THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROSALYN RIGGS,	)	
Employee	)	OEA Matter No.: 1601-0363-10
	)	
v.	)	Date of Issuance: July 3, 2012
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
	)	

Craig Ellis, Esq., Employee Representative
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 16, 2010, Rosalyn Riggs ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of terminating her position as a Clinical Psychologist. Employee received notification of her termination on July 2, 2010, with an effective date of July 16, 2010. Employee was serving in Educational Service status at the time her position was terminated.

I was assigned this matter on April 19, 2012. On April 20, 2012, I ordered the parties to submit briefs addressing whether OEA has jurisdiction over this matter due to Employee's apparent retirement ("April 20th Order"). Employee's brief was originally due on May 2, 2012. On April 26, 2012, Employee requested an extension of time to respond to the April 20th Order. On April 27, 2012, I issued an Order wherein I granted Employee's request for an extension of time, with a revised deadline of May 16, 2012. Employee has timely submitted her brief in this matter. Agency, who had an option to address jurisdiction in this matter, has not submitted a brief. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That 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.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Employee asserts in her brief that she "chose to retire so as not to lose her health benefits that were necessary to her treatment of a chronic disease."[1] Employee's assertion that she involuntarily retired raises a question as to whether OEA has jurisdiction over this appeal.

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 628.2, 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.[2] Therefore, issues

[1] Employee's Brief at p. 1 (May 15, 2012).

regarding jurisdiction may be raised at any time during the course of the proceeding.[3] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. The law is well settled with this Office that there is a legal presumption that retirements are voluntary.[4] Furthermore, OEA has consistently held that it lacks jurisdiction to adjudicate a voluntary retirement.[5] However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.[6] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[7] The Employee must prove that her retirement was involuntary by showing that (1) the retirement resulted from undue coercion or misrepresentation by Agency; (2) Employee relied upon such information when making her decision to retire; and (3) a reasonable person would have been misled by Agency's statements.[8]

Here, Employee contends that "despite the fact that she had a sound basis to attack her termination," she chose to retire because she is an insulin-dependent diabetic and "needed to make sure that she had insurance to help cover the expensive necessary medication and supplies." Employee further explained that rather than being faced with no insurance coverage resulting from the termination of her position, she was forced to retire.[9]

While Employee faced the difficult choice between retiring and or facing termination with a loss of medical insurance, I disagree with Employee's contention that she was forced to retire. Here, the record shows that Agency provided Employee with a termination notice on July 2, 2010, with an effective date of July 16, 2010.[10] Agency's notice informed Employee that she was rated 'ineffective' under Agency's IMPACT Assessment System, resulting in her termination as a Clinical Psychologist. Nothing in the record or the termination notice corroborate that Employee was threatened, coerced, or given a *mandate to retire* by Agency. Further, Agency has submitted Employee's SF-50, showing an effective retirement date of July 16, 2010. Thus, I find that Employee elected to voluntarily retire in lieu of being terminated.[11]

Regardless of Employee's protestations, the fact that she chose to retire instead of

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[2] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[3] *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).
[4] *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).
[5] *See* Deborah Gray-Avent v. D.C. Department of Human Resources, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2008); Adele LaFranque v. D.C. Public Schools, OEA Matter No. 2401-0032-10 (February 8, 2011); Curtis Woodward v. D.C. Public Schools, OEA Matter No. 2401-0029-10 (February 8, 2011).
[6] *Christie*, 518 F.2d at 587.
[7] *See Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984); *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995).
[8] *Covington*, 750 F.2d. at 942.
[9] *See* Employee Brief at p. 3 (May 15, 2012).
[10] Agency Answer, Tab 2 (September 20, 2010).
[11] *Id*. at Tab 1.

continuing to litigate her claims voids the Office's jurisdiction over her appeal. Employee's choice to retire in the face of a seemingly unpleasant situation – lack of medical insurance due to termination, does not make Employee's retirement involuntary.[12]

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 or appeal her termination with this Office. Based on the foregoing, I find that Employee's retirement was voluntary.[13] As such, 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

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

_____
STEPHANIE N. HARRIS, ESQ.
ADMINISTRATIVE JUDGE

[12] The court in *Covington* held that "[t]he fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives does not make an employee's decision any less voluntary." *Covington*, 750 F.2d at 942.

[13] 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*, 518 F.2d at 587-588. (citations omitted).