THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the matter of :	
SARA LEE Employee	OEA MATTER NO. 2401-0091-03
v.	DATE OF ISSUANCE: May 2, 2006
DEPARTMENT OF MENTAL HEALTH Agency	SHERYL SEARS, ESQ. ADMINISTRATIVE JUDGE

Thelma Chichester-Brown, Esq., Agency Representative
Lewis Norman, Employee Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

The following facts are undisputed. Employee was a Health Systems Specialist. On February 28, 2003, Agency issued a notice of proposal to separate her pursuant to a reduction in force. The prospective separation date was April 4, 2003. Instead, on that date Employee separated from Agency by discontinued service retirement. On April 21, 2003, Employee filed an appeal with this Office. Employee claims that she was involuntarily removed and seeks to invoke the jurisdiction of this Office.

Employee and Agency appeared for a pre-hearing conference and submitted documentary exhibits and arguments in support of their positions. The record in this matter is now closed.

JURISDICTION

The jurisdiction of this Office over this 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 . . ." The burden of proof is by a "preponderance of the evidence." In accordance with OEA Rule 629.1, a "preponderance of the evidence," is "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." In order to invoke the jurisdiction of this Office, Employee must show that it is more likely true than untrue that her retirement was involuntary.

ANALYSIS AND CONCLUSIONS

The Office of Employee Appeals was established by the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-601.01 *et seq.*, and has only that jurisdiction conferred upon it by law. In accordance with applicable law, OEA Rule 604.3, 46 D.C. Reg. at 9313, provides that the Office shall exercise jurisdiction over appeals filed after October 21, 1998, by an employee appealing a final agency decision that "effects an adverse action against him or her. . . ." Employee contends that she was the subject of a removal in the nature of an adverse action.

However, she retired. And there is a presumption in the law that a retirement is voluntarily. On the other hand, 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. ___ ( ). A retirement is only considered involuntary when it has been "obtained by agency misinformation or deception" or an employee chooses it under duress. *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). 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 in making the decision to retire.

Employee contends that her separation was the result of "involuntary, discontinued service, not optional retirement" because she "did not wish to retire." Instead Employee would have preferred to choose, without the pressure of imminent removal, a date for retirement that fit into her life plans. Employee could have chosen to allow the removal action to run its course and appeal on the merits. Instead, she elected "discontinued service retirement" to avoid removal. Employee has made no claim and proffered no evidence that would support a finding that Agency officials coerced her or gave her misinformation upon which she relied in making the decision to retire. Therefore, under the law, her decision to retire was voluntary.

This Office has no jurisdiction over an appeal from a voluntary retirement. Therefore, this matter must 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