotion from a DS Grade 9 to a DS Grade 11 or 12 and requested that she be allowed to become a member of the Union. Additionally, she wanted her title changed from secretary to case manager. Employee also argued that if she had to lose her job, she should be paid $25,000 for pain and

[1] *Agency's Response to Employee's Petition for Appeal*, Tab C (March 14, 2005).

suffering caused by Agency.[2]

On March 14, 2005, Agency filed its Response to Employee's Petition for Appeal. It argued that forty positions were abolished due to a reduction in its 2005 budget. Agency claimed that it made no errors in removing Employee and denied any wrongdoing in conducting the RIF action taken against her. It also determined that Employee's Petition for Appeal was filed prematurely.[3] Agency's final argument was that Employee failed to raise any claims that it did not follow Chapter 24 of the District Personnel Manual when removing her from her position. It also pointed out that the relief sought by Employee was outside the scope of OEA's authority. Therefore, Agency requested that OEA deny Employee's Petition for Appeal.[4]

Before the Administrative Judge ("AJ") issued his Initial Decision in this matter, it was discovered that Employee retired from Agency before her effective RIF date. The AJ required both parties to submit Pre-hearing Statements and concluded that OEA's jurisdiction was not established because of Employee's voluntary retirement from Agency.

The AJ held in his Initial Decision that Employee received thirty days notice that her position would be abolished due to the RIF. He also provided that Employee failed to prove that she involuntarily retired. She did not offer any evidence that she relied on misinformation from Agency or that it deceived her when making her decision to retire. Therefore, he found that OEA lacked jurisdiction to consider Employee's appeal. Conse-

[2] *Petition for Appeal*, p. 9 (February 8, 2005).
[3] Employee's date of separation from Agency was February 11, 2005, but her petition was filed on February 8, 2005.
[4] *Agency's Response to Employee's Petition for Appeal,* Tab B (March 14, 2005).

quently, Employee's petition was dismissed.[5]

On January 12, 2006, Employee filed a Petition for Review appealing the AJ's Initial Decision. She asserted that she retired after being pressured to do so by Agency. She also provided that she did not sign the form which stated that she voluntarily retired. Employee also argued, as she did in her Petition for Appeal, that she was overlooked for promotions while working at Agency.[6]

According to *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), an employee's decision to retire is deemed voluntary unless the employee presents sufficient evidence to establish otherwise. For a retirement to be considered involuntary, an employee must establish that the retirement was due to agency's coercion or misinformation upon which the employee relied. The burden rests on Employee to show that she involuntarily retired. Such a showing would constitute a constructive removal and allow OEA to adjudicate her matter.

As the AJ held, Employee failed to establish that Agency deceived her or gave her misleading information. She stated that she was being pressured by an Agency representative to participate in retirement counseling and that she informed the representative that she was not interested in retiring. After receiving two follow-up messages from Agency representatives, Employee voluntarily returned the call and decided to schedule an appointment with a representative. Employee stated in a memo to OEA that the pressure was on, and she did not want to lose her benefits if she was not

[5] *Initial Decision,* p. 2-3 (December 13, 2005).
[6] *Employee's Petition for Review,* p. 2-3 (January 12, 2006).

hired by another agency.[7]

A mere assertion that she was pressured by an Agency representative to participate in retirement counseling is not enough to prove that Employee involuntarily retired. Initially, Employee appeared firm in her decision not to retire. Then the day before her effective RIF date, she seemingly had second thoughts. It was at that point that Employee contacted Agency's representative and after asking the representative a few questions, Employee decided to meet to discuss retirement options. This meeting was clearly on Employee's terms. It appears to this Board that only after careful consideration, Employee decided that keeping her benefits was more important than challenging the RIF action.

Similar to the employee in *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975), Ms. Giles had the option of retiring or challenging the removal action taken against her by Agency. She chose to retire instead of standing firm and questioning the validity of the RIF. As for Employee's claim that she did not want to lose her benefits, OEA has held that financial hardship is not sufficient to make a retirement rise to the level of involuntariness.[8] Therefore, being faced with a difficult situation does not negate the fact that Employee voluntarily retired.

Employee also argued that she did not sign the form which stated that she elected to retire. However, after careful review of the form there appears to be no place that requires her signature. Even if there were a designated signature area, Employee does not

[7] *Memorandum to OEA's Executive Director*, p. 1 (March 9, 2005).
[8] *Banner v. D.C. Public Schools*, OEA Matter No. 2401-0169-96, August 20, 1998.

deny receiving retirement pay. She cannot benefit from the receiving the retirement and then assert that the retirement is not valid because her signature is not present on the Notification of Personnel Action Form.

Assuming arguendo that Employee was able to prove that she involuntarily retired, she offered no arguments that Agency failed to follow the RIF procedures by denying her thirty days notice or failing to afford her one round of lateral competition. As Agency provided in its Response to Employee's Petition for Appeal, she requested relief that OEA does not have the authority to grant. This Board does not have the statutory authority to make her a member of the Union, nor can we require Agency to pay her for pain and suffering. Likewise, we cannot order Agency to promote her.

As a result of Employee's failure to prove that her retirement was involuntary, this case is dismissed on the basis that OEA lacks the jurisdiction to adjudicate this matter. Accordingly, we hereby deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

_____
Sherri Beatty-Arthur, 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.