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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
WILLIAM DANDRIDGE,)	
Employee)	OEA Matter No. 1601-0049-08
)	
v.)	Date of Issuance: December 3, 2012
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
_____)	
Robert E. Deso, Esq., Employee Representative		
Teresa Quon Hyden, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

William Dandridge (“Employee”) was initially appointed to the Metropolitan Police Department on October 23, 1988. Employee was promoted through the ranks to Assistant Chief of Police on August 1, 2004. Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Metropolitan Police Department’s (“MPD” or “the Agency”) action of demoting him from the rank of Assistant Chief of Police to Commander. The effective date of this action was September 30, 2007. On or about March 31, 2008, this matter was originally assigned to Administrative Judge Muriel Aikens-Arnold. According to the record, she held an evidentiary hearing in this matter on or about January 29, 2009. However, due to budgetary constraints, her employment with the OEA ceased. This matter was then reassigned to Senior Administrative Judge Rohulamin Quander; however, he retired while this matter was still pending on his docket. Thereafter, this matter was reassigned to the undersigned on or about May 27, 2011. After initially reviewing the matter, I decided that I was unable to consider the testimony adduced during the aforementioned evidentiary hearing since I did not personally preside over the preceding and was therefore unable to see and hear first-hand the testimony presented therein.

After reviewing the relevant laws and circumstances in this matter, I then required the parties to submit briefs on the legality of Agency’s demotion action in the instant matter. The

parties have stipulated that at all times relevant to this matter Employee was in the Career Service. Moreover, Agency admits that the demotion action is unrelated to any disciplinary action; rather, the demotion was done as part of an Agency wide reorganization of the command hierarchy at the behest of Chief of Police Cathy Lanier (“Chief of Police”). Generally, in order to carry out a demotion of a Career Service employee, the Agency must have either have cause as defined in Chapter 16 of the District Personnel Manual or the demotion must be effectuated through a properly implemented Reduction-In-Force. Neither scenario occurred in the instant matter. In reaching a decision in this matter, I am primarily guided by the parties opposing positions as contained within the documents of record as well as the holdings in *Hilton Burton and Robin Hoey v. Office of Employee Appeals, et al*¹ and *Kevin Keegan v. Metropolitan Police Department*². The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Office Code § 1-606.03 (2001).

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.2, id. states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Agency’s Position

MPD argued that in the instant matter it did not need cause in order to demote Employee. Moreover, MPD asserts that its demotion action of Employee was lawful and should be upheld. In order to effectuate Employee’s demotion, MPD primarily relied on the following statutes:

¹ 30 A.3d 789 (D.C. 2011).

² Opinion and Order on Petition for Review, OEA Matter No. 1601-0044-08-R10 (September 18, 2012).

D.C. Official Code § 1-608.01(d-1), provides that:

[F]or members of the Metropolitan Police Department and notwithstanding § 1-632.03(1)(B) or any other law or regulation, the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines.

D.C. Official Code § 1-632.03(c), provides that:

Notwithstanding the provisions of subsection (a)(1)(B) of this section, or of any other law or regulation, for members of the Metropolitan Police Department, the Assistant and Deputy Chiefs of Police and Inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines as provided in § 5-105.01.

D.C. Official Code § 5-105.01, provides that:

(a) The Mayor of said District shall appoint to office, assign to such duty or duties as he may prescribe, and promote all officers and members of said Metropolitan Police force; provided, that all officers, members, and civilian employees of the force except the Chief of Police, the Assistant and Deputy Chiefs of Police, and the inspectors, shall be appointed and promoted in accordance with the provisions of [§§ 1101-1103](#), [1105](#), [1301-1303](#), [1307](#), [1308](#), [2102](#), [2951](#), [3302-3306](#), [3318](#), [3319](#), [3321](#), [3361](#), 7152, [7321](#), [7322](#), and [7352 of Title 5, United States Code](#), and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil Service of the United States; provided further, that the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines...

Employee's Position

Employee, through counsel, contends that he was summarily demoted without affording him any of the due process protections required by D.C. Official Code § 1-606.03, *et al.* Employee disagrees with MPD's contention that the Chief of Police had discretionary authority to demote Employee from his prior rank without cause or properly implemented Reduction-In-Force. Employee further contends that the OEA has jurisdiction over the instant appeal of a Career Service employee's demotion. Moreover, he argues that the manner in which his demotion action was undertaken by the Chief of Police was clearly unlawful as a matter of law and should be rescinded.

Analysis and Conclusion of Law

This Office was established by the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.1 *et seq.* (1999 repl.) and has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Code Ann. § 1-606.3. OEA's authority was established by D.C. Official Code §1-606.03(a). It provides that:

“[a]n employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.”

Moreover, District Personnel Regulations and OEA Rules sections 604.1 and 604.3 provide the following regarding OEA's jurisdiction:

604.1 Effective October 21, 1998, and except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.1 *et seq.* or Rule 604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

It is uncontroverted that Employee was in the Career Service when he was subjected to the demotion that is the subject of the instant matter. According to D.C. Official Code §1-606.03(a), Career Service employees of the District of Columbia government enjoy certain protection from being demoted absent cause or properly implemented Reduction-In-Force. However, as will be explained below, the Chief of Police enjoys discretionary authority to demote to no lower than the rank of Captain, discrete ranks of employees within her command hierarchy.

This matter is not one of first impression for the OEA because Employee is not the only employee of MPD who has been subjected to a demotion by the Chief of Police using her delegated authority as provided in D.C. Official Code § 1-632.03(c), D.C. Official Code § 1-608.01(d-1) and D.C. Official Code § 5-105.01. In a very similar matter, the Board of the OEA, relying on the District of Columbia Court of Appeals holding in *Hilton Burton and Robin Hoey*

*v. Office of Employee Appeals, et al*³, held in *Kevin Keegan v. MPD*⁴ that the Chief of Police had the authority to demote Inspectors, Commanders, and Assistant Chiefs back to the rank of Captain without cause. The following excerpt from this case is relevant to the instant matter:

In *Hilton Burton and Robin Hoey v. Office of Employee Appeals, et al.*, 30 A.3d 789 (D.C. 2011), the Court held that in accordance with D.C. Official Code §§ 1-616.51 and 1-616.52 (2001), a Career Service employee generally cannot be fired, demoted, or suspended without cause. However, D.C. Official Code § 1-608.01(d-1) grants “the Mayor (or his delegate)⁵ with explicit discretionary authority to return any officer above the rank of Captain to the rank of Captain”⁶

D.C. Official Code § 1-608.01(d-1) provides that for members of the Metropolitan Police Department and notwithstanding § 1-632.03(1)(B) or any other law or regulation, the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines.

As the Court reasoned, the language of D.C. Official Code § 1-608.01(d-1) applies to employees *notwithstanding* any other law or regulation (emphasis added). Hence, this section of the Code supersedes any conflicting regulations in place regarding Career Service protections.⁷ The Court noted that although § 1-608.01(d-1) did eliminate the right not to be reduced in rank without cause, it only applies to those positions above Captain. Agency employees cannot be terminated or demoted to a rank below Captain.⁸

The Court ruled that “to trigger due process protection in the area of public employment, an employee must have a legitimate claim of entitlement to the right or benefit” (*Hoey* quoting *Leonard v. District of Columbia*, 794 A.3d 618 (D.C. 2002)). However, an employee cannot have a legitimate claim of entitlement if the continuation of an employment benefit is based on discretion of the employer. Therefore,

³ 30 A.3d 789 (D.C. 2011).

⁴ *Kevin Keegan v. Metropolitan Police Department*, Opinion and Order on Petition for Review, OEA Matter No. 1601-0044-08-R10 (September 18, 2012).

⁵ In an order issued on May 9, 1997, the Mayor delegated his personnel authority under this provision to the Chief of Police. Mayor’s Order 97-88, 44 D.C. Reg. 2959-60 (May 16, 1997). That delegation remains in effect. (quoting *Hilton Burton and Robin Hoey v. Office of Employee Appeals, et al.*, 30 A.3d 789 (D.C. 2011)).

⁶ *Id.* at 792.

⁷ It should be noted that the Court addressed DPM §836, which Employee believes distinguishes his cases from *Hoey* and *Burton*. Even after considering DPM §836, the Court still ruled that Chief Lanier had the authority to demote employees. See *Hilton Burton and Robin Hoey v. Office of Employee Appeals, et al.*, 30 A.3d 789, 795 (D.C. 2011).

⁸ *Id.*, 795 and 796.

because § 1-608.01(d-1) provides the Chief of Police with the discretionary authority to return a Commander to Captain, Employee has no legitimate claim or entitlement to the benefits of the Commander position. Additionally, the Court ruled the even when an employee loses an increased salary, the incremental advantages are not protected because they were tied to a position from which they could be removed at the Chief's discretion.⁹

As has been made plainly evident through the Court of Appeals interpretation of D.C. Official Code § 1-632.03(c), D.C. Official Code § 1-608.01(d-1) and D.C. Official Code § 5-105.01 in *Burton and Hoey*, the Chief of Police possesses the discretionary authority to demote certain members of her command hierarchy absent cause or properly implemented Reduction-In-Force. Furthermore, the OEA Board followed the Court of Appeal's reasoning in *Keegan* in holding that the Chief of Police properly exercised her discretionary authority when she demoted Keegan from the rank of Inspector to the rank of Captain prior to his retirement despite his being a Career Service employee at the time of the demotion.

After careful review of the aforementioned statutes and case law, I find that this matter is not significantly distinguishable from either *Keegan* or *Burton and Hoey*. Accordingly, it is clear to the undersigned that Employee herein shall have to endure a similar result as the employees in those cases. I conclude that notwithstanding D.C. Official Code § 1-606.03(a) *et al* and pursuant to D.C. Official Code § 1-632.03(c), D.C. Official Code § 1-608.01(d-1) and D.C. Official Code § 5-105.01, that the Chief of Police, through the authority delegated to her by the Mayor of the District of Columbia, has the discretionary authority to demote Employee herein from the rank of Assistant Chief of Police to the rank of Commander regardless of Employee's Career Service status at the time of his demotion.

ORDER

Based on the foregoing, it is hereby ORDERED that Agency's action of demoting Employee from the rank of Assistant Chief of Police to the rank of Commander is UPHeld.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

⁹ *Id.* at 798.