THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
GWENDOLYN BELLFIELD,	)	
Employee	)	OEA Matter No. 2401-0292-09
	)	
v.	)	Date of Issuance: December 2, 2011
	)	
OFFICE OF THE CHIEF	)	
MEDICAL EXAMINER,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
	)	

Camilla McKinney, Esq., Employee Representative
Pamela Smith, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 28, 2009, Gwendolyn Bellfield ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the abolishment of her last position of record through a Reduction-In-Force ("RIF"). Employee's last position of record with the Office of the Chief Medical Examiner ("OCME" or the "Agency") was Domestic Violence Program Coordinator. The effective date of the RIF was September 30, 2009. Of note, Employee retired from service before the aforementioned RIF was executed.

The Undersigned was assigned this matter on or around July 19, 2011. A Prehearing Conference was held on September 8, 2011. During this conference, the parties addressed both the adequacy of Agency's RIF action and whether the OEA may exercise jurisdiction over the instant appeal due to Employee's retirement. Following the conference, the Undersigned issued a written Order dated September 9, 2011, wherein the parties were required to address whether the OEA may exercise jurisdiction over this matter as well as the merits of the RIF. Both parties have since submitted their respective briefs in this matter. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

ISSUES

1. Whether the OEA may exercise jurisdiction over this matter.

2. If so, whether the Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

JURISDICTION

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

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

From the documents of record and the parties' positions as stated during the Prehearing Conference the following facts are not subject to genuine dispute:

- On August 28, 2009, Employee received written notice ("RIF Notice") that her position was going to be abolished via the RIF.
- The effective date of the RIF was September 30, 2009.
- Employee retired from service with the Agency on September 30, 2009.
- At the time of the RIF, Employee was within a single person competitive level and area.
- Pursuant to the RIF, Employee's entire competitive level and area was abolished.

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), reads as follows: "The employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 629.1, *id.*, the burden of proof is by a "preponderance of the evidence", which is defined as "[t]hat 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."

Retirement

This Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office. *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools,* OEA Matter No. 2401-1224-96 (October 23, 2001), ___ D.C. Reg. ___ ( ). There is a legal presumption that retirements are voluntary. *Id.*

A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception." *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). Employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making her decision to retire. She must also show "that a reasonable person would have been misled by the Agency's statements." *Id.*

Employee asserts that her retirement was procured through misinformation and in her

written brief dated October 26, 2011, stated the following:

> Specifically, the DCHR (D.C. Human Resources) failed to appropriately calculate Ms. Bellfield's CSRS by twelve (12) years, a fact that was not determined until ten (10) months after her retirement. Indeed, as a part of the DCHR counseling, Ms. Bellfield reviewed her personnel folder with a DCHR specialist, R. Taylor-Jones, prior to retiring. During this review, she observed that her District service files dated back to 1965 as a youth employee. Based upon this record, Ms. Bellfield determined that she had 34 years and 6 months of District government service. Further, during the one-on-one career counseling, R. Taylor-Jones assured Ms. Bellfield that she could return to work with the District government 30 days after she retired. Ms. Taylor-Jones told Ms. Bellfield that this was allowed because of new regulations for RIF'd employees who retire. She gave this explanation in response to Ms. Bellfield's concerns about maintaining retention and reemployment status. As such, this reinforced to Ms. Bellfield that her retirement would not preclude her from challenging the RIF.
>
> Subsequent to tendering her retirement, a CSRS specialist reported to Ms. Bellfield that DCHR failed to send a complete work history. The CSRS specialist stated that it was not uncommon for there to be a difference between DCHR and CSRS of a few months. However, DCHR had miscalculated her CSRS by 12 years.
>
> Given this wide incongruity, Ms. Bellfield and the CSRS Specialist repeatedly made calls to DCHR for over nine months, receiving repeated promises by DCHR that the error would be corrected. Ms. Bellfield experienced significant duress with the repeated attempts to rectify the situation and the CSRS specialist had to provide an extension on finalizing the CSRS claim. After five months, however, the CSRS specialist made a decision based on the facts at hand.
>
> Because her retirement was based on inaccurate information reported by DCHR, Ms. Bellfield informed the CSRS specialist that she decided to rescind her retirement request. In response, the CSRS specialist informed Ms. Bellfield that the time for withdrawing her retirement had lapsed.
>
> Employee's Brief at 3 – 4.

Agency does not directly dispute Employee's rendition of events with respect to the retirement issue. Rather, it seeks to characterize Employee's description as something that does not run afoul of the misinformation portion of *Christie* that allows for retired employees to continue with employment related appeals process when they would otherwise be precluded from doing so. I disagree. "A decision made 'with blinders on,' based on misinformation or a lack of information, cannot be binding as a matter of fundamental fairness and due process." *Id*.

at 943. I find that the DCHR misinformed Employee with respect to the options that Employee had if she opted to retire. The misinformation that was given to Employee is particularly disconcerting given that DCHR's is in part responsible for the service delivery of the District's benefits program and policies for benefit eligible employees and retirees. This includes the plan management; contracting; and communication of all health, voluntary and retirement programs. All other things being equal, under these same circumstances, if Employee had not been misinformed, then the OEA would have lacked jurisdiction over this matter. Due to the misinformation provided to Employee regarding the effect of her retirement, I find that that the OEA may exercise jurisdiction over the instant matter.

RIF

OCME contends that the abolishment of Employee's last position of record pursuant to a RIF was conducted within the bounds of the law. OCME notes that it properly obtained approval to conduct the instant RIF pursuant to an Administrative Order. *See* Agency's Answer at Exhibit 3. In defending its action before the Office, the Agency relies on D.C. Official Code § 1-624.08 §§ (d), (e) and (f). Agency contends that the OEA's review of a RIF matter begins and ends with the aforementioned statute and that the OEA lacks authority to examine any other aspects of a RIF.

With respect to D.C. Official Code § 1-624.08 (e), Agency contends that Employee was given 30 days written notice informing her that her position was to be abolished. Included within Agency's Answer at Exhibit 4 is a letter dated August 28, 2009, addressed to Employee notifying her of the pending RIF. According to this letter, the effective date of the RIF was September 30, 2009. Of note, Employee signed this letter on August 28, 2009, acknowledging her receipt.

Employee makes several arguments in support of her position. The following excerpt from Employee Brief dated October 4, 2011, is informative:

> Pursuant to D.C. Code § 1-624.08(d), Agencies are required to comply with both the Agency Reemployment Priority Program (ARPP) and with the Displaced Employee Program (DEP). Specifically, DCMR 5207.5, Determining Retention Standing, provides that,
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> > The retention standing of each competing employee shall be determined on the basis of tenure of appointment, length of creditable service, veterans' preference, residency preference, and relative work performance, and on the basis of other selection factors as provided in these Regulations. Together, these factors shall determine whether an employee is entitled to compete with other employees for employment retention and, if so, with whom, and whether the employee is retained or released.
> >
> > Here, these factors were not given due consideration by the

> Agency in its RIF decision. In fact, Ms. Bellfield was subject to RIF without regard to her residency preference, career service, competitive level, creditable service history, Group I tenure, performance ratings, or her Bump or Retreat rights.
>
> Employee's Brief at 6.

Employee also argues that her competitive area and level were too narrow and that she should have competed with other OCME employees for positions that survived the instant RIF. Further, Employee also made circumspect allegations that someone else was hired after she was released from service.

I find that in the instant matter, I am guided primarily by D.C. Official Code § 1-624.08, which provides in pertinent part that:

> (d) An employee affected by the abolishment of a position pursuant to the section who, but for the section would be entitled to compete for retention, shall be entitled to one round of lateral competition... which shall be limited to positions in the employee's competitive level.
>
> (e) Each employee selected for separation pursuant to the section shall be given written notice of at least 30 days before the effective date of his or her separation.
>
> (f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to the section shall be subject to review except that:
>
> (1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of the chapter or § 2-1403.03; and
>
> (2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before the Office:

1. That s/he did not receive written notice thirty (30) days prior to the effective date of her/her separation from service; and/or

2. That s/he was not afforded one round of lateral competition within her/her competitive level.

In an appeal before this Office, I cannot consider the one round of lateral competition issue if I determine that the Employee was properly placed in a single person competitive level.

Based on the foregoing, I find that the Employee was properly placed in a single person competitive level when the instant RIF occurred; therefore "the statutory provision affording [her] one round of lateral competition [is] inapplicable. *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), ___ D.C. Reg. ___ ( ). In the matter at hand, I find that the entire unit in which Employee's position was located was abolished after a RIF had been properly implemented. I further find that the Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e). Based on the foregoing, I must uphold Agency's action of abolishing the Employee's position through a RIF.

According to *Anjuwan v. D.C. Department of Public Works,* 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was bona fide or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals.

Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate. That is not say that Employee may not press her claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims. Based on the foregoing, I conclude that the Agency's action of abolishing Employee's position was done in accordance with all applicable laws, rules and regulations.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE