THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MARY GRANT,	)	
Employee	)	OEA Matter No. 2401-0198-10
	)	
v.	)	Date of Issuance: May 14, 2012
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

John Mercer, Esq., Employee's Representative
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 1, 2009, Mary Grant ("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"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was a Science Teacher at Eastern High School ("Eastern"). Employee was serving in Educational Service status at the time her position was abolished. On December 31, 2009, Agency filed an Answer to Employee's appeal noting that this Office lacks jurisdiction since Employee voluntarily retired.

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 timely filed its brief. However, Employee submitted three (3) motions for enlargement to file brief due to a death in Employee's family. All three (3) motions were granted.[1] Employee has filed her brief. The record is now closed.

[1] Employee's first Motion was filed on March 23, 2012, and it was granted on the same day via email and by a subsequent Order dated March 26, 2012. Employee was granted two (2) weeks extension from the date of the

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.

FINDINGS OF FACT, 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.[2]

Employee submits that Agency failed to follow appropriate RIF procedures and that her termination was based on age discrimination.[3] Additionally, Employee contends that she involuntarily retired in March 2010 due to financial reasons. She contacted the DCPS Human Resources office in March of 2010, to inquire about her retirement benefits, and on March 3, 2010, she applied for retirement.[4] Employee also asserts that she was not granted the same opportunities and information regarding her options and financial information like similarly situated RIF employees.[5] Employee also explains that she was on medical leave when she was RIFed, and Agency's failure to provide her with thirty (30) days written notice prior to the effective date of her RIF increased the pressure and amounted to insufficient time to make a fully informed, voluntary decision.[6]

Agency submits that because Employee voluntarily retired, this Office lacks jurisdiction in this matter.[7] Agency maintains that the RIF Notice dated October 2, 2009, gave Employee an option to retire if she met certain criteria. Agency also maintains that, Employee was informed of the consequences of retiring in lieu of being RIFed. Specifically, Employee was informed that if she chose to retire, upon receiving the RIF notice, she may not have the option of appealing her RIF with OEA.[8] Additionally, Agency asserts that Employee also had the option to speak with Human Resources in the event she had questions about retirement. Agency also 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.

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motion within which to file her brief. The second Motion was filed on April 5, 2012, and it was granted on April 6, 2012, giving Employee another two (2) weeks. The last Motion was filed on April 18, 2012, and was granted on April 20, 2012, giving Employee yet another two (2) weeks extension within which to file her brief.

[2] See *Agency's Answer*, Tab 1 (December 31, 2009); *Agency's Brief* (March 5, 2012).

[3] *Petition for Appeal* (December 1, 2009).

[4] Employee's Brief, p.g. 4 (May 7, 2012).

[5] *Id*.

[6] *Id*.

[7] *Agency's Brief* (March 5, 2012).

[8] *Id.*

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated that her retirement from Agency after being RIFed was involuntary. 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 629.2, 46 D.C. Reg. 9317 (1999), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 629.1, *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.[9] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[10] 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.[11] 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.[12] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[13] The Employee must prove that his/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."[14]

Here, Employee contends that her retirement was not voluntary because did not have enough time to make an informed decision; she had health issues; and she was not provided with the same information and options provided to other employees regarding finances. I disagree. The RIF Notice simply informed Employee and all the other employees affected by the RIF of their options – appeal the RIF or retire if you qualify. This was not a mandate to retire. The RIF

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[9] *See Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[10] *See Brown v. District of Columbia Pub. Sch.*, 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).
[11] *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).
[12] *Id*. at 587.
[13] *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.2.d 937 (Fed. Cir. 1984).
[14] *Id.*

Notice also provided Employee with details on how to go about getting appeal or retirement information. Employee initiated contact with the Office of Human Resources ("HR") in March 20120 to inquire about her retirement benefits due to financial reasons. Also, she did not apply for retirement until March of 2010, more than five (5) months from when she received her RIF notice. She had enough time to get information, seek counsel and make an informed decision. Regardless of Employee's protestations, the fact that she chose to retire instead of continuing to litigate her claims voids OEA's jurisdiction over her appeals. Employee's choice to retire in the face of a seemingly unpleasant situation - financial hardship does not make Employee's retirement involuntary. And the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee.

Simply choosing to retire over being RIFed does not make an employee's retirement involuntary. There is no evidence that Agency misinformed Employee about her option to retire when she called HR in March 2012, or in the RIF Notice. Based on the foregoing, I find that Employee's retirement was voluntary.[15] 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 matter.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

[15] 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).