

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:)	
)	
LUCY MURRAY)	OEA Matter No. 2401-0071-96
Employee)	
)	Date of Issuance: June 14, 2006
v.)	
)	
DISTRICT OF COLUMBIA)	
HOUSING AUTHORITY)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Lucy Murray (“Employee”) worked with the D.C. Housing Authority (“Agency”) as a Visual and Public Information Officer. In May of 1995, Agency was placed in receivership by an order issued in the matter of *Catherine Delores Pearson v. Sharon Pratt Kelly*, C.A. No. 92-14030. David Gilmore was appointed the receiver for Agency. At the time it was placed in receivership, Agency’s biggest challenge was to do more with less. As a result, personnel matters were a top priority to the newly appointed receiver.¹ According to the *Pearson* Order, Mr. Gilmore had the “authority to

¹ *District of Columbia Housing Authority’s Legal Memorandum in Support of its Motion for Summary Decision*, p. 3 (August 9, 1996).

establish personnel policies; to create, modify, abolish, or transfer positions; [and] to hire, terminate, promote, transfer, evaluate, and set compensation for staff.”² His authority over personnel matters also included the ability to “reduce the size of the workforce, including the abolition of positions, when [he] determine[d] that such action [was] necessary or prudent.”³

The *Pearson* Order also provided that in reduction-in-force (“RIF”) matters, the Comprehensive Merit Personnel Act (“CMPA”) would remain effective until the receiver issued the Agency’s personnel policy. The policy entitled “District of Columbia Housing Authority (“DCHA”) Personnel Policy and Procedure Manual” was finalized and issued on December 8, 1995. On January 11, 1996, Employee received a RIF notice from Agency. The RIF was to become effective on February 16, 1996.⁴

On March 4, 1996, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). Employee’s petition alleged that her RIF notice was invalid and insufficient. She also provided that she was improperly RIFed because her competitive area was too narrow.⁵

Agency argued that it followed the provisions provided in the DCHA Personnel Policy and Procedure Manual to RIF Employee.⁶ The provisions clearly provided the requirements that Agency should follow to RIF an employee. According to the

² *Agency’s Record*, Exhibit # 9 (August 9, 1996).

³ 42 D.C. Reg. 6922 (December 8, 1995).

⁴ *Petition for Appeal (Resubmitted)*, p. 5-9 (March 19, 1996). The letter identified Employee’s position for abolishment because it was surplus to Agency’s mission. It went on to note the effective RIF date and included an enclosure outlining her appeal rights.

⁵ *Petition for Appeal*, p. 2-4 (March 4, 1996).

⁶ *District of Columbia Housing Authority’s Statement of Material Facts As Which There Are No Genuine Issues*, p. 3-5 (August 9, 1996).

regulation, the receiver was required to issue written notice of the action to be taken; provide the effective date of such action; and outline the employee's appeal rights.⁷

On June 7, 2004, the Administrative Judge ("AJ") issued an Initial Decision. It addressed whether Employee should have been removed through the RIF requirements outlined in the CMPA or through the DCHA Personnel Policy and Procedure Manual. The AJ held that at the time of the RIF, Agency was not bound to the CMPA because of the *Pearson* Order. Moreover, Agency met its RIF requirements to remove Employee as outlined in the DCHA Personnel Policy and Procedure Manual.

Employee responded to the Initial Decision by filing a Petition for Review on July 9, 2004. She alleged that she was denied a speedy resolution of her case. She then argued that the AJ used an impermissible basis for fact finding. Employee claimed that before the AJ scheduled a pre-hearing conference, she decided the effective date of Employee's removal by referencing her Personnel Form I. Finally, she contended that the AJ did not provide her with a D.C. Register cite in the case of *Levitt v. District of Columbia Office of Personnel*, OEA Matter No. 2401-0001-00 Opinion and Order on Petition for Review (November 21, 2002), that she referenced in her decision.⁸

Agency filed a response to Employee's Petition for Review on August 13, 2004. It provided that Employee failed to present any of the requirements to grant a Petition for Review as outlined in 6 D.C.M.R. § 634.3. Agency reasoned that although Employee took issue with her effective date of removal, she nonetheless failed to demonstrate that a hearing was necessary to make such findings. Moreover, Agency argued that

⁷ 42 D.C. Reg. 6922 (December 8, 1995).

⁸ *Petition for Review*, p. 2-8 (July 9, 2004).

Employee's argument regarding a speedy resolution to her case must also fail because the case was continued to accommodate Employee's counsel in another trial.⁹

The *Pearson* Order gives clear deference to the DCHA Personnel Policy and Procedure Manual over the RIF requirements outlined in the CMPA, D.C. Code § 1-601 *et seq.*¹⁰ The DCHA Personnel Policy and Procedure Manual § 7111.2 provides that:

“The Receiver shall conduct a reduction-in-force in the following manner:

- (a) The Receiver shall have sole discretion to determine the organizational structure, number of positions, classifications and positions in the Authority. The Receiver may reduce the size of the workforce, including by the abolition of positions, when the Receiver determines that such action is necessary or prudent. Except as otherwise provided by law, no outside agency may substitute its judgment for that of the Receiver as to the prudence of such action.
- (b) Permanent Employees subject to termination by a reduction by a reduction in force shall receive prior written notice of the action to be taken, the effective date of such action and of the employee's appeal rights. The termination of an employee by a reduction in force shall not be considered a removal for cause under these policies.”

As previously stated, Agency sent Employee a letter on January 11, 1996, notifying her that she would be separated effective February 16, 1996, due to a “budgetary deficit for Fiscal year 1996 and anticipated deficits for subsequent fiscal years.” The letter went on to say that Employee could appeal Agency's decision. An appeal notice was enclosed that served as “a statement of appeal rights of DCHA permanent employees subject to reduction in force.”¹¹ Hence, all of the DCHA regulation requirements were met in this one letter and its attachments.

⁹ *Agency's Response to Petition for Review*, p. 1-3 (August 13, 2004).

¹⁰ *Agency's Record*, Exhibit # 9 (August 9, 1996).

¹¹ *Agency's Record*, Exhibit # 5 (August 9, 1996). The effective RIF date is also found on Employee's Personnel Action Form I.

Employee's next argument was that the AJ failed to administer a speedy resolution of her case. She concedes in her Petition for Review that her counsel requested a continuance because of a lengthy trial she was about to begin. Additionally, the matter was continued because of health issues with Employee's counsel's family. Employee cannot request continuances in her case only to object to the delay in having the case resolved.

Employee also asserted that before the AJ scheduled a pre-hearing conference, she decided the effective date of her removal by referencing her Personnel Form I.¹² Employee had ample opportunities to develop an argument to the contrary. However, she did not. At any point prior to the pre-hearing conference, she could have filed a motion that addressed this particular issue. Therefore, she cannot now argue that the AJ used an impermissible basis for fact finding.

Employee's final argument was that the AJ did not provide her with a D.C. Register cite for the *Levitt* case she referenced in her Initial Decision. The AJ provided the standard case citation for OEA decisions. She did not include the D.C. Register cite because at the time that the Initial Decision was issued, it did not exist. This office cites all of its cases in the manner the AJ provided. A little due diligence would have accomplished the result sought by Employee. This argument is hardly a reasonable objection to the AJ's Initial Decision. Accordingly, we hereby deny Employee's Petition for Review.

¹² Employee contends that she was removed prior to the February 16, 1996, date that Agency provides on her Form I. However, the AJ and a U.S. District Court Judge for the District of Columbia found that there was no factual basis for Employee's claim. Both judges held that Employee was removed from her position on February 16, 1996.

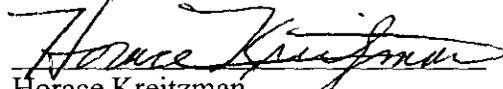
ORDER

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

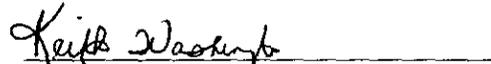
FOR THE BOARD:



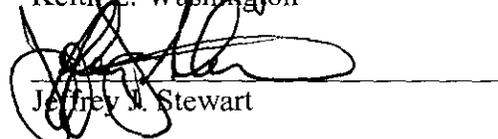
Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington



Jeffrey M. Stewart

Recused

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.