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THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
GREGORY LUMPKIN	)	OEA Matter No. 2401-0126-00
Employee	)	
	)	Date of Issuance: October 3, 2005
v.	)	
	)	Joseph E. Lim, Esq.
D.C. PUBLIC SCHOOLS	)	Senior Administrative Judge
Agency	)	
	)	

Harriet Segar, Esq., Agency Representative  
Gregory Lumpkin, Employee *Pro se*

INITIAL DECISION

PROCEDURAL BACKGROUND

On June 27, 2000, Employee appealed Agency's decision separating him from service pursuant to a modified reduction-in-force (RIF) effective August 14, 2000. Employee sought reinstatement to his position.

The matter was first assigned to Judge Susan King on December 1, 2000. She held a status conference after the parties completed discovery. After Judge King took another position, the matter was reassigned to Judge Blanca Torres on August 7, 2003. Subsequently Judge Torres left the Office's employ and the matter was then reassigned to me on May 16, 2005. I held a status conference on June 15, 2005 and ordered the parties to submit legal briefs on the issue of jurisdiction. After several requested postponements to allow Employee's counsel to locate his client, I approved counsel's motion to withdraw his representation after counsel showed good cause to show Employee's lack of cooperation with his lawyer. I subsequently closed the record.

ISSUE

Whether Agency's action separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The employee was hired as a Realty Officer, Grade 12 (EG 12) September 2, 1997. Employee was hired as an indefinite temporary employee as evidenced by his Official Personnel Action Form 1 and the Request for Personnel Action Form 2. Effective August 14, 2000, Employee's position was eliminated pursuant to a modified reduction-in-force (RIF). At the time of the RIF, it is undisputed that Employee was the sole occupant of the position title of Realty Officer, EG 12 and was therefore in a single person competitive level. On September 9, 2005, Employee's then counsel submitted documentation to show Employee's lack of cooperation and response in prosecuting his appeal.

The agency's first position is that Employee was a temporary employee and that therefore this Office has no jurisdiction over this appeal. OEA Rule 632.2, 39 D.C. Reg. 7424 (1992) provides that an employee seeking review shall have the burden of proof as to issues of jurisdiction. Agency also asserts that its RIF was in accordance with applicable rules and regulations and should thus be upheld. Employee had asserted that his position had been moved to the Office of the Deputy Superintendent. However, Employee did not submit any evidence to show such a change in Agency's organizational structure.

Section 149 of the District of Columbia Appropriations Act of 1996 (DCAA-96), Pub. L. 104-134 (April 26, 1996), 110 Stat. 1321-77, amended certain sections of the Comprehensive Merit Personnel Act (CMPA) pertaining to RIFs for the 1996 fiscal year.<sup>1</sup> Prior to the passage of DCAA-96, an entire agency was considered to be a "competitive area" for RIF purposes. Section 149 of DCAA-96 permitted an agency to establish, for the first time, competitive areas less than the entire agency.<sup>2</sup> These changes to the CMPA remained in effect for RIFs conducted during "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." See D.C. Official Code § 1-624.08 (2001). Thus, these changes were in effect for the RIF at issue in this matter, which took place during Fiscal Year 2000. Further, consistent with the earlier modifications to the CMPA, § 1-624.08 limited an employee's appeal rights to this Office to the following areas: 1) that an agency had violated an employee's entitlement to one (1) round of "lateral competition" within his or her competitive level; and 2) that an employee had not been given thirty (30) days specific notice prior to the effective date of the RIF.

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<sup>1</sup> A RIF is an orderly process for the reduction of positions within an agency for, *inter alia*, budgetary reasons and major reorganizations.

<sup>2</sup> Section 149(a) amended § 2401 of the CMPA as follows: "A personnel authority may establish lesser competitive areas within an agency on the basis of all or a clearly identifiable segment of an agency's mission or a division or major subdivision of an agency."

Addressing first the 30-day notice requirement, it is undisputed that Employee received the requisite notice.<sup>3</sup> Regarding the one round of lateral competition requirement, it is uncontroverted that Employee's competitive level was Realty Officer, EG 12. It is likewise uncontroverted that he was properly the only person in this competitive level. This Office has previously decided that in cases involving a single-person competitive level that was abolished pursuant to a RIF, "the statutory provision affording [the employee] one round of lateral competition was inapplicable." *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), \_ D.C. Reg. \_\_ ( ); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), \_ D.C. Reg. \_\_ ( ). I conclude that the holding in these cases applies here.

Employee has made no other claims cognizable by this Office in an appeal from a modified RIF. Therefore, I conclude that Agency's action separating Employee from service as a result of the RIF was in accordance with applicable law, rule and regulation and must therefore be upheld.

ORDER

It is hereby ORDERED that Agency's action separating Employee from service as a result of the RIF is UPHELD.

FOR THE OFFICE:



JOSEPH E. LIM, Esq.  
Senior Administrative Judge

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<sup>3</sup> Employee received a specific notice of RIF on June 12, 2000. The notice advised him that he would be separated from service on August 14, 2000, over 30 days after his receipt of the notice.