

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
WAYNE P. MERRILL)	
Employee)	
)	OEA Matter No.: J-0095-00
v.)	
)	Date of Issuance: October 18, 2006
COMMISSION ON MENTAL HEALTH)	
SERVICES)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Wayne Merrill ("Employee") was a Clinical Psychologist with the Commission on Mental Health Services ("Agency") working at St. Elizabeth's Hospital. Employee's position as a Clinical Psychologist was classified at the DS-0180 level. In March of 2000 Agency requested that Employee undergo a classification review to determine whether Employee, based on the duties he was actually performing, was properly classified. Agency made this request because it thought that Employee was not performing the duties of a Clinical Psychologist as those duties were defined in the position description.

The classification review would determine what should be the proper title, grade, and job series for the work that Employee was in fact performing.

Based on the results of the classification review, Agency determined that Employee was actually performing the duties of a Health Systems Specialist. This position was classified at the DS-0671 level. Therefore, on March 12, 2000 Employee was reclassified as a Health Systems Specialist and given the salary that was commensurate with that position.

On March 17, 2000 Agency issued to Employee a notice stating that his position would be abolished pursuant to a reduction-in-force ("RIF") that was scheduled to take effect on April 7, 2000. However, before the RIF took effect, Agency notified Employee on March 29, 2000 that the proposed RIF had been cancelled. Therefore Employee's position was not abolished.

On March 29, 2000 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He challenged Agency's reclassification action and its RIF action. By Initial Decision issued March 31, 2003 the Administrative Judge dismissed Employee's appeal for lack of jurisdiction. It was clear to the Administrative Judge that because Agency had rescinded the RIF, Employee was not appealing from a RIF action.

With respect to the classification issue, the Administrative Judge noted that prior to "October 21, 1998, the D.C. Code allowed an employee to appeal a final agency decision . . . 'deciding the classification of a position.'"¹ After that date, however, the law changed. The Administrative Judge correctly stated that OEA's jurisdiction is now limited to allow an employee to appeal only final agency decisions affecting a performance

¹ *Initial Decision* at 3.

rating which results in removal, a reduction in force, or an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more. "The plain language of the Code now omits . . . classification appeals from the section that describes the jurisdiction of this Office."² Thus Employee's appeal was dismissed.

On May 5, 2003, Employee filed a Petition for Review. He seeks to confer jurisdiction on this Office by arguing that the reclassification was actually an adverse action. We disagree. The reclassification of a position is not an adverse action. An adverse action is an action that an agency takes against an employee for cause and results in that employee being removed, being reduced in grade, or being suspended for at least 10 days. A reclassification is not an "action" taken against an employee. On the contrary it is a process used by an agency to determine whether an employee is performing the duties at which his or her position is classified. A reclassification can have positive results particularly when an employee's position is classified at a higher grade to reflect the fact that the employee is performing duties at a level above the grade at which the employee was formerly being paid. On the other hand, a reclassification can have negative results as it did in Employee's case. An adverse action always has a negative impact on an employee. For these reasons, a reclassification of a position is not an adverse action.

Employee has not given us any reason to overturn the Initial Decision.³ Therefore, we will uphold the Initial Decision and deny the Petition for Review.

² *Id.* at 4.

³ Employee cites numerous cases that he believes are applicable to his appeal. We, however, don't find any of them to be persuasive. The employees in the cases cited by Employee were subjected to a RIF. As already noted, Agency rescinded the RIF in this appeal. Thus Employee was never subjected to a RIF.

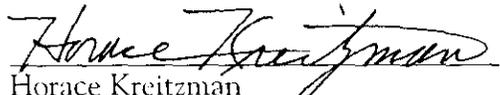
ORDER

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

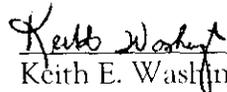
FOR THE BOARD:



Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington

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.