**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| EARL BEDNEY, SR., | ) | |
| Employee | ) | OEA Matter No. 2401-0348-10 |
| | ) | |
| v. | ) | Date of Issuance: October 19, 2012 |
| | ) | |
| DISTRICT OF COLUMBIA | ) | |
| DEPARTMENT OF TRANSPORTATION, | ) | STEPHANIE N. HARRIS, Esq. |
| Agency | ) | Administrative Judge |
| | ) | |

Earl Bedney, Employee *Pro-Se*
Glenn R. Dubin, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL BACKGROUND

On July 28, 2010, Earl Bedney, Sr. ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Transportation's ("Agency" or "DDOT") action of abolishing his position through a Reduction-In-Force ("RIF"). The effective date of the RIF was July 30, 2010. At the time his position was abolished, Employee's official position of record was a Traffic Counter Mechanic. On August 30, 2010, Agency filed its Answer to Employee's Petition for Appeal.

This matter was assigned to me on or around July 17, 2012. Subsequently, I issued an Order on July 24, 2012, wherein, I required the parties to submit briefs addressing the issue of whether the RIF was properly conducted in this matter. Agency submitted a timely brief on August 7, 2012. In its brief, Agency presented evidence in support of its contention that Employee retired from his position on the effective date of the RIF. Subsequently, the undersigned issued an Order on August 10, 2012, requiring Employee to address the jurisdictional issues presented by Agency. Employee timely submitted his brief on September 4, 2012. After considering the parties' arguments as presented in their submissions to this Office, I have determined that there are no material facts in dispute and therefore an evidentiary hearing is not warranted. 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

In his Petition for Appeal, Employee submits that he was improperly RIF'd, noting that only "line employees positions [were] terminated, [but] no Management." Employee also noted that the work that was previously done by him and fellow employees was being contracted out.[1] In his brief, Employee acknowledges that he did "put in for retirement," but claims that he had no choice due to unsatisfactory working conditions with his supervisor.[2] Additionally, Employee provided a detailed account of the various issues that he encountered with his former supervisor.

In its brief, Agency submits that it received approval for the instant RIF from the District of Columbia Department of Human Resources ("DCHR") on June 24, 2010. Agency notes that it followed all of the proper procedures and guidelines and adhered to all notification mandates as required by Chapter 24 of the District Personnel Manual ("DPM") when implementing the instant RIF. Agency further contends that Employee voluntarily retired from his position with Agency in lieu of being terminated by the instant RIF. In support of its proposition that Employee voluntarily retired, Agency submits that it provided Employee with the information needed to make an informed choice between options including retirement, severance pay, and appeal rights. Agency states that it also provided Employee with information on retirement benefits through RIF seminars presented by DCHR. Additionally, Agency notes that Employee completed all of the District and federal paperwork needed to receive his retirement annuity two years ago.[3] Agency also provides supporting documentation including Employee's retirement file, which includes a Notification of Personnel Action ("SF-50") showing that Employee's retirement was effective on July 30, 2010.[4] The documentation in the record showing Employee's retirement raises a question as to whether OEA has jurisdiction over this appeal.

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[1] *See* Petition for Appeal (July 28, 2010).
[2] Employee Brief, pp. 2, 5 (September 4, 2012).
[3] *See* Agency's Brief, pp. 1-4; Tabs 1-4 (August 7, 2012).
[4] *Id.*, Tab 4.

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.[5] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[6] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions, where OEA has consistently held that, there is a legal presumption that retirements are voluntary.[7] Thus, 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.[8] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[9] An Employee must prove that his 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 their decision to retire; and (3) a reasonable person would have been misled by Agency's statements.[10]

Here, Employee acknowledges that he did retire, but contends that his retirement was not voluntary, claiming that he had no choice but to retire due to unsatisfactory working conditions with his supervisor, which he considers a constructive removal.

I disagree with Employee's contentions. Employee allegations regarding issues with his supervisor amount to grievances, which are no longer handled by this Office.[11] Employee has not provided any credible evidence showing that his retirement is tantamount to a constructive discharge. Furthermore, I find no credible evidence of misrepresentation, coercion, or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about his option to retire or that he relied on Agency misinformation to his detriment.

While Employee faced the difficult choice between retiring or facing termination via the instant RIF, I disagree with Employee's contention that he was forced to retire. Here, the record shows that Agency provided Employee with a termination notice on June 29, 2010, with an effective date of July 30, 2010.[12] Nothing in the record or the termination notice indicates that Employee was threatened, coerced, or given a *mandate to retire* by Agency (emphasis added). In fact, Employee's RIF notice does not

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[5] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[6] *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).
[7] *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).
[8] *Id.* at 587.
[9] *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).
[10] *Id.*
[11] It is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals.
[12] Agency Answer, Tab 2 (September 20, 2010).

mention an option to retire, but Agency submits that Employee was provided with retirement information during RIF seminars presented by DCHR.[13]

Regardless of Employee's protestations, the fact that he chose to retire instead of continuing to litigate his claims voids the Office's jurisdiction over his appeal. Employee's choice to retire in the face of a seemingly unpleasant situation does not make Employee's retirement involuntary.[14] Based on the foregoing, I find Employee elected to voluntarily retire in lieu of being terminated.[15] 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:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

[13] *Id*., p. 4.
[14] 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.
[15] 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,* 518 F.2d at 587-588. (citations omitted).