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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SHARON FARMER,)	
Employee)	OEA Matter No. 2401-0125-10
)	
v.)	Date of Issuance: May 4, 2012
)	
DISTRICT OFCOLUMBIA PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
)	Administrative Judge
Torrance J. Colvin, Esq., Employee’s Representative		
Sara White, Esq., Agency’s Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 2, 2009, Sharon Farmer (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) action of abolishing her position through a Reduction-In-Force (“RIF”). Employee received her RIF notice on October 2, 2009. The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was an Assistant Principal at Dunbar Senior High School (“Dunbar”). Employee was serving in Educational Service status at the time her position was abolished. Prior to her appointment as Assistant Principal at Dunbar, Employee held a teaching position. On December 14, 2009, Agency filed an Answer to Employee’s appeal.

I was assigned this matter on or around February 6, 2012. Thereafter, on February 10, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Agency complied, but Employee did not. Subsequently, on March 27, 2012, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on her failure to provide a response to my February 10, 2012, Order. Employee had until April 10, 2012, to respond. On April 10, 2012, Employee submitted her response to the Orders. 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.

ANALYSIS AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force (“RIF”) pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor’s Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.¹

In her petition for appeal, Employee submits that Agency failed to follow guidelines and policies regarding RIF. Employee explains that prior to the RIF, her evaluation had been excellent. Employee also notes that her competitive level score card was not filled out fairly.² Additionally, in her brief, Employee states that she involuntarily retired upon receiving the RIF Notice.³ Employee explains that the RIF letter and all subsequent communication with DCPS indicated that her only options were to either retire or accept the RIF.⁴ Employee further notes that, absent discovery, Employee is unable to make claims that there was deception; however, because DCPS provided her with inaccurate information when she asked to revert to her former teaching position, her retirement should be treated as a constructive removal.⁵ Employee explained that her inclusion in the RIF was improper, and that she was entitled by law, to revert to her previous position at her previous pay grade. Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation.⁶

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated in her brief that she involuntarily retired after she was RIFed. 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,

¹ See *Agency’s Answer*, Tab 1 (December 14, 2009); *Agency’s Brief* dated March 5, 2012.

² *Petition for Appeal* (November 2, 2009).

³ *Employee’s brief* (April 10, 2012).

⁴ *Id.*

⁵ *Id.* at p. 3.

⁶ *Agency’s Answer*, *supra*.

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

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to OEA Rule 628.1, *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.⁷ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁸ The issue of an Employee’s voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA has consistently held that, there is a legal presumption that retirements are voluntary.⁹ 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.¹⁰ A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”¹¹ 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 her decision to retire. She must also show “that a reasonable person would have been misled by the Agency’s statements.”¹²

Here, Employee contends that her retirement was not voluntary because the RIF letter and all subsequent communication with Agency indicated that Employee’s only options were to either retire or accept the RIF. Employee maintains that her retirement should be treated as a constructive removal because “[a]ny individual in Ms. Farmer’s position would have been misled by the written documentation provided to Ms. Farmer and the oral statements made to her.”¹³ She further alleges that DCPS provided her inaccurate information when she asked to revert to her former position.¹⁴ I disagree with Employee’s contentions. The RIF Notice simply informed Employee of her options – appeal the RIF or retire if you qualify, and not a *mandate to retire*. The RIF Notice also provided Employee with details on how to go about getting appeal or retirement information. Also, I find that given the circumstances, thirty (30) days is a reasonable time to get information, seek counsel and make an informed decision.

⁷ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁸ 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).

⁹ 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).

¹⁰ *Id.* at 587.

¹¹ 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).

¹² *Id.*

¹³ *Employee’s brief, supra* at p. 3.

¹⁴ *Id.*

Regardless of Employee's protestations, the fact that she chose to retire instead of continuing to litigate her claims voids the Office's jurisdiction over her appeal. I find that the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Employee's choice to retire in the face of a seemingly unpleasant situation, instead of being RIFed does not make Employee's retirement involuntary. Employee also asserts that "absent discovery...Ms. Farmer is unable to make the claim that there was deception."¹⁵ I disagree. According to OEA Rule 617.6, *supra*, discovery may be commenced after this Office notifies the agency that the employee has filed a petition. Here, discovery commenced on November 12, 2009. Employee, either on her own, or through counsel, could have completed all or at least some of the legwork necessary in order to prepare for her "day in court" for two years. She opted to sit and wait for the matter to be assigned. Employee could have obtained counsel, propounded discovery requests, attempted mediation, or completed any number of other logistical items in order to prepare for the moment when she would be able to actively prosecute her appeal. Employee could have started her preparation from the moment she received her RIF notice. Instead, she chose to sit and wait, and she must now live with the consequences.

Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire. Based on the foregoing, I find that Employee's retirement was voluntary.¹⁶ 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

¹⁵ *Id.*

¹⁶ 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).