THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SYLVIA JOHNSON,	)	OEA Matter No. 2401-0143-08
Employee	)	
	)	Date of Issuance: July 30, 2010
	)	
DEPARTMENT OF	)	
HUMAN RESOURCES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sylvia Johnson ("Employee") worked as a Human Resource Specialist with the Department of Human Resources ("Agency"). Employee was notified that she was being separated from service as the result of a Reduction-in-Force ("RIF"). Employee's termination was effective July 11, 2009.

On August 8, 2008, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). In her appeal, Employee argued that 1) employees with less seniority were transferred to other DC agencies to avoid being terminated as a result

of the RIF; 2) Agency failed to afford her one round of lateral competition in her competitive level; 3) the RIF/realignment was beyond the Mayor's authority.[1]

The Administrative Judge held a pre-hearing conference on March 26, 2009 to discuss whether this Office had jurisdiction over Employee's appeal. An Order was issued on March 30, 2009, directing Agency to submit further documentation to complete the record. On July 28, 2009, the AJ issued an Initial Decision dismissing Employee's Petition for Appeal. The AJ held that OEA lacked jurisdiction to consider the appeal because Employee could not show that she involuntarily retired. The AJ held that there is a presumption that retirement is voluntary. Because voluntary retirements do not fall under OEA's purview, the AJ did not consider the merits of the case. The AJ noted; however, that involuntary retirement does fall within this Office's jurisdiction. The Initial Decision stated that Employee failed to show that Agency officials coerced her or gave her misinformation upon which she relied when retiring. Therefore, Employee's retirement was deemed to be voluntary and her appeal was dismissed.

Employee disagreed with the Initial Decision and filed a Petition for Review on August 31, 2009. In her appeal, Employee alleges that the Initial Decision was not based on substantial evidence regarding the issue of jurisdiction. Employee argues that she was not given an opportunity to present evidence to support her contention that she involuntarily retired. According to Employee, the RIF notice she received was misleading and erroneous because it was unclear as to her right to seek Discontinued Service Retirement Benefits ("DSR") and the impact that DSR would have on her appeal rights to OEA. Furthermore, Employee believes she should have been given an opportunity to rebut Agency's documents concerning her retirement.

[1] Amended Petition for Appeal, Exhibit A (March 24, 2009).

The issue to be decided here is whether Employee's retirement was voluntary. According to *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975), an employee's decision to retire is deemed voluntary unless the employee presents sufficient evidence to establish otherwise. For a retirement to be considered involuntary, an employee must establish that the retirement was due to agency's coercion or misinformation upon which the employee relied. The burden rests on Employee to show that she involuntarily retired. Such a showing would constitute a constructive removal and allow OEA to adjudicate her matter. D.C. Official Code §1-606.03 (2001) limits this Office to determine whether an employee was: 1) afforded one round of lateral competition; and 2) given written notice at least thirty (30) days prior to the effective date of his or her separation.

On June 25, 2008, Employee signed an "Employee Reduction-in-Force Counseling" form wherein she verified that she had received information related to, amongst other topics, retirement options, severance pay; and appeal rights.[2] Employee has not proffered that her signature confirming the RIF training was a result of misinformation or coercion. Moreover, Employee signed an Application for Immediate Retirement on July 9, 2008. Similar to the employee in *Christie v. United States*, *supra*, Employee had the option of retiring or challenging the removal action taken against her by Agency.

As for Employee's claim that she did not have a full and fair opportunity to establish that she did not voluntarily retire, OEA Rule 629.2 states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness." Her

[2] *Answer to Petition for Appeal*, Exhibit 3 (September 19, 2008). The RIF counselor noted that Employee requested a severance pay worksheet as well as retirement counseling.

failure to make these arguments in her Petition for Appeal or in her response to the AJ's order regarding jurisdiction, limits the Board's ability to respond to them.

Even if Employee was able to show that her retirement was a result of misleading information or coercion, the record reflects that she was in fact afforded one round of lateral competition and thirty days written notice of separation.[3] While Employee was faced with a difficult decision to make as a result of the RIF, her election did not obviate the voluntariness of her retirement.

As a result of Employee's failure to prove that her retirement was involuntary, this case is dismissed on the basis that OEA lacks the jurisdiction to adjudicate this matter. Accordingly, we hereby deny Employee's Petition for Review.

[3] Agency's Brief in Support of its Motion to Dismiss, Exhibit 3-5 (June 6, 2008).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

_____
Clarence Labor, Jr., Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after the formal notice of the decision or order sought to be reviewed.