THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
LINDA CLARK-SPEIGHT,	)	
Employee	)	OEA Matter No.: 1601-0223-12
	)	
v.	)	Date of Issuance: December 19, 2012
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
	)	

Linda Clark-Speight, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 27, 2012, Linda Clark-Speight ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of terminating her position as a Special Education Teacher. Employee received notification of her termination on July 27, 2012, with an effective date of August 10, 2012. Employee was serving in Educational Service status at the time her position was terminated.

I was assigned this matter on October 18, 2012. On October 19, 2012, I ordered the parties to submit briefs addressing whether OEA has jurisdiction over this matter due to Agency's contention that Employee retired. Employee's brief was originally due on or before October 31, 2012. Employee submitted her brief on November 2, 2012. 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

Agency's contention in its Answer that Employee retired raises a question as to whether OEA has jurisdiction over this appeal.[1]

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]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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."

This Office has no authority to review issues beyond its jurisdiction.[2] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[3] The issue of an employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. The law is well settled with this Office that there is a legal presumption that retirements are voluntary.[4] Furthermore, OEA has consistently held that it lacks jurisdiction to adjudicate a voluntary retirement.[5] However, a retirement where the decision to retire was involuntary, is treated as a constructive removal

---

[1] Agency's Answer, p. 6 (October 11, 2012).
[2] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[3] *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).
[4] *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).
[5] *See* Deborah Gray-Avent v. D.C. Department of Human Resources, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2008); Adele LaFranque v. D.C. Public Schools, OEA Matter No. 2401-0032-10 (February 8, 2011); Curtis Woodward v. D.C. Public Schools, OEA Matter No. 2401-0029-10 (February 8, 2011).

and may be appealed to this Office.[6] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[7] The employee must prove that her retirement was involuntary by showing that (1) the retirement resulted from undue coercion or misrepresentation by Agency; (2) the employee relied upon such information when making her decision to retire; and (3) a reasonable person would have been misled by Agency's statements.[8]

Here, Employee asserts in her brief that she "is considered to have voluntarily applied for retirement after August 18, 2012."[9] Additionally, Employee states that "as a *short brief*, the Employee would have been deemed to have retired voluntarily," and notes that she has chosen the *short brief* (emphasis added).[10] Based on Employee's admission and the evidence of record, I find that Employee voluntarily retired from her position. Furthermore, I find no credible evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire or appeal her termination with this Office. Based on the foregoing, I find that because Employee's retirement was voluntary, this Office lacks jurisdiction over this matter.[11] 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

[6] *Christie*, 518 F.2d at 587.
[7] *See Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984); *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995).
[8] *Covington*, 750 F.2d. at 942.
[9] Employee's Brief at p. 2 (November 6, 2012).
[10] *Id*.
[11] 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).