THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
Virginia Floyd	)	OEA Matter No. 2401-0038-15
Employee	)	
	)	Date of Issuance: December 23, 2015
v.	)	
	)	Joseph E. Lim, Esq.
Department of Health	)	Senior Administrative Judge
Agency	)	

Kadija Ash, Employee Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 26, 2015, Virginia Floyd ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District Department of Health ("DOH" or "the Agency") decision to abolish her position through a Reduction-In-Force ("RIF"). I was assigned this matter on or around March 3, 2015. I held a Prehearing Conference on June 24, 2015, so that I could get a better understanding of the relevant facts and circumstances of this matter.

As a result of this Prehearing Conference, I decided that an evidentiary hearing was unwarranted. I then issued an Order wherein I required the parties to submit final legal briefs in this matter by September 25, 2015. The parties have complied. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following facts are not subject to genuine dispute:

1. On January 6, 2009, Agency memorialized Employee's acceptance of the position of Public Health Outreach Technician, DS-640-07, with an effective date of appointment of January 12, 2009. This was a Term Appointment with a not-to-exceed date of February 11, 2010.[1]

2. D.C. Optional Form 8 was signed and prepared for a Public Health Outreach Technician, DS-640-07. It did not identify any employee.[2]

3. The position Employee was actually placed in was Public Health Outreach Technician, DS-640-06. Because she was grateful for the job, Employee did not press for a correction.[3]

4. Employee's term appointment was extended several times and the most recent extension extended her term to July 10, 2015.[4]

5. On August 26, 2014, Agency requested approval of a Reduction-in-Force, citing budget concerns. Attached was Administrative Order DOH-2014-09, which listed the positions for the RIF. Employee's position of Public Health Outreach Technician, DS-640-06, was included.[5]

6. A retention register was prepared for the four Public Health Outreach Technician positions. Three of the positions were abolished under the RIF. Employee had the lowest score, and thus, her position was abolished.[6]

7. On September 9, 2014, Agency sent Employee a notice informing her that her RIF would be effective October 10, 2014.[7]

8. On October 1, 2014, Agency sent Employee a notice amending her separation date to December 26, 2014.[8]

When the instant RIF occurred, Employee's position of record was Public Health Outreach Technician, DS-640-06. Employee contends that she was actually hired as a

[1] See Employee Exhibit 3.
[2] See Employee Exhibit 2.
[3] Employee brief, August 28, 2015.

[4] See Agency Exhibit 1.

[5] See Agency Exhibit 2.
[6] See Employee Exhibit 4.
[7] See Agency Exhibit 3.
[8] See Employee Exhibit 5.

Public Health Outreach Technician, DS-640-07, when the RIF occurred. To support this claim, Employee offers her letter of verbal acceptance of that position dated January 6, 2009,[9] and a D.C. Optional Form 8, Position Description.[10] Consequently, Employee alleges that she should be returned to service since that position survived the instant RIF.

Agency argues that Employee's position of record was Public Health Outreach Technician, DS-640-06, not Public Health Outreach Technician, DS-640-07, and that Agency adequately followed all portions of the D.C. Official Code § 1-624.08 that are under the OEA's purview when it abolished Employee's last position of record.

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. Here, Employee is attempting to appeal Agency's 2009 action improperly placing her in a position with a lower pay grade than what was verbally agreed to. Employee's allegation is in the nature of a contract violation and a grievance. As will now be discussed, this Office lacks jurisdiction over contract violations or grievance appeals.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Code in pertinent part as follows:

> (1) D.C. Code § 1-606.3(a) is amended as follows:
>
> > (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force. . . .

Thus, § 101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

> a performance rating that results in removal;
>
> a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or

[9] See Employee Exhibit 3.
[10] See Employee Exhibit 2.

a reduction in force

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from grievances. That is not say that Employee may not press her claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's particular claim. However, this Office does have jurisdiction over RIF appeals, and thus, an analysis under the RIF laws and regulations is appropriate.

D.C. Official Code § 1-624.08 states in pertinent part that:

> (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... which shall be limited to positions in the employee's competitive level.
>
> (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.
>
> (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:
>
> (1) An employee may file a complaint contesting a determination or a 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.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

Employee does not allege that she did not receive thirty days of notice or that her round of lateral competition was improperly executed, only that she should not have been in that competitive level at all.

According to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was bona fide or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented.

Based on the foregoing, I conclude that the Agency's action of abolishing Employee's position was done in accordance with all applicable laws, rules and regulations.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge