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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0160-10
BOBBIE DUFFY,)	
Employee)	
)	Date of Issuance: March 30, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
_____)	Senior Administrative Judge
Donielle Powe, Esq., Union Representative		
Sara White, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 24, 2009, Bobbie Duffy (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia Public School’s (“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 ET-15 Home Economics Teacher at Transition Academy. Employee’s tenure with DDCP began in 1974. Employee was serving in an Educational Service at the time she was terminated.

I was assigned this matter on or around February 6, 2012. On February 9, 2012, I issued an Order wherein I required the parties to submit briefs on whether the Agency, in conducting the instant RIF, adequately followed proper District of Columbia statutes, regulations and laws. I also ordered the parties to address whether the OEA may exercise jurisdiction over this matter if Employee’s opted to retire during the RIF. On February 16, 2012, due to a typographical error, I issued an amended order which, inter alia, gave the parties additional time in which to file their briefs. Both parties have timely filed their respective briefs in this matter. After reviewing the documents of record, I have determined that no further proceedings are warranted in this matter. 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

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]. . . .

This Office has no authority to review issues beyond its jurisdiction.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.² The issue of an Employee’s voluntary or involuntary retirement has been adjudicated on numerous

¹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² 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).

occasions by this Office. OEA has consistently held that, there is a legal presumption that retirements are voluntary.³ Furthermore, I find that 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.⁴ A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”⁵ The Employee must prove that his/her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he/she relied when making his/her decision to retire. He/she must also show “that a reasonable person would have been misled by the Agency’s statements.”⁶

Here, Employee contends that her retirement was not voluntary because after she was separated via the RIF, another teacher was tasked with teaching the courses she once taught. Moreover, Employee contends that this other teacher was not someone with whom she competed against as part of the one round of lateral competition that normally occurs when multiple persons encumber a competitive level and area that is only partially abolished in a RIF.

I disagree with Employee’s contentions. Invariably, when a RIF is implemented, an Agency is typically mandated to continue with fulfilling its mission; but with less staff in which to accomplish said task. I do not doubt that someone else was reassigned to provide tutelage to the students of Transition Academy in Employee’s absence. This, in of itself, does not lead the undersigned to believe that DCPS employed some form of chicanery in order to effectuate the RIF, and abolish Employee’s last position of record. This only shows that Transition Academy was forced to do more with less; which regrettably, is one of the consequences of a RIF.

I find that the RIF Notice simply informed Employee of her options – appeal the RIF or retire if you qualify. Nothing in the RIF notice, nor any of DCPS’ actions, gave Employee a *mandate to retire*. The Notice provided Employee with details on how to go about getting appeal or retirement information. Also, I find that thirty (30) days is sufficient time to get information, seek counsel and make an informed decision. Regardless of Employee’s protestations, the fact that she chose to retire instead of continuing to litigate her claims voids the Office’s jurisdiction over her appeal. Moreover, the retirement was Employee’s own choice and Employee has enjoyed the benefits of retiring. Employee’s choice to retire in the face of a seemingly unpleasant situation – financial hardship, instead of being RIFed does not make Employee’s retirement involuntary.

I find no *credible* evidence of misrepresentation or deceit on the part of the Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire. Employee’s misinterpretation of the options in the RIF Notice is of her own doing and not the Agency’s. Based on the foregoing, I find that Employee’s retirement was

³ 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).

⁴ *Id.* at 587.

⁵ 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.2d 937 (Fed. Cir. 1984).

⁶ *Id.*

voluntary.⁷ As such, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

ORDER

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

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

⁷ The Court in *Christie* stated that “[w]hile 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.” *Christie, supra* at 587-588. (citations omitted).