THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
GEORGIA M. GREEN Employee	OEA Matter No. 2401-0079-02
	Date of Issuance: March 15, 2006
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Ms. Green ("Employee") was employed as a Paralegal Specialist with the D.C. Department of Corrections ("Agency"). She also served as General Counsel for the Fraternal Order of Police Union representing Agency employees in the Collective Bargaining Unit.[1] On March 4, 2002, Agency issued a reduction-in-force ("RIF") notice against Employee because the facility where she was employed was closing.[2] In lieu of being RIFed, Employee decided to retire. The retirement was effective on April 3, 2002.

[1] *Employee's Petition for Appeal*, p. 6 (May 3, 2002).
[2] The Agency was under Cogressional, Presidential, and Mayoral mandate to close all of its Lorton, Virginia facilities. *Agency's Response to Employee's Argument that the Office of Employee Appeals has jurisdiction to adjudicate her appeal from her reduction-in-force*, p. 3 (March 8, 2004).

On May 3, 2002, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). In it she alleged that her performance rating was not current; she was treated differently from other employees because she requested that Agency make reasonable accommodations for her disability; and the RIF action was taken in retaliation for her being a union representative.[3] Agency filed a response to the Petition for Appeal on October 25, 2002, arguing that Employee could not appeal the RIF action since it did not take place because of Employee's voluntary retirement. Furthermore, because Employee's retirement was voluntary, OEA lacked jurisdiction to adjudicate her case.[4]

On May 4, 2004, the Administrative Law Judge ("ALJ") issued an Initial Decision. She reasoned that although OEA has jurisdiction over RIF actions, the office lacked jurisdiction over matters involving voluntary retirement. However, if Employee could show that her retirement was involuntary and the result of duress or based on misinformation, then the RIF matter could be considered. Employee failed to meet her burden of proving that her retirement was involuntary, so the case was dismissed on the basis of lack of jurisdiction.[5]

Employee then filed a Petition for Review with OEA on June 8, 2004. She alleged that the ALJ did not consider her argument that her performance rating was not current. She also argued that the ALJ failed to consider evidence that Agency misinformed her by failing to tell her that if she opted to retire, she would forfeit her

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[3] *Employee's Petition for Appeal*, p. 3-5 (May 3, 2002).
[4] *Agency's Pre-hearing Statement and Supporting Documents*, p. 2-3 (October 25, 2002).
[5] *Initial Decision*, p. 4 (May 4, 2004).

opportunity to appeal the RIF action.[6] Agency filed a response to the Petition for Review on July 15, 2004, arguing that Employee's performance rating would not have prevented the RIF action and that Employee failed to prove that her retirement was involuntary.[7]

Similar to the employee in *Christie v. United States*, 518 F.2d 584 (1973), Ms. Green had the option of retiring or challenging the removal action taken against her by Agency. Employee claims that she had no choice but to retire. However, she did have the choice of retiring or standing firm against the RIF action. She chose to retire.

Consequently, the burden rests on Employee to show that her retirement was not voluntary. Such a showing would constitute a constructive removal and allow OEA to adjudicate her matter. However, Employee failed to meet her burden. She neglected to show that Agency's representatives deceived her or gave her misleading information. She provided in her Petition for Review that when she spoke with a personnel specialist regarding options other than retirement, the specialist responded by telling her that she was going to retire and refused to inform her of any other options. She also stated that she spoke with a retirement representative who did not inform her that if she retired she would be precluded from appealing the RIF action. In neither situation did Employee prove that either of the Agency's representatives forced her to retire under duress or because of a misrepresentation on their part. Mere failure to discuss an issue does not rise to the level of misrepresentation.

Assuming arguendo that Employee was able to establish OEA's jurisdiction, she failed to show a basis for reversal of the RIF action taken against her. OEA is only

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[6] *Employee Georgia Mae Green's Petition for Review of the Initial Decision*, p. 2-5 (June 8, 2004).
[7] *Agency's Response to Employee's Petition for Review*, p. 2-5 (July 15, 2004).

authorized to review RIF cases where an employee claims the agency did not provide one round of lateral competition, or where an employee was not given 30-days written notice prior to their separation. Employee does not advance either of these arguments. She instead contends that her performance rating was not current. This is not a viable argument for the reversal of a RIF action. Employee failed to make a connection between how her lapsed performance rating could have prevented or reversed the RIF. There is no evidence that the outcome would have differed if the evaluation was current. Therefore, she also failed to prove that the RIF procedures used by Agency were improper.

Moreover, it is hard to believe that someone who acted as General Counsel representing Agency employees in matters similar to her own would not have known that she could not benefit from both options of retiring and appealing her RIF action. Once Employee chose to retire, the RIF action was nullified.

As a result of Employee's failure to prove that her retirement was involuntary, this case is dismissed on the basis OEA's lack the jurisdiction to adjudicate this matter. Accordingly, we hereby deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

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.