

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:)	
)	
PATRICIA A. CALLOWAY)	
Employee)	
)	OEA Matter No. 2405-0099-92P04
)	
v.)	
)	Date of Issuance: June 18, 2004
)	
DEPARTMENT OF HOUSING AND)	
COMMUNITY DEVELOPMENT)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW No. 2

Employee was a Financial Services Manager at the time Agency abolished her position pursuant to a modified reduction-in-force (RIF) effective July 6, 1992. Employee then filed a Petition for Appeal. That appeal was assigned to an Administrative Judge of the Temporary Appeals Panel (TAP).¹

¹ The Council of the District of Columbia created the Temporary Appeals Panel as an agency that was separate and distinct from the Office of Employee Appeals. TAP had exclusive jurisdiction to review the

Employee alleged in her Petition for Appeal that Agency had misclassified her position and had drawn the retention register too narrowly. In an Initial Decision issued June 30, 1993, the TAP Administrative Judge upheld the RIF action and found that Agency had properly constructed the retention register. Nonetheless, the TAP Administrative Judge held that TAP did not have jurisdiction to review issues regarding the classification of Employee's position.

Subsequently, Employee appealed the Initial Decision. On November 5, 1993, the TAP Board issued an order that granted Employee's Petition for Review and remanded the appeal with the instruction that the TAP Administrative Judge conduct a new hearing.² Without any explanation as to how it reached its conclusion, the TAP Board found that the June 30, 1993 Initial Decision was not supported by substantial evidence.

Because TAP was abolished before Employee's appeal was concluded, the case was transferred to this Office for further adjudication. In accordance with the instructions of the November 5, 1993 order, an Administrative Judge of this Office conducted an evidentiary hearing on March 10 and March 11, 1994. On April 9, 1996, the Administrative Judge issued an Initial Decision which, again, upheld Agency's action.

Thereafter, on May 14, 1996, Employee appealed that decision to this Board. In her Petition for Review, Employee made several arguments that were aimed at demonstrating that Agency had misclassified her position and thus had place her in the

appeals of employees who had been separated from District government service pursuant to a modified reduction-in-force. TAP, which was abolished on November 30, 1993, had its own Board to review Petitions for Review.

² On September 29, 1993, the TAP Board issued an order that also granted Employee's Petition for Review and remanded the appeal with the instructions that a hearing *de novo* be held.

wrong competitive level. Further, Employee argued that when her appeal was transferred to this Office, the Administrative Judge improperly shifted the burden of proof to her. Another argument posited by Employee was that an Agency witness gave testimony that contradicted the testimony of one of Employee's witnesses with respect to which positions should have been included in Employee's competitive level. Finally, Employee argued that the Administrative Judge had failed to consider the fact that Agency had not offered her another position, nor had Agency reassigned her to another position that was not scheduled to be abolished. Based on these claims of error, Employee requested that the Board reverse Agency's RIF action.

In an Opinion and Order on Petition for Review issued October 10, 1997, we addressed each of Employee's arguments and found them to be without merit. Specifically, we determined that there was nothing in the record that showed that the Administrative Judge had shifted the burden of proof to Employee when her appeal was transferred to this Office. In fact, we found that the Administrative Judge had evaluated the evidence with the understanding that Agency bore the burden of proving that the RIF action was proper. Moreover, we found that Employee had not cited any rule or regulation that required Agency to reclassify her position prior to conducting the RIF. Thus, Employee had failed to show that Agency had placed in the wrong competitive level as a result of misclassifying her position. Next, we determined that the testimony of Agency's witness and the testimony of Employee's witness was in accord with one another on the issue of which positions should have been included in Employee's competitive level. Lastly, we found that Employee had not properly raised before the Administrative Judge the issue regarding Agency's failure to offer her another position or to reassign her

to another position. Inasmuch as these two issues had not been properly raised in the appeal, we held that the Administrative Judge had no obligation to resolve them.

Even though the substance of the October 10, 1997 Opinion and Order indicated that the Initial Decision would be affirmed and that Employee's Petition for Review would be denied, we, nevertheless, issued the following order:

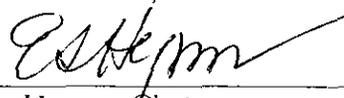
Accordingly, it is hereby ORDERED that Agency's petition for review is GRANTED, the initial decision is REVERSED and the Agency's RIF action is UPHeld.

Realizing that the order contained an error and believing that it was our intention to reverse the Initial Decision in spite of the fact that we had upheld the RIF action, on October 20, 1997, Employee filed "Employee's Notification of Errors in and a Request for Review of the October 10, 1997 Opinion and Order on (Employee's) Petition for Review." In this document Employee has again challenged Agency's RIF action. As a basis for that challenge, Employee relies upon the same arguments that she had raised in her May 14, 1996 Petition for Review. The Administrative Judge addressed each of those arguments during the course of this appeal and we also addressed them in our first Opinion and Order. Employee has not given us any compelling reason to reconsider those arguments. Accordingly, we will affirm the April 6, 1996 Initial Decision, deny Employee's request, and uphold Agency's RIF action.

ORDER

Accordingly, it is hereby **ORDERED** that the April 9, 1996 Initial Decision is **AFFIRMED**, Employee's Request is **DENIED**, and Agency's RIF action is **UPHELD**.

FOR THE BOARD:



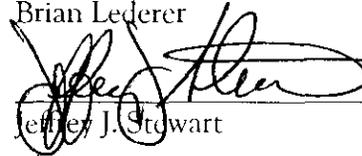
Erias A. Hyman, Chair



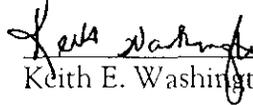
Horace Kreitzman



Brian Lederer



Jeffrey J. Stewart



Keith E. Washington

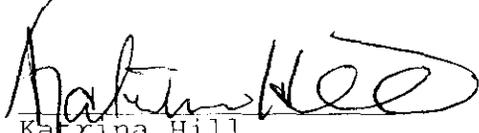
The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.

CERTIFICATE OF SERVICE

I certify that the attached OPINION AND ORDER was sent by regular mail this day to:

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Washington, D.C. 20001


Katrina Hill
Clerk

June 18, 2004
Date