THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SHARON JEFFRIES,	)	OEA Matter No. 2401-0073-11
Employee	)	
	)	Date of Issuance: July 24, 2014
	)	
D.C. RETIREMENT BOARD,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sharon Jeffries ("Employee") worked as an Executive Legal Assistant with the D.C. Retirement Board ("Agency"). On January 28, 2011, Agency issued a notice to Employee informing her that she was being separated from her position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was February 28, 2011.[1]

Employee contested the RIF action and filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). She argued that she did not receive one round of lateral competition pursuant to the RIF procedures; Agency did not properly calculate her Service Computation date; and Agency did not provide her the option to be placed in a new position.[2] Therefore, she believed that she should not have been subjected to the RIF. [3]

[1] *Petition for Appeal,* p. 21 (February 24, 2011).
[2] *Id.* at 4.
[3] *Amended Petition for Appeal* (March 11, 2011).

In its response to the Petition for Appeal, Agency explained that Employee was provided the required thirty-day notice prior to the effective date of her separation. However, with regard to the requirement of one round of lateral competition, Agency provided that Employee was the sole person within her competitive level.[4] As a result, it believed that the RIF was proper and requested that OEA deny Employee's appeal.[5]

The Initial Decision was issued on January 30, 2013. The Administrative Judge ("AJ") found that D.C. Official Code § 1-624.08 was the applicable statute to govern the RIF. As a result, she ruled that § 1-624.08 limited her review of the appeal to determining whether Employee received a written, thirty-day notice prior to the effective date of her separation and if Agency provided one round of lateral competition within her competitive level. The AJ concluded that since Employee occupied the only position within her competitive level, the requirement of one round of lateral competition was inapplicable. She also found that Employee was provided a written, thirty-day notice prior to the effective date of her separation. As a result, Agency's RIF action was upheld.[6]

Employee filed a Petition for Review with the OEA Board on April 2, 2013. At the onset of her petition, she provides that she attempted to gain consent from Agency regarding her late filing. She argues that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy, and it did not address all of the issues of law and fact raised in her

[4] Agency explained that the Legal Department was determined to be the competitive area, and the DS-0303-05-01-N position was determined to be the competitive level subject to the RIF. Agency submitted that Employee was the only person within this competitive level.

[5] *Response to Petition for Appeal* (March 31, 2011). Employee later submitted a Supplement to the Petition for Appeal on May 24, 2011. The supplement explained that Agency advertised a vacancy announcement for an Administrative position on May 13, 2011, and that she applied for the position. *Supplement to the Petition for Appeal* (May 24, 2011). She submitted another supplement which provided that she also applied for a Retirement Analyst position, but Agency did not rehire her pursuant to D.C. regulations. *Supplement to the Petition for Appeal* (June 20, 2012). Additionally, she provided that Agency did not comply with the District Personnel Manual ("DPM") §§ 2409.3 and 2409.4. *Sharon Jeffries Response to OEA Order* (November 9, 2012).

[6] With regard to Employee's contention that Agency did not consider her applications for rehire, the AJ held that there was no evidence to support this allegation. Additionally, the AJ opined that there was no evidence to support Employee's belief that Agency did not comply with DPM § 2409. *Initial Decision*, p. 3-5 (January 30, 2013).

appeal. Employee reiterates her position that Agency did not comply with DPM § 2409. She explains that she was improperly placed in a single-person competitive level and that there were three other Executive Assistants with whom she should have been able to compete.[7] She further submits that Agency failed to comply with the provisions of its Reemployment Priority Program.[8]

On January 23, 2014, OEA received a copy of a letter addressed to Employee. In response to Employee's allegation that it did not consider her for a vacancy announcement in accordance with the Reemployment Priority Program, Agency explained that her coverage under the program ended in March, 2013 pursuant to DPM § 2429.3. As a result, it explained to Employee that her reemployment benefit was invalid.[9]

There are two issues which prevent this Board from addressing the merits of Employee's claims on Petition for Review. The first is that she raises issues on appeal that were not presented to the Administrative Judge for consideration. In accordance with OEA Rule 633.4, "any . . . legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board." Employee had numerous opportunities to present her arguments that three other Executive Assistants were within her competitive level. However, she chose not to.[10]

Secondly, Employee conceded that her Petition for Review was untimely filed. In

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[7] Employee provides that the Executive Assistant positions were within the same competitive level as her position. *Petition for Review*, p. 2 (April 2, 2013).

[8] Employee explains that Agency advertised an Administrative Specialist vacancy within the Executive Department, and this vacancy listed the same duties that she performed in her Executive Assistant position. She argues that she should have been considered for this position. *Id.* Thereafter, Employee submitted a supplement to the Petition for Review which provided that Agency also did not consider her for a Member Services Representative Position. *Response to the Initial Decision* (December 30, 2013).

[9] *Letter to Employee* (January 23, 2014).

[10] Contrary to Employee's contentions, the record is clear that she was the only Executive Assistant within the Legal Department within Agency. According to Agency filings, the other Executive Assistants were within the Executive Director's Office, the Chief Operating Officer's office, and the Chief Investment Officer's office. Because none of these other Executive Assistant positions were within her competitive level, Employee's argument lacks merit.

accordance with OEA Rule 633.1 "any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty-five (35) calendar days of issuance of the initial decision." Furthermore, D.C. Official Code § 1-606.03(c) provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period." As a result, the D.C. Court of Appeals held in *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991) that "the time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters."[11] Therefore, OEA has consistently held that this statutory language is mandatory in nature.[12]

In the current case, the Initial Decision was issued on January 30, 2013. Therefore, Employee had until March 6, 2013, to file her petition. However, she did not file the Petition for Review until April 2, 2013. Because the statute is mandatory, this Board does not have the authority to waive the requirement. Accordingly, Employee's Petition for Review is DENIED.

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[11] *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) (citing *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 635 (D.C.1985); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C.1985); *Gosch v. District of Columbia Department of Employment Services*, 484 A.2d 956, 958 (D.C.1984); and *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C.1980)).

[12] *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), *James Davis v. Department of Human Services*, OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer*, OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); and *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010).

ORDER

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

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

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.