

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Sammie J. Williamson)	OEA Matter No. 2401-0111-04
Employee)	
)	Date of Issuance: May 11, 2005
v.)	
)	Sheryl Sears, Esq.
)	Administrative Judge
D.C. Public Schools)	
Agency)	

Sammie J. Williamson, *Pro Se*
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On May 27, 2004, Karen R. Jackson, Ph.D., Chief Human Resources Officer, issued a letter to notify Employee that her position as an English Teacher would be abolished effective on June 30, 2004. Employee filed an appeal with this Office on June 28, 2004. However, she retired from service effective on June 30, 2005 in lieu of separation. The parties convened for a pre-hearing conference on May 11, 2005.

JURISDICTION

The jurisdiction of this Office over Employee's appeal has not been established.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction . . ."

ANALYSIS AND CONCLUSIONS

OEA Rule 604.1, 46 D.C. Reg. at 9313 provides, in relevant portion, as follows:

Effective October 21, 1998, and 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 [e]ffecting. . . (c) A reduction-in-force.

However, as noted above, Employee was not removed by RIF but, instead, retired.

This Office does not have jurisdiction to review a voluntary retirement. However, an involuntary retirement is treated as a constructive removal and is within the jurisdiction of this Office. See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975) and *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-0224-96 (October 23, 2001), ___ D.C. Reg. ___ (). The question is whether Employee's retirement was voluntary. There is a presumption in the law that a retirement is voluntary. Even when elected under difficult circumstances, a voluntary retirement does not constitute an adverse action by an agency. See *Bertha Dunham v. D.C. Public Schools*, OEA Matter No. 2401-0291-96 (March 9, 2000) affirmed by Opinion and Order on Petition for Review (September 28, 2000).

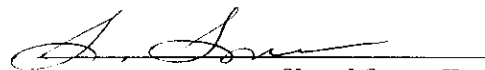
A retirement is only considered involuntary when it has been "obtained by agency misinformation or deception." See *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984). To prove that a retirement was involuntary, an employee must present evidence that Agency officials coerced her or gave her misinformation upon which she relied. It must also be clear that a reasonable person would have relied upon the misinformation. *Id.*

Employee did not claim, at any point during this appeal, that an agency official coerced or misinformed her before she decided to retire. Thus, the retirement was voluntary. This Office does not have jurisdiction over this appeal and it will be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:



Sheryl Sears, Esq.
Administrative Judge