THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
CHARLES M. BAGENSTOSE	)	
Employee	)	
	)	OEA Matter No. 2401-0224-96
	)	
v.	)	Date of Issuance: June 23, 2003
	)	
D.C. PUBLIC SCHOOLS	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency notified Employee that he would be removed from his position as a Mathematics Teacher pursuant to a modified reduction-in-force ("RIF") that was scheduled to take effect on July 19, 1996. This notice also informed Employee that he should submit a retirement application if he wanted to be considered for the discontinued service retirement annuity. Early retirement benefits were available to those Agency employees who were 50

years old and had completed 20 or more years of service with Agency or who had completed 25 years of service with Agency regardless of their age.

Employee submitted the necessary documentation to effectuate the retirement. Although the date of retirement would have ordinarily coincided with the date of the impending RIF, Employee testified that he was permitted to retire effective August 27, 1996 "so that [he] could get full credit or more credit . . . for what [he] was entitled to. . . ." *Transcript* at 127-128. Thus, on that date Employee was retired from the District government.

Employee appealed Agency's action to this Office. The threshold issued before the Administrative Judge was whether, in view of the fact that Employee had retired, this Office had jurisdiction over Employee's appeal. There is a presumption that an employee's decision to retire is voluntary unless the employee can present evidence to prove otherwise. *See Christie v. United States*, 518 F.2d 584 (Cl. Ct. 1975). In cases where an employee voluntarily retires, this Office lacks jurisdiction to consider that employee's appeal. However, where an employee can prove that an agency coerced him or her into retiring or that an agency provided him or her with misleading information on which the employee relied to his or her detriment, the resulting retirement will be considered involuntary. Under these circumstances the employee's decision to retire will be treated as a constructive removal which may be appealed to this Office.

In this appeal Employee does not claim that he was coerced into retiring or that Agency gave him false information. Rather, he claims that he was never told that by retiring, he would

not be able to appeal the RIF. With respect to this claim, the Administrative Judge held that Employee had not presented any evidence to show that his retirement was involuntary. Further the Administrative Judge found that "Employee ha[d] not made any showing that he asked anyone for official advice on his options, nor that [Agency] had any obligation to give him such advice, assuming of course that they were knowledgeable of his option of refusing to retire and contesting the bona fides of the RIF before this Office." *Initial Decision* at 5. Based on the lack of any evidence to prove that Employee retired involuntarily, the Administrative Judge dismissed Employee's appeal for lack of jurisdiction.

In his Petition for Review, Employee again claims that he did not voluntarily retire from District government service. According to Employee, he should have been told that by choosing to retire, he would thereby be precluded from appealing the RIF. The Administrative Judge addressed this argument in the Initial Decision and found that Employee had not proven that he asked Agency for any information or that Agency was under a duty to provide him with this information. Moreover, Employee has not brought forth any evidence in his Petition for Review to substantiate his claim. Because there is substantial evidence in the record to support the Initial Decision, we will deny Employee's Petition for Review and uphold the Initial Decision. Even though we are upholding the Initial Decision, we suggest that Agency, in the future, consider modifying its RIF notice form and counseling practice to inform employees that by retiring they loose the right to challenge the RIF.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED.**

FOR THE BOARD:

Erias A. Hyman, Chair

Horace Kreitzman

Brian Lederer

Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.