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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DONESHA MOORE,)	
Employee)	
)	OEA Matter No.: J-0114-14
v.)	
)	Date of Issuance: September 25, 2014
OFFICE OF THE STATE,)	
SUPERINTENDENT OF EDUCATION)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge
Donesha Moore, Employee, Pro Se		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 22, 2014, Donesha Moore (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”). Employee previously worked as a Bus Attendant with the Office of the State Superintendent of Education (“OSSE” or “Agency”). This matter was assigned to me in August of 2014. On August 29, 2014, I issued an Order directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. On September 12, 2014, Employee submitted a response to the Order. Agency submitted a response brief on September 17, 2014. After reviewing the record, the Undersigned has determined that an evidentiary hearing is not warranted, as there are no material facts at dispute. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

“An employee may appeal 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....”

Thus, §101(d) restricted this Office’s jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) provides that 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 further states that 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.¹

This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ The issue of whether a resignation (or retirement) is voluntary or involuntary has been addressed in several cases before this Office. The typical case involves an employee who resigns or retires and then appeals to this Office, contending that their resignation or retirement was coerced or was a constructive discharge.⁴ In these cases, this Office has looked to the seminal case in the federal sector on the issue of whether a resignation or retirement is voluntary or involuntary.⁵ In these cases, this Office has looked to the seminal case in the federal sector on the issue of whether a resignation or retirement is voluntary or involuntary, *Christie v. United States*.⁶

¹ *Id.*

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, e.g., *Jefferson v. Department of Human Services*, OEA Matter No. J-0043-93, 47 D.C. Reg. 1587 (2000); *Alston v. D.C. Office of Department of Contracting and Procurement*, OEA Matter No. 1601-0010-09 (May 5, 2009).

⁵ *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975).

⁶ 518 F.2d 584 (Ct. Cl. 1975).

In *Christie*, the plaintiff claimed that she was wrongfully separated from the government by means of a coerced resignation. The U.S. Court of Claims held that, as a matter of law, the plaintiff's resignation was voluntary. Christie was a Veteran's preference employee of the U.S. Navy Department. She was issued an advance notice of proposed removal for cause for attempting to inflict bodily injury on her supervisor. She denied the charge. The agency issued a final decision to remove Christie, but allowed her an opportunity to accept a discontinued service retirement instead of being fired. Christie resigned and accepted the retirement benefit. Then, she filed an appeal with the U.S. Civil Service Commission (CSC). The CSC dismissed the appeal for lack of jurisdiction and the plaintiff appealed to the U.S. Court of Claims. In finding that the resignation was voluntary, the Court of Claims held that employee resignations are presumed to be voluntary. The Court further stated:

“This presumption will prevail unless plaintiff comes forward with sufficient evidence to establish that the resignation was involuntarily extracted. Plaintiff had the opportunity to rebut this presumption before the CSC. . . . Upon review of the facts as they appear in the record before the CSC, it is clear the plaintiff has failed to show that her resignation was obtained by external coercion or duress. Duress is not measured by the employee's subjective evaluation of the situation. Rather, the test is an objective one. While 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. This Court has repeatedly upheld the voluntariness of resignations where they were submitted to avoid threatened termination for cause. Of course, the threatened termination must be for good cause in order to precipitate a binding, voluntary resignation. But this “good cause” requirement is met as long as plaintiff fails to show that the agency knew or believed that the proposed termination could not be substantiated.”⁷

It is incumbent on the employee; therefore, to present sufficient evidence to prove that his or her resignation or retirement was involuntary. In her September 12, 2014 submission to this Office, Employee states that she was not called back for winter school bus routes in August of 2009, and that she questioned her manager regarding the matter. According to Employee, when she asked her manager, Janice Gleaton, about the status of her employment, Employee was told that she resigned from her position as a Bus Attendant. However, Employee argues that she did not resign, and that she never submitted a resignation letter to Agency or to the Department of

⁷ *Christie, supra* at 587-588. (emphasis in original). (citations omitted).

Human Resources.⁸ However, Agency's September 17, 2014 submission to this Office includes a copy of Employee's letter of resignation. The letter states in pertinent part that "I [Donesha Moore] am resigning as a bus attendant from DCPS, effective immediately...due to unforeseen circumstances."⁹ The letter is dated September 3, 2009, and includes Employee's signature at the end of the letter.

In this case, I find that Employee has failed to meet her burden of proof with regard to jurisdiction. The SF-50, in addition to Employee's resignation letter supports a finding that Employee elected to resign voluntarily. Employee has failed to provide any credible evidence to this tribunal that her resignation was procured through fraud, undue coercion, misinterpretation, or deception. In addition, there is no evidence in record to show that the resignation letter was authored or submitted by Employee. Accordingly, I find that Employee's resignation was not involuntary.

In addition, under OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed action. In her Petition for Appeal, Employee states that she was unaware that she could file an appeal with OEA. However, the Undersigned is not persuaded that there is a compelling justification for such an untimely filing. The effective date of Employee's resignation was September 3, 2009, but Employee did not file a Petition for Appeal with this Office until August 22, 2014, well beyond the thirty (30) day jurisdictional limit. Employee's failure to file a timely appeal with this Office serves as alternate grounds for dismissing the instant appeal. Based on the foregoing, I find that OEA lacks jurisdiction over Employee's appeal, and the matter is therefore dismissed.

ORDER

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

FOR THE OFFICE:

SOMMER J MURPHY, ESQ
ADMINISTRATIVE JUDGE

⁸ Employee Brief (September 8, 2014).

⁹ Agency Brief (September 17, 2014).