THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
GEORGE BOYKINS	)	
Employee	)	
	)	
	)	OEA Matter No. J-0067-01
v.	)	
	)	Date of Issuance: September 30, 2004
	)	
DEPARTMENT OF HUMAN SERVICES	)	
Agency	)	
	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee was a Food Preparation and Services Foreman at Agency's Oak Hill Youth Center. During a random drug test administered on June 22, 2000, Employee tested positive for the presence of cocaine in his system. As a result, on June 28, 2000, Agency ordered Employee to complete a drug treatment program. Agency informed Employee that if he failed to successfully complete the program, it would terminate his employment. When Agency learned that the treatment provider had discharged

Employee for failure to complete the program, it issued him an advance notice of adverse action dated December 11, 2000. Agency proposed removing Employee for insubordination based upon his failure to complete the program. Agency prepared its final notice of adverse action on July 25, 2001, and stated therein that the removal would take effect July 27, 2001.

Because Employee did not report to work on July 27, 2001, Agency was not able to serve the final notice until Employee reported to work on that following Monday, July 31, 2001. Within days of receiving the notice, Employee notified Agency's personnel office of his intention to retire. Since Agency had not completed the process to finalize the removal, Agency allowed Employee to retire after 28 years of government service. Employee's retirement took effect July 31, 2001. Thus the adverse action was not effected.

Claiming that he had in fact been removed, that his retirement was involuntary, and that, based on the disinterested designee's determination, good cause did not exist for the adverse action, Employee appealed to this Office. The Administrative Judge, in an Initial Decision issued December 17, 2003, found that because Employee had retired, he had not been subjected to an adverse action. Relying on the case of *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975), the Administrative Judge determined that Employee's retirement was indeed voluntary. Further, the Administrative Judge found that despite the disinterested designee's determination, Agency had good cause to terminate Employee based on the fact that Employee admitted to not completing the drug treatment program. Moreover, the Administrative Judge stated that notwithstanding the disinterested designee's recommendation, Agency was under no obligation to abide by it.

Accordingly, the Administrative Judge held that this Office lacked jurisdiction to consider Employee's appeal and dismissed it on that basis.

Employee has now filed a Petition for Review. In it he presents the same arguments that he made before the Administrative Judge. Employee again claims that this Office has jurisdiction over his appeal because, according to Employee, his retirement was not voluntary and because, in view of the disinterested designee's determination, Agency lacked good cause to remove Employee.

With respect to whether or not Employee's retirement was voluntary, we agree with the Administrative Judge that *Christie*, 518 F.2d 584, is to be followed when analyzing this issue. The court in *Christie* stated that an employee's resignation, or retirement as in this appeal, is presumed to be voluntary unless the employee can prove that it was the product of coercion or duress. If the employee was coerced or subjected to duress, then the resignation or retirement will be deemed involuntary. The court went on to state that "[m]erely because [an employee is] faced with an inherently unpleasant situation in that [the] choice was arguably limited to two unpleasant alternatives does not obviate the [voluntary nature] . . ." of the employee's choice. *Id.* at 587.

Employee could have accepted, and later contested, the termination or he could have retired in lieu of being terminated. Perhaps Employee, as was the case with the employee in *Christie*, did not like either of these choices. Even so, he chose to retire.[1] Moreover, Employee has not presented any evidence in his Petition for Review that would render his retirement involuntary nor did he do so at the trial level.

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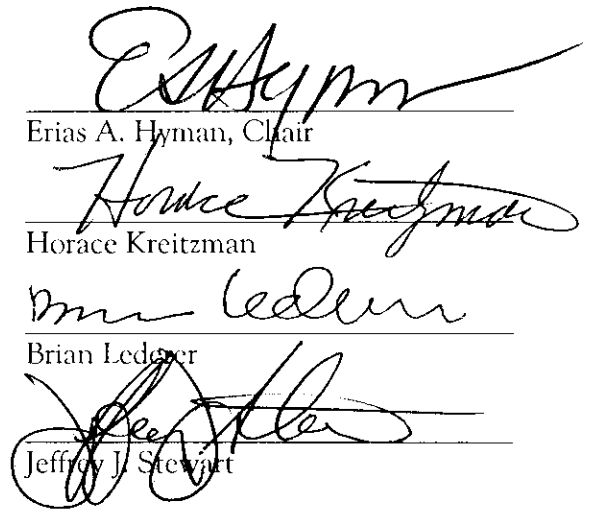
[1] Retirement is preferable to a termination because of the long-term benefits that accrue to an employee who retires as opposed to one who is terminated.

Further, Employee's reliance upon the disinterested designee's recommendation to support the claim that Agency lacked good cause to remove him is misplaced. Again, we agree with the ruling that the Administrative Judge made in this regard. The Administrative Judge stated that good cause existed unless Employee could present sufficient evidence to prove that Agency knew or believed that the proposed termination could not be substantiated. "Here, Agency had good cause to terminate Employee by virtue of the fact that he admit[ted] to being removed from the [drug treatment program] and thus failed to abide by the terms of the drug treatment agreement. That Employee or even that the disinterested designee disagrees with Agency's assessment of good cause does not negate the fact that Employee [failed] to abide by the [requirements of] the drug program and that Agency thus had good cause." *Initial Decision* at 5. Employee has not brought forth any evidence that would warrant a reversal of this finding. Accordingly, we find that there is substantial evidence in the record to uphold the Initial Decision and deny Employee's Petition for Review.

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

Jeffrey J. Stewart

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 date 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.

CERTIFICATE OF SERVICE

I certify that the attached **OPINION AND ORDER** was sent by regular mail this day to:

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Katrina Hill
Clerk

September 30, 2004
Date