THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
SHIRLEY WIGGLESWORTH Employee	
v.	OEA Matter No.: 1601-0060-02
DEPARTMENT OF HUMAN SERVICES Agency	Date of Issuance: May 17, 2006

OPINION AND ORDER
ON
PETITION FOR REVIEW

Shirley Wigglesworth ("Employee") was a District government employee with over 30 years of service. Her most recent position was with the Department of Human Services ("Agency"). In January 1999 Agency appointed Employee to the position of Administrative Officer. At the time of the appointment the position was classified in the Career Service. However, on March 9, 2001, Agency converted the Administrative Officer position to the Management Supervisory Service ("MSS"). When Agency initiated the conversion, it gave to Employee a letter to sign stating that she accepted the

appointment to the MSS. Employee signed a letter. Thus on March 9, 2001, Employee was officially appointed to the MSS.

Almost one year later, Agency informed Employee that effective February 11, 2002, she would be terminated. Rather than accepting the termination, Employee retired from government service effective February 11, 2002. Thus Agency never effectuated the termination. Nonetheless, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on March 25, 2002.

On May 22, 2003, the Administrative Judge issued an Initial Decision in which she dismissed Employee's appeal for lack of jurisdiction. The Administrative Judge reasoned that because Employee voluntarily retired from government service and was not terminated, this Office lacked jurisdiction to consider her appeal. Further, the Administrative Judge held that because Employee was classified in the MSS, she was an at-will employee over whom the OEA had no jurisdiction. For these two reasons, Employee's appeal was dismissed.

On June 18, 2003 Employee filed a Petition for Review. As the basis for her appeal, Employee makes a three-fold argument: that she obtained a property interest in her employment and that such interest confers jurisdiction to OEA; that she was improperly placed in the MSS; and that her retirement was the result of coercion and misrepresentation and thus was not voluntary. Agency filed a response to Employee's Petition for Review on August 8, 2003.

Employee is incorrect when she argues that she obtained a property interest in her position as the Administrative Officer. As previously mentioned, on March 9, 2001 Employee's position was converted to the MSS. Employee accepted the appointment to

the MSS. According to D.C. Official Code § 1-609.54(a), "an appointment to a position in the Management Supervisory Service shall be an at-will appointment." In the Initial Decision the Administrative Judge correctly stated that "[i]t is well settled that at-will employees may be terminated for no reason or 'for any reason at all' . . . [and] may be removed with or without cause."[1] It is clear then that an employee appointed to the MSS *cannot* obtain a property interest in his or her employment. Thus, Employee did not obtain a property interest in her position as an Administrative Officer and her claim that OEA has jurisdiction for this reason is without merit.

Employee's second argument, that she was improperly placed within the MSS, is not a claim that can be considered by this Office. With the passage of the Omnibus Personnel Reform Amendment Act of 1998 on October 21, 1998, this Office no longer has jurisdiction over grievance matters. OEA's jurisdiction is limited to final agency decisions that result in an employee being removed, suspended for at least 10 days, or reduced in grade. Additionally, OEA has jurisdiction to consider appeals from employees whose positions have been abolished through a reduction-in-force. Employee's claim is a matter that, if it was permissible, should have gone through the grievance process at the agency level.

Lastly, Employee claims that her decision to retire was obtained by coercion and misrepresentation and therefore was not voluntary. OEA does not have jurisdiction over the voluntary retirements of employees and there is a legal presumption that retirements are voluntary. However, if an employee can show that his or her retirement was the result of coercive acts by the agency or was based on misinformation or deception by the

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[1] *See Initial Decision* at 3.

agency, such retirement will be viewed as involuntary and treated as a constructive removal that may be appealed to this Office. *See Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975).

It appears that Employee was faced with a difficult situation. An agency representative told Employee that she could either accept the termination and lose any benefits to which she had become entitled or that she could retire and receive those benefits during retirement. Employee chose to retire. In fact Employee has been receiving a retirement check ever since she left her job. We believe that Employee has failed to establish, nor does the record reveal, that she was in any way coerced to retire or that she was given misleading information. *See Keyes v. District of Columbia*, 372 F.3d 434, 439 (2004) (where employee has option to elect to resign and retire so that he may be guaranteed pension, and that "employee is faced merely with the unpleasant alternatives of resigning or being subject to removal . . ., such limited choices do not make the resulting resignation an involuntary act") (internal citations omitted). We find that Employee's retirement was voluntary. For the foregoing reasons, we deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

Jeffrey J. Stewart

Barbara D. Morgan

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.