

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Evelyn Lyles)	OEA Matter No. 2401-0150-09
Employee)	
)	Date of Issuance: March 16, 2010
v.)	
)	Senior Administrative Judge
DC Dept. of Mental Health)	Joseph E. Lim, Esq.
Agency)	
_____)	

Evelyn Lyles, Employee pro se
Ross Buchholz, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On July 2, 2009, Employee, an Occupational Rehabilitation Specialist, DS-1715-12-07N, in the Career Service, filed a petition for appeal from Agency’s final decision separating her from Government service pursuant to a modified reduction-in-force (RIF).

This matter was assigned to me on January 19, 2010. I conducted a Prehearing Conference on March 15, 2010, after Employee requested a postponement due to illness. Since the matter could be decided based on the documentary evidence and the parties’ positions as set forth at the conference, no further proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUE

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

FINDINGS OF FACT

The following facts are not subject to genuine dispute:

1. On August 1, 2009, the effective date of her RIF, Employee had occupied the position of Occupational Rehabilitation Specialist, DS-1715-12-07N in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's competitive level. Because she was the only Occupational Rehabilitation Specialist, DS-12, then for purposes of the RIF, she was properly in a one-person competitive level.
2. Employee's Retention Register shows that her RIF service computation date is May 7, 1976. Because her position was eliminated and because she was the only one in her competitive level, Employee was terminated.
3. Employee received the requisite 30-day notice prior to the effective date of her separation.
4. At the conference, Employee alleged that she should have been placed in another position. She had filed a discrimination complaint against Agency and alleged that she was not given severance pay.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." Further, § 1-624.08(f)(2) reads as follows: "An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied." Section 1-624.08(d) states in part that: "[a]n employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],¹ which shall be limited to positions in the employee's competitive level."

Section 1-624.08(e) states that an employee who is "selected for separation" as a result of a RIF is entitled to 30 days written notice prior to the effective date of the RIF. Thus, an employee whose position was abolished as a result of a RIF may only contest the following before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days' notice prior to the effective date of his/her separation.

Chapter 24 of the DPM, § 2410.4, 47 D.C. Reg. 2430 (2000), defines "competitive level" as:

All positions in the competitive area ... in the same grade (or occupational level), and classification series and which are

¹ Chapter 24 of the DPM contains the regulations implementing the RIF law.

sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a “retention register” for each competitive level, and provides that the retention register “shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level.” Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the retention register. An employee’s standing is determined by his/her RIF service computation date (RIF-SCD), which is usually the date on which the employee began D.C. Government service. However, an employee’s standing on the retention register can be enhanced by: 1) an “Outstanding” performance rating for the rating year immediately preceding the RIF (DPM § 2416, 47 D.C. Reg. at 2433); 2) Veteran’s preference (DPM § 2417, 47 D.C. Reg. at 2434); and/or 3) D.C. residency preference (DPM § 2418, *id.*).

Employee’s arguments:

1) Agency should have placed her in another position.

At the prehearing conference and in her legal brief, Employee alleged that her RIF was improper because the agency should have placed her in another vacant position.

As the deciding Administrative Judge, I note that none of Employee’s arguments negate the legality of the RIF action. As discussed above, § 1-624.08(f)(2) limits the grounds upon which employee may contest her RIF, and the above arguments are not among them.

2) Employee did not receive her one round of lateral competition.

Employee also complained that she did not receive her one round of lateral competition. However, pursuant to § 2412 of the RIF regulations, above, Agency established a retention register for Employee’s competitive level.

D.C. Official Code § 1-624.08(f) reads as follows:

Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this action shall be subject to review except that . . . (2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

Section 1-624.08(d) states in part that:

An employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],² which shall be limited to positions in the employee's competitive level.

Section 1-624.08(e) states that:

Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

Thus, an employee whose position was abolished as a result of a RIF may only contest before this Office: 1) that she was not afforded one round of lateral competition within her competitive level; and/or 2) that she was not given 30 days notice prior to the effective date of her separation.

Regarding the lateral competition requirement, the record shows that Employee was the sole Occupational Rehabilitation Specialist occupying the position, which placed her into a single person competitive level. Therefore, I conclude that the statutory provision of Code § 1-624.08(e), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.3, are both inapplicable, and that Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position. See *Leona Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), __ D.C. Reg. __; *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), __ D.C. Reg. __; *Deborah J. Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003), __ D.C. Reg. __; and *R. James Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001), __ D.C. Reg. __.

3) Employee alleged that she was discriminated against by Agency and that she was not given severance pay. As noted above, the RIF regulations do not allow me jurisdiction to address these issues. However, I requested the Agency to look into these matters and address Employee's concerns.

Based on the foregoing, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

² Chapter 24 of the DPM contains the regulations implementing the RIF law.

It is hereby ORDERED that Agency's action separating Employee pursuant to a RIF is UPHELD.

FOR THE OFFICE:

Joseph Edward Lim, Esq.
Senior Administrative Judge