THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DEBORAH GRAY-AVENT	)	
Employee	)	
	)	OEA Matter No.: 2401-0145-08
v.	)	
	)	Date of Issuance: July 30, 2010
D.C. DEPARTMENT OF HUMAN RESOURCES	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Deborah Gray-Avent ("Employee") worked as a Human Resources Specialist with the District of Columbia Department of Human Resources ("Agency"). On June 6, 2008 Agency informed Employee that her position was being abolished pursuant to a reduction-in-force ("RIF"). The RIF was scheduled to take effect on July 11, 2008. In anticipation of the RIF, Agency provided Employee with information and counseling on various topics including Employee's retirement options and appeal rights. Employee

signed a form thereby acknowledging that she had received the aforementioned information and counseling.

On the same day that the RIF was to be effected, Employee took a discontinued service retirement. At the time of her retirement, Employee had worked for the District government for nearly 24 years and the federal government for nearly four years prior to joining the District. Based on the total number of years that Employee had worked for both governments, Employee was eligible to retire under the civil service retirement system. On December 11, 2008, Employee was informed that her application for retirement under the Civil Service Retirement System had been finalized.[1]

On August 8, 2008, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). The Administrative Judge informed the parties that this Office does not have jurisdiction over an appeal in which an employee voluntarily retires. However, where an employee can prove that an agency coerced him or her into retiring or provided him or her with misleading information on which the employee relied to his or her detriment, the resulting retirement will be considered involuntary. Under those circumstances, this Office will treat the employee's involuntary decision to retire as a constructive removal that may be appealed here. *See, e.g., Dunham v. District of Columbia Pub. Schs.,* OEA Matter No. 2401-0291-96, *Opinion and Order on Petition for Review* (Sept. 28, 2000), __D.C. Reg.__ ( ). Therefore, the threshold issue before the Administrative Judge was whether Employee's decision to retire was voluntary. Because

[1] The December 11, 2008 letter does not provide the date on which Employee applied for civil service retirement; however, the documents that were needed to process the retirement were transferred to the US Office of Personnel Management on July 17, 2008. Moreover, the record contains a notification of personnel action (SF 50) which provides that on July 11, 2008, Employee elected to retire.

an employee bears the burden of proof with respect to issues of jurisdiction, Employee was required to establish this Office's jurisdiction.

In an Initial Decision issued July 27, 2009, the Administrative Judge dismissed Employee's petition for lack of jurisdiction. The Administrative Judge found that Employee had not "claim[ed] that she was coerced into retiring or that Agency [had given] her misinformation on which she based her decision."[2] Based on this finding, it appeared that Employee's retirement was in fact voluntary. Thus, Employee's petition was dismissed.

Thereafter, on August 31, 2009 Employee filed a Petition for Review. In her petition, Employee argues that the Administrative Judge erred by not convening an evidentiary hearing, by not allowing Employee the opportunity to engage in discovery, and by not resolving the supposed discrepancy between the two personnel action forms (SF 50). Additionally Employee claims that the Administrative Judge erred by finding that she had voluntarily retired even though Agency had failed to inform Employee as to what effect a retirement would have on her right to appeal the RIF action to this Office. Lastly, Employee claims that the Initial Decision lacks substantial evidence. For these reasons, Employee asks us to vacate the Initial Decision and remand this matter so that an evidentiary hearing can be conducted.

OEA Rule 625.1 provides that a party may request that an evidentiary hearing be held. However, as OEA Rule 625.2 indicates, it is within the discretion of the administrative judge to either grant the request or deny it based on whether or not the judge believes that a hearing is necessary. Clearly, an evidentiary hearing is necessary

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[2] *Initial Decision* at 5.

when there are material issues of fact that can only be resolved through the testimony of witnesses.

In this case, there were no material issues of fact in dispute. The record compiled in this case clearly indicates that Employee retired. Petitioner's Motion To Amend Petition For Appeal contains an SF 50 which provides in the "Remarks" section that "Employee elected to retire on Discontinued Service Retirement." The effective date of that action is July 11, 2008—the same date on which the RIF was to have taken effect. Box 49 of this same SF 50 provides that it was approved on July 17, 2008 and box 50 contains the handwritten signature of the approving official. Also within the record is the Application for Immediate Retirement, Civil Service Retirement System. Employee completed this form and it bears her signature and indicates that she completed it on July 10, 2008—one day before the RIF would have taken effect. Employee did not then, nor does she now, dispute the authenticity of these documents. The second SF 50 form which Employee believes to be critical to her case was never approved. Box 49 of that particular SF 50 does not contain an approval date and box 50 does not contain the signature of the approving official. Most likely this SF 50 was prepared in anticipation of the RIF; however, it was never effectuated. Because there were no material issues of fact in dispute, an evidentiary hearing was not necessary.

We reject Employee's second argument as well, *viz.*, that the Administrative Judge erred by finding that she had voluntarily retired even though Agency had failed to inform her as to what effect a retirement would have on her right to appeal the RIF action to this Office. Employee met with the RIF counselor on July 1, 2008. During that meeting Employee's appeal rights and retirement options were discussed. If Employee

was confused about the information presented in the RIF notice, she had the opportunity to clarify any misunderstanding during that meeting. Even though the notice did not expressly state the consequence of retirement, it did not contain any incorrect or misleading information.

Lastly, we disagree with Employee's claim that the Initial Decision lacks substantial evidence. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Kralick v. District of Columbia Dep't of Empl. Servs.*, 842 A.2d 705, 710 (D.C. 2004). Therefore, we "will affirm the agency's ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law." *McCamey v. D.C. Dep't of Empl. Servs.,* 947 A.2d 1191, 1196 (D.C. 2008). Based on this standard of review, we believe there is substantial evidence in the record to support the Initial Decision. Retirements are presumed to be voluntary unless an employee presents evidence to rebut this presumption. Employee did not present such evidence. Rather there is overwhelming evidence to support the conclusion that Employee voluntarily retired. For these reasons, we must deny the Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

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Clarence Labor, Jr., Chair

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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 formal notice of the decision or order sought to be reviewed.