

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant 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:)	
)	
MARY BECK)	
Employee)	
)	OEA Matter No. 2401-0249-96
v.)	
)	Date of Issuance: November 8, 2005
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mary Beck (“Employee”) was a teacher at Phyllis Wheatley Elementary School at the time that the District of Columbia Public Schools (“Agency”) took action to abolish her position through a modified reduction-in-force (“RIF”). The RIF took effect July 17, 1996. On July 25, 1996, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). In an Initial Decision issued August 28, 2002, the Administrative Judge upheld the RIF.

A group of eighteen classroom teachers at Phyllis Wheatley Elementary School, including Employee, was selected to have their positions abolished through the RIF process. Because the applicable RIF regulations entitled each teacher to one round of lateral competition, only two of the eighteen teachers would actually be subjected to the RIF. To determine which two positions would be abolished, Agency devised a form known as the Competitive Level Documentation Form ("CLDF"). Each teacher was to complete the form and, based on the information contained within the form, each teacher would be assigned a certain number of points. The teachers who received the most points would not be subjected to the RIF. Sixteen teachers received a score of 63 or higher. None of those teachers had their position abolished. Employee, however, received a score of 18. Thus Employee (along with another teacher who received a score of 62) was subjected to the RIF.

To assess the validity of the RIF with respect to Employee, the Administrative Judge had to determine whether Employee received all of the points to which she was entitled. The Administrative Judge found that Employee had been denied some of the points that other similarly situated teachers had been granted. After recalculating the points, the Administrative Judge held that Employee was entitled to an additional 27 points. Even with the additional 27 points added to the 18 points to make a total of 45 points, Employee still "fell short of the necessary 63 points."¹ Thus the Administrative Judge upheld Agency's RIF action.

Employee has timely filed a Petition for Review in which she claims that the Initial Decision is not based on substantial evidence. Substantial evidence is "more than a mere

¹ *Initial Decision* at 17.

scintilla” of evidence. It is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). See *Gunty v. Dep’t of Employment Services*, 524 A.2d 1192, 1198 (D.C. 1987).

First Employee claims that she was erroneously denied five points for her participation in International Day. The Administrative Judge held that because Employee had not listed that item on her CLDF, the school principal had justifiably denied her credit for that item. Employee claims, however, that the principal “confirmed that Ms. Beck participated in International Day.”² The testimony does not bear this out. According to the transcript, the principal testified that he did not know and could not “recall whether [Employee] did or [did] not” participate in International Day.³ The principal went on to say that he used “the narrative that the teacher gave [him]” to ascertain what activities a teacher had participated in. *Id.* Further, he testified that even though he is “almost sure” that all of the teachers participated in International Day “in some way or the other[,]” he would not have awarded points to them if “they didn’t put it on their narrative.” *Id.* at 402. Because Employee failed to include on her CLDF submissions that she had participated in International Day, we believe the Administrative Judge was correct to deny her the points for this activity.

Employee next argues that the Administrative Judge erred by not allowing her to receive additional points for various other activities and accomplishments. The Administrative Judge held that with respect to these activities and accomplishments, Employee had not shown that what she had done was equivalent to what the comparison

² *Petition for Review* at 5.

³ *Transcript* at 399.

teachers had done and received credit for. Further, the Administrative Judge found that Employee had failed to list in her CLDF submissions many of the items that she claims to have participated in. On the contrary, the teachers with whom Employee compares herself received points for activities and accomplishments that were directly responsive to the items contained within the CLDF. For example, points were given to teachers who had a Master's Degree but not to those who had not received such. Employee had only a master's equivalency and according to the principal, he thought a teacher had to actually have a Master's Degree in order to receive any points in this category. Employee's argument fails on this point.

Lastly, Employee argues that she should have been credited with ten additional points in the attendance and discipline section of the CLDF because her lack of attendance and resulting discipline was directly related to Agency's failure to accommodate her disability. As proof that she has a disabling condition which Agency failed to reasonably accommodate, Employee includes a decision issued by the U.S. District Court for the District of Columbia. In that decision the judge reaffirmed a jury's verdict which found that Employee suffered from a disability which Agency had in fact failed to reasonably accommodate. This finding, according to Employee, should have resulted in the Administrative Judge allowing the additional points for attendance and discipline.

During the opening statement at the evidentiary hearing, Employee made mention of this decision. To substantiate her claim with respect to her lack of attendance and resulting discipline, the Administrative Judge asked whether Employee would be entering the decision into evidence. Employee said that she would; however, Employee

never submitted the decision into evidence. Lacking this decision, the Administrative Judge found that Employee had “provided no documentary evidence to substantiate her claim.”⁴ As mentioned, Employee has now included the decision. Nevertheless, even if we were to allow the ten additional points, Employee would have a score of only 55. Because she needed at least 63 points, her score remains insufficient to remove her from a RIF status. Thus the evidence supports the Administrative Judge’s decision. In view of our findings, we must deny Employee’s Petition for Review.


⁴ *Initial Decision* at 9.

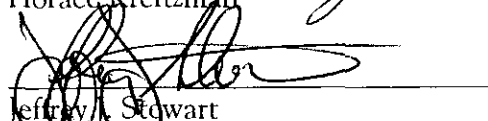
ORDER

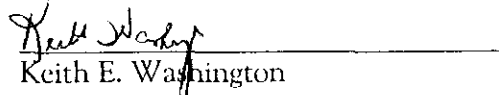
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:



Brian Lederer, Chair

Horace Kreitzman

Jeffrey A. Stewart

Keith E. Washington

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.