

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
SONDRA PETTY,	)	OEA Matter No. 2401-0084-03
Employee	)	
	)	Date of Issuance: December 17, 2008
	)	
DEPARTMENT OF MENTAL HEALTH,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Sondra Petty (“Employee”) worked for the Department of Mental Health (“Agency”) as a medical health care monitor. On February 28, 2003, Employee received a reduction-in-force (“RIF”) notice from Agency. The notice stated that the RIF was the result of a major reorganization.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on April 4, 2003. She argued that Agency failed to obtain approval for the 2002 reorganization; that it failed to justify the use of a smaller competitive area; that her competitive area nor retention register were not properly developed; and that Agency

violated its re-employment program.<sup>1</sup>

On January 7, 2004, Agency filed its response to Employee's Petition for Appeal. It argued that the reorganization occurred pursuant to a court-ordered plan approved by the federal court in *Dixon et al. v. Williams* and by enabling legislation enacted by the D.C. City Council. As a result, Agency is comprised of the Mental Health Authority, Saint Elizabeth's Hospital, and a Department of Mental Health Core Service Agency. It also argued that Employee's competitive level and the retention register were determined in accordance to District Personnel regulations.<sup>2</sup>

The OEA Administrative Judge ("AJ") issued her decision on May 11, 2006. She found that the Office's jurisdiction was not established by Employee. The AJ held that there is a mandatory, statutory requirement for employees to timely file an appeal with OEA within thirty days of the effective date of the Agency action. It was her belief that Employee's effective RIF date was February 28, 2003, therefore, she had until March 30, 2003 to file her appeal with OEA. However, Employee did not file until April 4, 2003. The AJ held that the filing date could not be waived. Consequently, she dismissed Employee's appeal citing that it was untimely filed. The AJ did go on to note that even if the case was heard on its merits, Employee still would not prevail because she received the proper thirty days notice from Agency that she was RIFed, and she was not denied one round of lateral competition.<sup>3</sup>

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<sup>1</sup> *Petition for Appeal*, p. 6 (April 4, 2003).

<sup>2</sup> *Agency's Response to Employee's Petition for Appeal*, Tab 6 (January 7, 2004).

<sup>3</sup> *Initial Decision*, p. 2 (May 11, 2006).

On June 14, 2006, Employee filed a Petition for Review of the Initial Decision. She argued that Agency violated several District personnel laws when imposing the RIF action against her. Specifically, she argued that it failed to provide a valid thirty-day notice and failed to provide one round of lateral competition within Employee's competitive level. Employee stated that in accordance with her RIF notice, her effective date of separation was April 4, 2003. Therefore, the Petition for Appeal that was filed on April 4, 2003, was timely, thereby, establishing OEA's jurisdiction to consider this case on the merits. Employee went on to assert that the RIF notice was issued without proper authority; that the notice was defective because Agency failed to justify its use of designated competitive areas; that the competitive levels and retention registers were not properly established; and that the Initial Decision failed to address all issues of law and fact which were properly raised on appeal.<sup>4</sup>

Agency filed a response to Employee's Petition for Review on July 11, 2006. It provided that thirty days notice was given to Employee. Agency said that the notice was effective on April 4, 2003. It asserted that the AJ's findings that OEA lacked jurisdiction to hear Employee's appeal was based on substantial evidence of the record and applicable laws.<sup>5</sup>

D.C. Official Code § 1-606.03 provides that

“An 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

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<sup>4</sup> *Petition for Review*, p. 3-9 (June 14, 2006).

<sup>5</sup> *Agency's Response to Employee's Petition for Review*, p. 2-3 (July 11, 2006).

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 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.”

Additionally, OEA Rule 604.2 provides that “an appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action.” Therefore, this Board disagrees with the Administrative Judge’s holding in the Initial Decision. The AJ dismissed Employee’s case because she deemed it untimely. She took it upon herself to calculate March 30, 2003, as the last day in which Employee had to appeal.<sup>6</sup> However, after careful review of Employee’s RIF notice it is clear that April 4, 2003, is the effective date of Agency’s RIF action against Employee. The notice states that “in accordance with Chapter 24 of the District’s personnel regulations, you will be separated from District government service effective 4/4/2003.”

Therefore, in accordance with D.C. Official Code § 1-606.03 and OEA Rule 604.2, Employee had thirty days after April 4, 2003, in which to file her appeal with OEA. This Board will not penalize Employee for a mistake made by Agency or the AJ in their calculations. Because the language is clear, we consider April 4, 2003, as the effective RIF date, as outlined in the notice. Accordingly, Employee had until May 4, 2003, to file her Petition for Appeal with OEA. Employee’s petition was filed on April 4,

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<sup>6</sup> It appears that the AJ counted thirty calendar days after the date of the letter (February 28, 2003) to arrive at March 30, 2003, as the last day for Employee to file her appeal.

2003. Therefore, the Petition for Appeal was filed timely. As a result, Employee's Petition for Review is granted, and we hereby remand this matter to the Administrative Judge to consider the case on its merits.<sup>7</sup>

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<sup>7</sup> Although the AJ provided that even if the case was heard on its merits, Employee still would not prevail because she received thirty days notice and one round of lateral competition, she offered no analysis to substantiate such a finding. Therefore, we believe that a proper assessment of the merits of this case are warranted.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, and this case is **REMANDED** to the Administrative Judge.

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns