

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
CHARLENE COLLINS,	)	
Employee	)	OEA Matter No. 1601-0092-14
	)	
v.	)	Date of Issuance: September 10, 2014
	)	
DEPARTMENT OF HUMAN SERVICES,	)	
Agency	)	MONICA DOHNJI, Esq.
_____	)	Administrative Judge
Charlene Collins, Employee <i>Pro Se</i>		
Robert C. Warren, Jr., Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On June 24, 2014, Charlene Collins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Human Services’ (“Agency” or “DHS”) decision to terminate her from her position as a Social Service Assistant, effective June 6, 2014. On July 28, 2014, Agency submitted its Answer to Employee’s Petition for Appeal noting that Employee’s Petition for Appeal be dismissed as Employee retired from District of Columbia government employment on June 30, 2014.

I was assigned this matter on July 30, 2014. Subsequently, I issued an Order wherein, I ordered Employee to address the jurisdiction issue in this matter. Employee’s brief was due on or before August 11, 2014, and Agency had the option to submit a reply brief on or before August 18, 2014. On August 26, 2014, Employee submitted her brief addressing the jurisdiction issue in this matter. The record is now closed.

**JURISDICTION**

The jurisdiction of this Office has not been established.

**ISSUE**

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.<sup>1</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>2</sup> 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 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.<sup>3</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”<sup>7</sup> The employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making a decision to retire. An employee must also show “that a reasonable person would have been misled by the Agency’s statements.”<sup>8</sup>

---

<sup>1</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>2</sup> See *Brown v. District of Columbia Public School*, 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).

<sup>3</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>4</sup> See *Brown v. District of Columbia Public School*, 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).

<sup>5</sup> See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Bagenstose v. District of Columbia Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).

<sup>6</sup> *Id.* at 587.

<sup>7</sup> 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.2d 937 (Fed. Cir. 1984).

<sup>8</sup> *Id.*

*Analysis*

In this case, Agency argues that Employee voluntarily retired on June 30, 2014, and as such, her Petition for Appeal should be dismissed. Employee does not dispute this fact. Employee states in her brief that she retired from DC Department of Human Services on June 30, 2014. Employee further noted that “Thank you for allowing me to retire vs. being removed from my position, I sincerely appreciate it.” Employee also included her Standard Form (“SF”) 50 which highlights her retirement effective date of June 30, 2014.

Accordingly, I find no *credible* evidence of misrepresentation, misinformation or deceit on the part of Agency in procuring the retirement of Employee. Further, Employee has not provided any evidence to prove that Agency deceived her or gave her misleading information with regards to her retirement. And there is no evidence that Agency misinformed Employee about her option to retire. I further find that the facts and circumstances surrounding Employee’s retirement were Employee’s own choice and she has enjoyed the benefits of retiring. Based on the foregoing, I conclude that Employee’s retirement was voluntary. I further find that this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

---

MONICA DOHNJI, Esq.  
Administrative Judge