

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Maytiller Evans) OEA Matter No. 2401-0121-09R10
Employee)
) Date of Issuance: April 9, 2010
v.)
) Senior Administrative Judge
D.C. Dept. of Parks & Recreation) Joseph E. Lim, Esq.
Agency)
_____)

Maytiller Evans, Employee Pro se
Justin Zimmerman, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On May 26, 2009, Employee, a Staff Assistant, DS-301-12/4, 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 November 30, 2009. After the Agency failed to submit a Prehearing Statement and failed to attend a January 6, 2010, Prehearing Conference, I issued an Initial Decision reversing Agency’s action for failure to defend on January 7, 2010. After Agency appealed on the grounds that it was not properly served, the Office of Employee Appeals (OEA) Board remanded the matter back to me in an *Opinion and Order on Petition for Review* on March 1, 2010.

I conducted a Prehearing Conference on April 9, 2010. Since the matter could be decided based on the documentary evidence and the parties’ positions as set forth during 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 May 29, 2009, the effective date of her RIF, Employee occupied the position of Staff Assistant, DS-301-12/4, 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 Staff Assistant, 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 was October 23, 1997. Because her position was eliminated, Employee was terminated.
3. Employee received the requisite 30-day notice prior to the effective date of her separation.
4. At the prehearing conference, Employee stated that Agency did not really have a budget crisis that would justify a RIF; that she was not given a designation of representative form by Agency, and that she had been rehired but at a lower grade.

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.

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

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.

Based on the above cited statute, Employee's stated grounds for appealing her RIF are legally insufficient to overturn her RIF. Here, it is undisputed that Employee received her round of lateral competition within her competitive level; and that she was given 30 days' notice prior to the effective date of her separation.

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

ORDER

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