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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---------------------|---|-----------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| GERTRUDE HOWARD |) | OEA Matter No. 2401-0181-04 |
| Employee |) | |
| |) | |
| v |) | Date of Issuance: October 5, 2005 |
| |) | |
| D.C. PUBLIC SCHOOLS |) | Muriel A. Aikens-Arnold |
| Agency |) | Administrative Judge |
| _____ |) | |

Gertrude Howard, *Pro se*
Harriet Segar, Esq., Office of the General Counsel

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 29, 2004, Employee, a Teacher, filed a Petition for Appeal from Agency's action to separate her from service effective June 30, 2004 as a result of a reduction-in-force due to Agency's serious financial challenges. Agency was notified by this Office regarding this appeal on December 16, 2004 and directed to respond by January 21, 2005. Agency filed its response on January 19, 2005.

This matter was assigned to this Judge on April 19, 2005. On June 3, 2005, an Order To Convene A Prehearing Conference was issued scheduling

said conference on June 28, 2005 with prehearing submissions due by June 23, 2005. On June 24, 2005, Agency filed its prehearing statement in which it contends that Employee elected to retire rather than be subject to the abolishment of her position; and requested dismissal of this matter on that basis. No submissions were filed by Employee. The record is closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed based on lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Both parties appeared at the prehearing conference where Employee argued that Agency wrongfully terminated her based on: 1) rating her against a few teachers in her school ; and 2) that she competed against other teachers who were not certified. Agency responded that Employee competed with teachers in her competitive level and that not all teachers in a school are in the same competitive level. More significantly, Agency reiterated that Employee voluntarily retired. Employee confirmed that she had retired because she needed the money and is currently receiving a monthly check.

This Office has no jurisdiction to review a voluntary retirement. Although an involuntary retirement is treated as a constructive removal and within the jurisdiction of this Office, there is no question that Employee chose to retire rather than wait for Agency to remove her through a reduction-in-force. Even when elected under difficult circumstances, a voluntary retirement does not constitute an adverse action.¹ Therefore, this

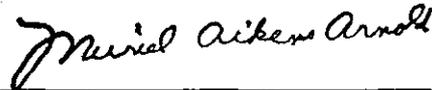
¹ See *Bertha Dunham v. D.C. Public Schools*, OEA Matter No. 2401-0291-96 (March 9,

Judge concludes that this matter should be dismissed.

ORDER

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

FOR THE OFFICE:



MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge