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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
SANDRA WILLIAMS,	)	
Employee	)	OEA Matter No. 2401-0154-10
	)	
v.	)	Date of Issuance: April 3, 2012
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MONICA DOHNJI, Esq.
_____	)	Administrative Judge
John Mercer, Esq., Employee’s Representative	)	
W. Iris Barber, Esq., Agency’s Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On November 20, 2009, Sandra Williams (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency ” or “DCPS”) action of abolishing her position through a Reduction-In-Force (“RIF”). Employee received her RIF notice on October 2, 2009. The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was a Counselor at Ellington Senior High School (“Ellington”). Employee was serving in Educational Service status at the time her position was abolished. Employee was initially hired by DCPS in 1991 as an Intervention Counselor at Hine Jr. High School. Thereafter, Employee was reassigned to several other schools within DCPS. In 2006, Employee was transferred to Anacostia Senior High School as a Counselor. At the end of the 2008-2009 school year, Employee was ‘excessed’ from Anacostia Senior High School. In August of 2009, Employee was assigned to Ellington.<sup>1</sup> On December 23, 2009, Agency filed an Answer to Employee’s appeal asserting that Employee was a probationary employee at the time of the RIF, and as such, OEA lacks jurisdiction to hear this matter.

I was assigned this matter on or around February 6, 2012. Thereafter, on February 10, 2012, I issued an Order directing Employee to address the jurisdiction question in this matter.

<sup>1</sup> *Employee’s Brief Regarding Jurisdiction*, p. 2-3 (March 23, 2012).

Employee had until February 22, 2012, to respond. And, Agency had until March 5, 2012, to submit a reply to Employee's response. Employee did not comply. Subsequently, on February 27, 2012, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on her failure to respond to my February 10, 2012, Order. Employee had until March 10, 2012, to respond. On March 9, 2012, Employee, through Counsel, submitted Employee's Request for Sufficient Time and Due Process, requesting at least thirty (30) days extension to "sufficiently engage in discovery, present briefs and prepare for scheduled hearings." On March 12, 2012, the undersigned issued an Order granting Employee ten (10) days to submit a brief addressing the jurisdiction issue in this matter. Employee's brief was due on March 23, 2012 and Agency's reply to Employee's brief was due March 30, 2012. Both parties have complied. The record is now closed.

### JURISDICTION

The jurisdiction of this Office has not been established.

### ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.<sup>2</sup>

In her petition for appeal, Employee submits that Agency failed to follow appropriate RIF procedures as required by D.C. Code § 1-624.08, and therefore, she should be reinstated.<sup>3</sup> Additionally, in her brief on jurisdiction, Employee contends that she involuntarily retired upon receiving the RIF Notice.<sup>4</sup> Employee explains that the RIF notice was "dangerously incomplete and misleading."<sup>5</sup> Employee further asserts that she was faced with "extremely coercive elements" and that, her decision to retire "was induced by duress and other factors that, in combination, substantially undermined her freedom of choice ..."<sup>6</sup> Agency submits that because Employee was a probationary employee at the time the RIF was conducted, OEA lacks jurisdiction over Employee's appeal. Agency further contends that because Employee voluntarily retired, this Office lacks jurisdiction in this matter.<sup>7</sup> Agency also submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official

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<sup>2</sup> See *Agency's Answer*, Tab 1 (December 23, 2009); *Agency's Brief* dated February 24, 2012.

<sup>3</sup> *Employee's Petition for Appeal* (October 21, 2009).

<sup>4</sup> *Employee's Brief Regarding Jurisdiction*, p. 9 (March 23, 2012).

<sup>5</sup> *Id.* at p. 10.

<sup>6</sup> *Id.* at p. 12.

<sup>7</sup> *District of Columbia Public Schools' Brief* at p. 2 (March 29, 2012).

Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation.

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period. However, D.C. Code § 1-628.08(c) gives this Office limited jurisdiction over Career and Educational service employees, in RIF cases, regardless of the employee's date of hire. Here, although Employee was a probationary employee at the time of the RIF, based on the above referenced section, Employee would still be entitled to the regular RIF procedures found in D.C. Code § 1-624.08, which includes one round of lateral competition and thirty (30) days written notice prior to the effective date of the RIF. However, as will be discussed below, because Employee retired in lieu of being RIFed, there is another jurisdiction question in this matter.

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.<sup>8</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>9</sup> The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA has consistently held that, there is a legal presumption that retirements are voluntary.<sup>10</sup> Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.<sup>11</sup> A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."<sup>12</sup> The Employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making her

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<sup>8</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> *Id.* at 587.

<sup>12</sup> See *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984).

decision to retire. She must also show “that a reasonable person would have been misled by the Agency’s statements.”<sup>13</sup>

Here, Employee contends that her retirement was not voluntary because she interpreted the RIF Notice as requiring her to apply for retirement or lose all her retirement benefits, life insurance and health benefits; she was immediately placed on administrative leave; she did not chose her retirement date; she was not given a reasonable time to make a choice; and that she only retired after receiving the RIF notice. Employee felt that she was under duress due to a number of factors including:

Unlikely probability of finding further employment based upon the nature of her removal; absence of information concerning her most recent performance; Employee’s age and the possibility of work in area of here (sic) training in expertise; negative public information distributed by DCPS and media concerning all teachers subject (sic) to the RIF and removed from their positions during the RIF; Harsh, intimidating and hostile actions by DCPS in the removal process; Encouragement by DCPS and the Teachers’ Union to immediately file for “involuntary” retirement without providing pertinent information including the legal burden of “involuntary retirement” to be carried by the proposed Retiree in order to proceed with OEA litigation.<sup>14</sup>

I disagree with Employee’s contentions. The RIF Notice simply informed Employee of her options – appeal the RIF or retire if you qualify, and not a *mandate to retire*. The Notice also provided Employee with details on how to go about getting appeal or retirement information. Also, thirty (30) days is a reasonable time to get information, seek counsel and make an informed decision. Additionally, pursuant to District Personnel Manual (“DPM”) § 2422.11, an employee who receives written notice of release from his or her competitive level due to reduction in force may be placed on administrative leave at the discretion of the agency head (or his or her designee). Therefore, Agency was within its rights to place Employee on administrative leave, pending the effective date of her RIF.

Regardless of Employee’s protestations, the fact that she chose to retire instead of continuing to litigate her claims voids the Office’s jurisdiction over her appeal. I find that the facts and circumstances surrounding Employee’s retirement was Employee’s own choice and Employee has enjoyed the benefits of retiring. Employee’s choice to retire in the face of a seemingly unpleasant situation – financial hardship, instead of being RIFed does not make Employee’s retirement involuntary. 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. Employee’s misinterpretation of the options in the RIF Notice is of her own doing and not Agency’s. Based on the foregoing, I find that Employee’s retirement was voluntary.<sup>15</sup> I further find that, this

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<sup>13</sup> *Id.*

<sup>14</sup> Employee’s Brief Regarding Jurisdiction, *Supra*, p. 12.

<sup>15</sup> 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

Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

Employee also argues that her appeal process is flawed due to the inordinate amount of time that has transpired since her OEA petition for appeal was filed. She also takes umbrage with respect to the pace that her matter has progressed since it was assigned to the undersigned. According to Employee, her due process rights were violated because this Office allegedly took too long to calendar and decide her appeal. Employee now takes offense because the pace has quickened too fast now that it has been assigned. Employee notes that this Office has been processing a large number of similarly situated DCPS employees due to a Writ of Mandamus that was filed on November 1, 2011, by the Washington Teachers' Union, on behalf of DCPS employees removed from service via the instant RIF. Employee correctly notes that approximately two years transpired prior to this matter being assigned to my docket. Employee claims that she has not had an appropriate amount of time in which to conduct discovery and to otherwise prepare for further litigation in this matter. I disagree. Employee, either on her own, or through counsel, could have completed all or at least some of the legwork necessary in order to prepare for her "day in court" for two years. She opted to sit and wait for the matter to be assigned. Employee could have obtained counsel, propounded discovery requests, attempted mediation, or completed any number of other logistical items in order to prepare for the moment when she would be able to actively prosecute her appeal. Employee could have started her preparation from the moment she received her RIF notice. Instead, she chose to sit and wait. Employee, either on her own, or through counsel, has made her decision – she must now live with the consequences.

#### ORDER

It is hereby **ORDERED** that the petition in this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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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, supra* at 587-588. (citations omitted).