

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Johnnie Jowers)	OLEA Matter No. 2401-0107-04
Employee)	
)	Date of Issuance: June 22, 2005
v.)	
)	Sheryl Sears, Esq.
)	Administrative Judge
D.C. Public Schools)	
Agency)	

Johnnie Jowers, Employee, *Pro Se*
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Employee was a Mathematics Teacher at the P.R. Harris Educational Center. By letter dated May 27, 2004, Karen R. Jackson, Ph.D., Agency's Chief Human Resources Officer, notified Employee that Agency was "required to reduce staffing levels through abolishment." Employee was advised that his position would be "abolished on June 30, 2004." Employee filed a petition for appeal with this Office on June 25, 2004, challenging his separation as a removal. Agency responded with a claim that Employee retired in lieu of separation by reduction in force.

On March 21, 2005, the parties were ordered to state, in writing, their positions on whether Employee retired from his position and whether this Office has jurisdiction over his appeal. Agency submitted a D.C. government Personnel Form I documenting Employee's retirement effective on August 19, 2004. Employee submitted copies of his "position abolishment letter and retirement papers."

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this matter should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

This Office does not have jurisdiction to review a voluntary retirement. However, an involuntary retirement is treated as a constructive removal and is within the jurisdiction of this Office. See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975) and *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-0224-96 (October 23, 2001), ___ D.C. Reg. ___ ().

There is no question that Employee chose to retire rather than wait for Agency to remove him by reduction-in-force. Even when elected under difficult circumstances, a voluntary retirement does not constitute an adverse action. See *Bertha Dunbam v. D.C. Public Schools*, OEA Matter No. 2401-0291-96 (March 9, 2000) affirmed by Opinion and Order on Petition for Review (September 28, 2000).

A retirement is only considered involuntary when it has been “obtained by agency misinformation or deception” upon which a reasonable person would rely or is coerced from an employee. 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). Absent any evidence of misinformation or coercion, this Judge must conclude that Employee’s retirement was voluntary. This appeal must be dismissed.

ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:



SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE

THE DISTRICT OF COLUMBIA

BEFORE

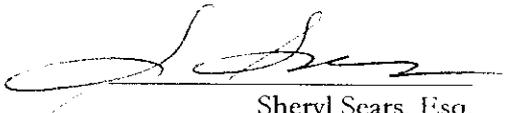
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ORDER CLOSING THE RECORD

Pursuant to OEA Rule 630.1, 46 D.C. Reg. 9317 (1999), it is hereby ORDERED that the record in the above-captioned matter will close effective immediately. Pursuant to OEA Rule 630.2, 46 D.C. Reg. 9317 (1999), once the record closes no additional evidence or argument shall be accepted unless the presiding official reopens the record.


Sheryl Sears, Esq.
Administrative Judge