THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JULIET ADAMS,	)	
Employee	)	OEA Matter No.: 2401-0173-10
	)	
v.	)	Date of Issuance: June 5, 2012
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
	)	

Juliet Adams, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 25, 2009, Juliet Adams ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of terminating her employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was an Art Teacher at Shepherd Elementary School ("Shepherd"). Employee was serving in Educational Service status at the time her position was abolished. On December 29, 2009, Agency filed an Answer to Employee's appeal.

I was assigned this matter on February 6, 2012. On February 15, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations ("February 15th Order"). The parties were also directed to address whether Employee elected to retire in lieu of being separated under the RIF. Agency complied, but Employee did not respond to the February 15th Order. On March 8, 2012, Employee's copy of the February 15th Order was returned to this Office marked 'Return to Sender; Not Deliverable as Addressed; Unable to Forward.' Subsequently, on March 30, 2012, I issued an Order for Statement of Good Cause ("March 30th Order") wherein Employee was required to submit a statement explaining her failure to respond to the February 15th Order, along with submission of her legal brief. Employee's response was due on or before April 10, 2012. On April 19, 2012, Employee's copy of the Order for Statement of Good Cause was returned to this Office marked 'Return to Sender; Attempted-Not Known; Unable to Forward.'

Upon further review of the record, the undersigned issued an Order on April 27, 2012 ("April 27th Order") directing the parties to address jurisdiction issues due to Agency's assertion that Employee voluntarily retired. Employee was ordered to submit her brief addressing jurisdiction on or by May 11, 2012. On May 14, 2012, Employee's copy of the April 27th Order was returned to this Office marked 'Return to Sender; Not Deliverable as Addressed; Unable to Forward.' As of the date of this decision, the undersigned has not received a response from Employee regarding the February 15th, March 30th, and April 27th Orders. Agency timely submitted its response, along with supporting documentation on May 25, 2012. After reviewing all of the relevant facts and circumstances as contained within the documents of record, I have decided that no further proceedings are required. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> 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 *id.* states:

> 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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Agency asserts that this Office lacks jurisdiction over this matter because Employee voluntarily retired.[1] Agency's assertion that Employee voluntarily retired raises a question as to whether OEA has jurisdiction over this appeal.

[1] *See* Agency's Brief at p. 2 (March 7, 2012).

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] 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 [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 621.1, *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."

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 an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. The law is well settled with this Office that there is a legal presumption that retirements are voluntary.[4] Furthermore, OEA has consistently held that it lacks jurisdiction to adjudicate a voluntary retirement.[5] However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.[6] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[7] The employee must prove that her retirement was involuntary by showing that (1) the retirement resulted from undue coercion or misrepresentation by Agency; (2) Employee relied upon such information when making her decision to retire; and (3) a reasonable person would have been misled by Agency's statements.[8]

Here, the record shows that Agency provided Employee with a RIF notice on October 2, 2009, with an effective date of November 2, 2009.[9] Agency's RIF notice informed Employee of

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[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 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).
[5] *See* Deborah Gray-Avent v. D.C. Department of Human Resources, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2008); Adele LaFranque v. D.C. Public Schools, OEA Matter No. 2401-0032-10 (February 8, 2011); Curtis Woodward v. D.C. Public Schools, OEA Matter No. 2401-0029-10 (February 8, 2011).
[6] *Christie*, 518 F.2d at 587.
[7] *See Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984); *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995).
[8] *Covington*, 750 F.2d. at 942.
[9] Agency Answer, Tab 4 (December 29, 2009).

her options to appeal the RIF or retire, if qualified. Nothing in the RIF notice indicates that Agency gave Employee a *mandate to retire*. Further, Agency has provided a copy of Employee's signed retirement application dated March 29, 2010, in support of its contention that Employee voluntarily retired.[10] Employee's retirement application shows a retroactive effective date of November 2, 2009.

Employee has failed to address the jurisdictional issues concerning her retirement status or provide any credible evidence that her retirement was involuntary, despite being provided ample time and opportunity to address this issue. Further, while the record shows that Employee submitted her retirement application after the RIF effective date, this Office lacks jurisdiction over any voluntary retirement, irrespective of the application or retirement effective date.

Thus, based on the evidence of record, I find that Employee elected to voluntarily retire in lieu of being terminated. Also, I find that not only was Employee properly given thirty (30) days notice of the RIF, but she applied for retirement benefits approximately four months after the RIF effective date, which is sufficient time to get information, seek counsel, and make an informed decision. Employee's choice to retire instead of continuing to litigate her claims voids the Office's jurisdiction over her appeal. While Employee may have been faced with two unpleasant alternatives, choosing to retire instead of being RIFed does not make Employee's retirement involuntary.[11]

Moreover, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire. Based on the evidence of record, I find that Employee's retirement was voluntary. Further, I conclude that Employee has not met the burden of proof and that this matter must be dismissed for lack of jurisdiction. As such, I am unable to address the factual merits, if any, of this appeal.

Additionally, Employee's failure to respond to the February 15th, March 30th, and April 27th Orders provides another basis to dismiss this petition. OEA Rule 621.3 grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice.[12] The AJ may, in the exercise of sound discretion, dismiss the action if a party fails to take reasonable steps to prosecute or defend her appeal.[13] Specifically, OEA Rule 621.3(b)-(c) provides that the failure to prosecute an appeal includes failing to submit required documents after being provided with a deadline for such submission and not informing this Office of a change of address which results in correspondence being returned.[14] The February 15th, March 30th, and April 27th Orders advised Employee of the consequences for not

[10] Agency Submission Regarding Jurisdiction, Exhibit A (May 25, 2012).
[11] The court in *Covington* held that "[t]he fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives does not make an employee's decision any less voluntary." *Covington*, 750 F.2d at 942.
[12] 59 DCR 2129 (March 16, 2012).
[13] *See* OEA Rule 621.2, 59 DCR 2129 (March 16, 2012).
[14] *See also Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

responding, including sanctions resulting in the dismissal of the matter. Employee's responses to these Orders were required for a proper resolution of this matter on the merits. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and I find that this presents another ground for upholding Agency's action.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, ESQ.
ADMINISTRATIVE JUDGE