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:	
SHERYL WATSON Employee	OEA Matter No. 2401-0152-99
v.	Date of Issuance: September 26, 2005
D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

On June 2, 1999, Sheryl Watson ("Employee") received notice from the Department of Consumer and Regulatory Affairs ("DCRA") that she would be separated from her position with the agency on June 18, 1999, pursuant to a reduction-in-force ("RIF"). Employee was employed as a Paralegal Specialist, D-12. At the time of her separation, she was the only person in the DCRA with that designation. Employee appealed her case to the Office of Employee Appeals ("OEA") on July 7, 1999.

The Administrative Judge assigned to this appeal issued an Initial Decision on September 20, 2004, that upheld the Agency's decision to separate Employee through the

RIF and denied Employee's claim that the RIF was the result of claims made by her under the Whisteblower Protection Act (WPA). The Administrative Judge also concluded that the OEA lacked jurisdiction to address Employee's post-RIF reemployment rights.

In response to the Administrative Judge's ruling, Employee filed a Petition for Review on October 22, 2004, in which she raised several issues. Employee argues that the Administrative Judge erred in his determination that OEA lacked jurisdiction to address Employee's unauthorized detail related to the RIF. She also asserts that the Administrative Judge erred in his determination that the change in Employee's responsibility center designation had no bearing on the Agency's decision to RIF her from the Office of Director ("OD"). Employee further provides that the Administrative Judge erred in finding that she only had the right to appeal the RIF after determining that the notice for the RIF was improper or one round of lateral competition was perfected incorrectly.

Additionally, Employee contends that the Administrative Judge erred in his determination that the actual 15-day notice given to Employee and the erroneous appeal date given were insignificant and posed no real harm to employee. Finally, Employee alleges that the Omnibus Personal Reform Amendment Act that the Administrative Judge applied was not officially law during the time that he decided the case. Additional claims of unconstitutionality and Fifth Amendment violations were made in Employee's Amendment to Petition for Review filed on March 3, 2005. Employee also argued that

Levitt v. D.C. Office of Employee Appeals, 869 A.2d 364 (March 10, 2005) was applicable in her appeal.

The first issue raised by Employee is that the Administrative Judge erred in failing to address Employee's unauthorized detail as it relates to the RIF. Employee argues that a change in her responsibility center from the OD to the Office of Adjudication ("OA") constituted a reassignment which would make the RIF from the OD ineffective. Contrary to Employee's claim, the Administrative Judge dealt with this issue in great detail in his Initial Decision. The Judge determined that the fact that Employee's detail changed from OD to OA was not significant to warrant reversal of the RIF. In his Initial Decision he provides that "an appeal from an alleged improper detail is legally characterized as a grievance."[1] Furthermore, *Anderson v. Department of Public Works*, OEA Matter No. 1602-0151-91 (October 12, 1994), __ D.C. Reg. __ ( ) quoting District Personnel Manual ("DPM"), provides that "a detail is a temporary assignment of an employee to a different position for a specified period, with the employee returning to his or her regular duties at the end of the detail. A position is not filled by detail, as the employee continues to be the incumbent of the position from which detailed." Therefore, a detail does not rise to the level of a reassignment. Consequently, Employee was still employed by the OD not OA.

Moreover, upon the admission of Ms. Belva Newsome, Chief Administrative Law Judge, a Position Description and a Request for Personnel Action were forwarded to the DCRA Personnel Office to have Employee reassigned to the OA. Ms. Newsome

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[1] *See* Initial Decision, p. 23, (September 20, 2004).

provided that she never received a response to her request before Employee was RIFed.[2] Therefore, based on her own witness' testimony, not only was Employee statutorily not reassigned by the detail but she lacked a procedural reassignment as well. As a result, at the time of the RIF the OD had full authority to enforce the RIF action taken against Employee because she was still employed by their agency.

Subsequently, Employee's second argument fails. The Administrative Judge was correct in his determination that the change in Employee's responsibility center had no bearing on the OD's decision to RIF her. A responsibility center is defined as the primary level at which a budget is established for financial control purposes.[3] Based on the testimony of Ms. Newsome and the statutory definition, it is clear that a responsibility center is the budget from where funds are taken to pay an employee.[4] Similar to our previous analysis, a change in responsibility center does not equate to a reassignment, therefore the Administrative Judge's ruling on this issue was accurate.

Next, Employee contends that the Judge erred in his determination that OEA's jurisdiction with respect to RIFs was limited to examining whether the notice of the RIF was improper or that the lateral competition was perfected incorrectly. As outlined in D.C. Code Ann. §1-606.3(a) an employee may appeal a final agency decision to the OEA if the employee has been: (1) removed; (2) involved in an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or (3) involved in a reduction-in-force. Employee conceded that since she was a single person within a

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[2] *See* Transcript, p. 111-116, (February 25, 2004).
[3] *See* D.C. Code Ann. § 47-382.
[4] *See* Transcript p. 102, (February 25, 2004).

competitive level, the statutory provision pertaining to lateral competition did not apply to her.[5]

Focusing on the notice requirement of RIF actions, *Howard v. D.C. Public Schools*, OEA Matter No. 2401-0323-96 (July 21, 2000), __ D.C. Reg. __ ( ), as well as *Pass v. D.C. Office of Personnel*, OEA Matter No. 2401-0122-99 (October 2, 2000), __ D.C. Reg. __ ( ), found that notice violations that are merely harmless procedural error do not warrant reversal of a RIF action. In both cases, it was determined that an award of the pay and benefits that an employee would have received had they been afforded the full 30-day notice is adequate in fairness and equity. Therefore, the Administrative Judge did not err in determining that Employee only had the right to appeal the RIF after determining that the notice of the RIF was improper. Nor was he incorrect in determining that the 15-day notice given to Employee and the erroneous appeal date given posed no real harm to employee.[6]

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[5] *See* Employee Brief, p.1 (January 29, 2002).

[6] The Administrative Judge correctly found that Employee's 15-day notice argument did not warrant a reversal of the RIF. D.C. Code Ann. § 1-625.2(d) provides that "a [RIF] action may not be taken until the employee has been afforded at least 15 days advance notice of such an action." Employee claims that the Omnibus Personal Reform Amendment Act was not officially law during the time that the Administrative Judge decided the case. The OPRAA amendments pertaining to RIFs did not apply during the time of her RIF. The RIF portion of the statute was amended to allow 30 days notice for RIFs effected during FY99 instead of the 15 days provided.

The lack of 15 days' notice did not cause substantial harm as Employee contends. As was the case in *Howard,* Employee could be made whole by receiving pay for the difference between the 15- and 30-day notices. Furthermore, Employee's appeal rights were not compromised or prejudiced because of the improper notice. Nor did the improper notice significantly affected the Agency's final decision to RIF her. Accordingly, the fact that Agency did not afford Employee the full 30-day notice amounts to harmless error and does not afford Employee a substantive right to have the RIF reversed.

The final issue that Employee raises is that the RIF regulations used by the Administrative Judge were unconstitutional and in violation of her Fifth Amendment rights. She maintains that the RIF regulations denied her the opportunity to appeal the reason for the RIF and ultimately deprived her of her property interest in her job. She claims that the Administrative Judge erred in ruling that Employee could only appeal the process and notice requirements of the RIF because doing so denies her Due Process and property interest in her employment rights. Based on the argument raised, we believe that Employee is questioning the Administrative Judge's ruling that the OEA lacks the jurisdiction to address her post-RIF reemployment priority rights.

Plainly stated, this Office lacks the jurisdiction to hear post-RIF reemployment matters.[7] As previously provided, the OEA is statutorily authorized to address specific types of cases. The Administrative Judge accurately ruled on all issues raised that the OEA could address.

The reason the Agency provided as a basis for the RIF was that the office no longer had a need for a paralegal. Reorganization is a legitimate reason for a RIF. Moreover, Employee did not prove that a paralegal was hired after she was RIFed to show that the Agency had any reasons that were less than noble to separate her from the position. Furthermore, Employee's reemployment matters have no bearing on whether the RIF was proper.

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[7] *See Wynn v. Department of Corrections,* OEA Matter No. 2401-0133-00 (November 19, 2002), __ D.C. Reg. __ ( ); *King v. Department of Health,* OEA Matter No. J-0052-01 (January 15, 2003), __ D.C. Reg. __ ( ); *Siler v. Department of Corrections,* OEA Matter No. 2401-0134-00 (November 19, 2002), __ D.C. Reg. __ ( ).

Employee properly appealed her RIF but did not meet the requirements necessary for a ruling in her favor. Because Employee failed to prove that the Administrative Judge erred in his ruling, we hereby 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.