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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LAURA JACKSON,)	
Employee)	OEA Matter No. 2401-0020-10R17
)	
v.)	Date of Issuance: May 1, 2018
)	
D.C. DEPARTMENT OF HEALTH,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
_____)	
Donald Temple, Esq., Employee’s Representative)	
Milena Mikailova, Esq., Agency Representative)	

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 6, 2009, Laura Jackson (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Department of Health’s (“Agency”) action of terminating her employment through a Reduction-in-Force (“RIF”). Employee’s position of record at the time she was separated from service was Compliance Specialist. Employee worked in Career Service status at the time she was terminated. This matter was initially assigned to former Administrative Judge (“AJ”) Murphy. On April 19, 2013, she issued an Initial Decision (“ID”) upholding Agency’s decision to abolish Employee’s position. In November of 2013, Employee, through her attorney, appealed the AJ’s ID to the District of Columbia Superior Court, which remanded the case to OEA. The Court explained that OEA should address the issue of errors in the calculation of Employee’s service computation date (“SCD”) which was not address in the ID. The Court also requested that OEA clarify what Agency must do to meet its burden.

Following former AJ Murphy’s promotion to Deputy General Counsel for OEA, this matter was reassigned to the undersigned AJ. A Status Conference was convened in this matter on November 14, 2017, wherein, the parties requested time to recalculate Employee’s SCD. Thereafter, I issued a Post Status Conference Order wherein, the parties were required to submit briefs addressing the issues discussed in the April 19, 2016, Status Conference. In an email dated February 23, 2018, the undersigned AJ was informed that District of Columbia Department of Human Resources (“DCHR”) had completed its calculation of Employee’s SCD and it appeared that Employee should not have been RIF’d. Agency further informed the undersigned

that it had contacted and scheduled a meeting with Employee's representative for March 8, 2018, and a status update will be filed with OEA thereafter.

In an email dated March 15, 2018, Agency's representative requested that the undersigned schedule a Status Conference in this matter. A Status Conference was held on April 18, 2018, wherein, the undersigned notified the parties that in order to proceed to the compliance portion of this matter, Agency is required to submit a brief addressing its decision with regards to the accuracy of the Employee's SCD. On April 24, 2018, Agency filed its Notice of Revised Retention Register. The record is now closed.

JURISDICTION

OEA 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.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

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

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The District of Columbia Superior Court remanded this matter to OEA to address the issue of errors in the calculation of Employee's SCD. The Court also requested that OEA clarify what Agency must do to meet its burden. In an email dated March 15, 2018, and in its April 24, 2018, Notice of Revised Retention Register, Agency explained that the revised Retention Register indicated that Employee's termination pursuant to the 2009 was improper. Agency stated that, based on a recalculation completed by DCHR, Employee's correct SCD is March 9, 1995, and her SCD was adjusted to account for her federal service which was not previously calculated during the 2009 RIF. Additionally, Agency asserted that another Employee, Mr. Melvin Johnson's SCD was amended to correctly compensate him for eligible service dates and was adjusted for military service. Agency further noted that based on the revised SCDs, Mr.

Johnson, and not Employee should have been terminated as a result of the 2009 RIF. Since Agency has conceded and acknowledged that Employee's SCD was inaccurate and that Mr. Johnson, and not Employee should have been RIF'd, I find that Employee was improperly terminated.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to her last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge