THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
JACQUELINE HENDERSON Employee	OEA Matter No. 2401-0073-02
v.	Date of Issuance: January 25, 2006
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Jacqueline Henderson ("Employee") worked as a secretary for the D.C. Department of Corrections ("Agency"). Agency issued a reduction in force ("RIF") action against Employee that was to become effective on March 22, 2002. On March 21, 2002, Employee decided to voluntarily retire in lieu of accepting the terms of the RIF.[1] Despite her voluntary retirement, Employee filed a Petition for Appeal with the Office of

[1] *Agency's Response to Employee's Argument that the Office of Employee Appeals has Jurisdiction to Adjudicate her Appeal from her Reduction in Force*, Exhibit #1 (March 8, 2004).
According to Agency's Official Personnel Action Form One, Employee's service computation date was listed as 02/22/76 which gave Employee 25 years of services, making her eligible for retirement.

Employee Appeals ("OEA") on April 22, 2002, challenging Agency's RIF action.

Employee argued in her Petition for Appeal that Agency did not comply with DPM, Chapter 14 by promptly issuing her performance evaluation. According to Employee, the regulation provides that she was to receive her evaluation by June 30, 2001; however, she did not receive the document until September of 2001. As a result, Employee alleged that Agency did not have a performance rating to comply with the RIF regulations.[2]

Nearly one and a half years after receiving monthly retirement benefits, Employee received a notice from the Office of Personnel Management on May 23, 2003. According to their records, she was not eligible for the retirement annuity payments that she received and would be required to repay the money.[3] As a consequence of Employee's inability to retire, the RIF action taken against her was effective. Subsequently, Employee sought to continue her RIF appeal filed in April of 2002.

On June 3, 2004, the Administrative Law Judge ("ALJ") issued an Initial Decision. The ALJ reasoned that OEA's jurisdiction to adjudicate this matter heavily relied on whether Employee's retirement was voluntary or involuntary. If the retirement was deemed voluntary, then OEA would lack the statutory jurisdiction to hear this matter. However, if it is determined that Employee involuntarily retired, then that constitutes a constructive removal and OEA could adjudicate the matter.[4]

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[2] *Employee's Petition for Appeal*, p. 8 (April 22, 2002).
[3] The notice contends that to retire from service, Employee should be at least 50 years old with 20 years of service *or* any age with at least 25 years of service. Employee was 48 year old with 23 years, 6 months and 2 days of service. Therefore, she was not eligible for retirement benefits.
[4] *Dunham v. D.C. Public Schools*, OEA Matter No. 2401-0291-96, Opinion and Order on Petition for Review (September 28, 2000) quoting *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975).

The ALJ held that Employee was misinformed by Agency's retirement staff, and the staff and Employee relied on the misinformation. Furthermore, Employee reasonably relied on Agency's misinformation to her detriment. Therefore, she did not voluntarily retire.[5] Accordingly, OEA's jurisdiction to hear this matter was clearly established. The ALJ also held that although jurisdiction was established, Employee did not meet her burden to reverse the RIF action.

Employee then filed a Petition for Review on July 8, 2004, opposing the Initial Decision. Employee reasserted the argument provided in her Petition for Appeal contending the time she received her performance evaluation. She argued that the rating presented was illegal and could not be used to validate her RIF. Additionally, she asserted that if the RIF was not reversed, then Agency would be allowed to neglect its duty to comply with its regulations.[6] Agency filed a Response to Employee's Petition for Review on July 20, 2004, requesting that the Initial Decision be upheld.

D.C. Code § 1-624.08(d), (e), and (f) clearly establishes the circumstances under which the OEA may hear RIFs on appeal.

> "(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to position in the employee's competitive level.
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> (e) 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.

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[5] *Initial Decision*, p. 6 (June 3, 2004).
[6] *Employee Jacqueline D. Henderson's Petition for Review of the Initial Decision*, p. 2-3 (July 8, 2004).

> (f) 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 section shall be subject to review except that:
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> > (1) An employee may file a complaint contesting a determination or separation pursuant to subchapter XV of this chapter or § 2-1403.03; and
> >
> > (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."

Thus, this Office is only authorized to review RIF cases where an employee claims the Agency did not provide one round of lateral competition or where an employee was not given 30-days written notice prior to their separation. Employee does not advance either of these arguments. She instead focused on her failure to receive her performance evaluation in a timely manner from Agency. This is not a viable argument for the reversal of a RIF action. Employee failed to make a connection between how her untimely receipt of her performance evaluation could have prevented or reversed the RIF. There is no evidence that the outcome would have differed if the evaluation was received timely. Therefore, Employee failed to prove that the RIF procedures used by Agency were improper.

Although it is terribly unfortunate that Employee detrimentally relied on Agency's misinformation to involuntarily retire, she did not provide a basis upon which relief could be granted. Accordingly, we uphold the Judge's decision and deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

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.