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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EDGAR KING)	
Employee)	
)	OEA Matter No.: 2401-0182-99R07
v.)	
)	Date of Issuance: September 16, 2009
DISTRICT OF COLUMBIA)	
DEPARTMENT OF CORRECTIONS)	
Agency)	
_____)	

OPINION
ON
REMAND

This is the second time this appeal has come before us and our review of the voluminous record compiled in this appeal indicates that all of the issues pertaining to this reduction-in-force (“RIF”) action have been thoroughly litigated during the course of the protracted history of this case. Nevertheless, the relevant facts and procedural history remain unchanged and are as follows:

- 1) Employee was a Vocational Development Specialist, DS-11, with the Agency, assigned to Agency’s Youth Center in Lorton, Virginia. Employee was RIFed from the Agency, effective September 25, 1999, due to the mandated closure of all of Agency’s facilities and operations at that site.

- 2) Employee's Competitive Level was DS-1715-11-03-N (Union). His initial SCD was listed as January 26, 1982. At the time of the RIF, Employee received four (4) years of creditable service for an Outstanding Performance Evaluation, plus three (3) years of creditable service for being a District of Columbia Resident. The additional seven (7) years of creditable service gave Employee a recalculated RIF-SCD to January 26, 1975.
- 3) There were eight (8) employees in Employee's competitive level. After all of the relevant and mandatory SCD calculations were made, Employee was calculated as the third most junior employee in his competitive level, and eventually awarded the number seven position on the retention register. All three of the most junior personnel, employees #6, #7, and #8, including Employee, were separated from the Agency when three Vocational Development Specialist positions were abolished.
- 4) Had Employee been credited with four additional years for a veteran's preference, his RIF-SCD would have been adjusted to January 26, 1971, and his position on the Register moved from position seven to position six. However, he still would have been subjected to the RIF.
- 5) Employee timely filed a Petition for Appeal with the Office on September 8, 1999, and thereafter filed a brief with attachments on June 27, 2000. Both documents essentially allege that Employee had been improperly RIFed. The essence of Employee's petition concentrated upon his assertions that, at the time of his separation from the Agency, he was not given proper credit based on his military status as a retiree "below the rank of Major," the effect of which denied his claim for entitlement to receive severance pay.
- 6) On January 16, 2001, Administrative Judge Blanca Torres, formerly of this office, issued an *Initial Decision* which reflected that the matter had been settled.
- 7) On February 23, 2001 Employee filed a second Petition for Appeal. Employee again contested the validity of the RIF. The Administrative Judge dismissed this appeal as having been untimely filed.
- 8) On June 19, 2001 Employee filed a Petition for Review in which he asked the Board to review the Initial Decision issued in his second Petition for Appeal and further, to reopen the case pertaining to his first Petition for Appeal.
- 9) On October 16, 2001 the Board issued an Opinion and Order on Petition for Review. The Board denied Employee's petition.

- 10) Subsequently Employee filed a Petition for Review in the Superior Court of the District of Columbia.
- 11) On June 15, 2007, the Superior Court remanded this case to the Administrative Judge for the limited purpose of considering Employee's entitlement to reopen the case pertaining to his first Petition for Appeal. If the Administrative Judge found that Employee was entitled to having this appeal reopened, the court further instructed that the claim be decided on its merits.
- 12) On remand the Administrative Judge determined that the essence of Employee's case were his claims that Agency had failed to credit him with the appropriate veterans preference, that Agency had failed to conduct the RIF in compliance with the established laws and procedures, and that Agency had not given him an opportunity to retreat to his previously held position nor had Agency allowed him to transfer to another position. As part of these claims, Employee also argued that he was entitled to severance pay.
- 13) In an Initial Decision issued April 7, 2008 the Administrative Judge held that, according to the law, Employee was not entitled to the veterans preference, that Agency had complied with the applicable laws and regulations when it implemented the RIF and when it afforded Employee the one round of lateral competition during the process, and that Employee's motion to pursue his claim with respect to severance pay was denied.

Once again Employee appealed to the Superior Court of the District of Columbia. On June 2, 2009 the court issued a Postremand Opinion. While it is not entirely clear what the court wants us to now consider based on its Postremand Opinion, we believe the court is asking us to once again examine the propriety of the RIF particularly as it pertains to the authorizing documents which indicate that Employee's position was not specifically identified as one of the three positions scheduled to be abolished.

There are two documents relevant to this question. The first document contains the authority to implement the RIF and is embodied within Administrative Order No. OM 99-03. It was signed by then-Mayor Anthony Williams on August 18, 1999. The

document indicates that three Vocational Development Specialists positions, Grade 11 from the Minimum Security Facility, were to be abolished. Those positions were encumbered by Thomas Long, Antionette Gorham, and Margaret Major. Employee's position was not identified as a position to be abolished.

The second document relevant to this question is the August 24, 1999 Retention Register. It indicates that the positions encumbered by Thomas Long, Antionette Gorham, and Margaret Major are to be abolished. It also shows that Thomas Long, Antionette Gorham, and Employee are the three most junior Vocational Development Specialists.

The law in effect at that time entitled employees whose positions were to be abolished to have one round of lateral competition within their competitive level. Among the three aforementioned employees, Major was the most senior because she had the earliest service computation date. By exercising her right to one round of lateral competition, Major bumped an employee who had less tenure than she yet was within the same competitive level. That employee was Edgar King. As mentioned earlier, King, Long, and Gorham were the three most junior employees within their competitive level. Therefore, even though Employee's position was not identified to be RIFed, he nevertheless was RIFed as a result of a more senior employee (Major) exercising her lawful right to one round of lateral competition within the same competitive level.

Employee has been challenging this RIF for the last decade. Despite his efforts, the outcome remains the same. The record makes clear, particularly since the Administrative Order and Retention Register were submitted, that Employee was

properly RIFed in accordance with the applicable laws and regulations in effect at that time.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

Hilary Cairns

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