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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
IVY PINKNEY,)	OEA Matter No. 2401-0014-11
Employee)	
)	
v.)	Date of Issuance: April 26, 2013
)	
DISTRICT OF COLUMBIA DEPARTMENT)	
OF HEALTH,)	
Agency)	
_____)	STEPHANIE N. HARRIS, Esq.
Ivy Pinkney , Employee <i>Pro-Se</i>)	Administrative Judge
Lindsay Neinast, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 25, 2010, Ivy Pinkney (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Health’s (“Agency” or “DOH”) action of abolishing her position through a Reduction-in-Force (“RIF”). Employee’s RIF notice was dated August 20, 2010, with an effective date of September 24, 2010. At the time her position was abolished, Employee’s official position of record within the Agency was an Administrative Specialist. On November 23, 2010, Agency filed an Answer to Employee’s Petition for Appeal.

I was assigned this matter on July 26, 2012. On January 31, 2013, the undersigned issued an Order (“January 31st Order”) scheduling a Prehearing Conference for February 21, 2013, to assess the status of this matter and to address pending issues requiring further review. Agency was present for the Prehearing Conference, but Employee did not appear at the scheduled date and time. Subsequently, the undersigned issued an Order for Statement of Good Cause on February 21, 2013 (“February 21st Order”). Employee was ordered to submit a Statement of Good Cause based on her failure to appear at the scheduled Prehearing Conference. Employee’s response to the February 21st Order was due on or before March 11, 2013. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned Order for Statement of Good Cause. Based on the record to date, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

This 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 the instant 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:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

Employee's Position

In her Petition for Appeal, Employee states that Agency's RIF was a result of age discrimination, retaliation, non-compliance with the Family and Medical Leave Act ("FMLA"), pretext to terminate without cause, and failure to pay a compensation differential, benefits, and severance. She claims that she was assigned to a project that was outside of the scope of her duties with little to no training, shortly before the RIF. Employee submitted copies of email communication between her and her supervisor regarding her job duties. Additionally, she contends that her service computation date was calculated in error and that she was placed in the wrong tenure group.¹

¹ See Petition for Appeal (October 25, 2010).

Agency's Position

Agency submits that it properly conducted the instant RIF pursuant to Chapter 24 of the District of Columbia Personnel Manual (“DPM”) and D.C. Code §1-624.08., by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of the instant RIF.² Agency states that based on an executed Administrative Order dated August 11, 2010, Agency identified two positions for the instant RIF, including Employee’s position, Administrative Specialist.³ Agency asserts that because Employee was the only individual who occupied her competitive level as evidenced in the Retention Register, the statutory provision affording her one round of lateral competition was inapplicable.⁴ Agency further asserts that Employee was given thirty (30) days written notice prior to the effective date of the instant RIF.⁵

Analysis of RIF Regulations

In an August 6, 2010 Administrative Order, Agency was granted authorization to conduct the instant RIF due to lack of funds pursuant to D.C. Code § 1-624.01 *et seq.*; Title 6 of the District of Columbia Municipal Regulations (“DCMR”), Chapter 24; and Mayor’s Order 2008-92.⁶ Employee’s Notification of Personnel Action (“SF-50”) reflects that D.C. Code § 1-624.02 was listed as the legal authority to conduct the instant RIF.⁷ Although the instant RIF may have been implemented in part pursuant to D.C. Code § 1-624.02, for the reasons explained below, I find that D.C. Official Code § 1-624.08 (“Abolishment Act” or “the Act”) is the more applicable statute to govern this RIF.⁸

Section § 1-624.08 states in pertinent part that:

(a) ***Notwithstanding*** any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September

² See Agency’s Answer (November 23, 2010); Agency Prehearing Statement (February 14, 2013).

³ Agency Answer, Tab 4 (November 23, 2010).

⁴ *Id.*, Tab 5.

⁵ *Id.*, Tab 6.

⁶ *Id.*, Tab 4.

⁷ *Id.*, tab 4.

⁸ D.C. Code § 1-624.02 states in relevant part that:

(a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) ***Notwithstanding any rights or procedures established by any other provision of this subchapter***, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(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 pursuant to Chapter 24 of the District of Columbia Personnel Manual, 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*** (emphasis added).

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the

government can only use it during times of fiscal emergency.”⁹ The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”¹⁰

However, the Court of Appeals took a different position. In *Washington Teachers’ Union*, DCPS conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.”¹¹ The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”¹² The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”¹³

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.¹⁴ The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”¹⁵ Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”¹⁶

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹⁷ Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding’, suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated 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.

⁹ *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹⁰ *Id.* at p. 5.

¹¹ *Washington Teachers’ Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

¹⁶ *Id.*

¹⁷ *See Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

Lateral Competition

Pursuant to D.C. Code §1-624.08, employees separated due to a RIF are entitled to one of round of lateral competition within their competitive level. According to DPM §§ 2410.2, 2410.4, employees who have the same job title, series, and grade are placed in the same competitive level. A separate Retention Register is created for each competitive level within a competitive area. The Retention Register “shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level.”¹⁸ Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the Retention Register. An employee’s standing is determined by several factors, including tenure group and RIF service computation date (“SCD”).¹⁹ The Retention Register provided by Agency shows that Employee was the only Administrative Specialist in her competitive level.²⁰ Further, Agency maintains that the statutory provision providing one round of lateral competition was inapplicable because Employee was the only individual in her competitive level.

This Office has consistently held that when an employee *holds the only position in her competitive level* or when an entire competitive level is abolished pursuant to a RIF, D.C. Official Code § 1-624.08(d), which affords Employee one round of lateral competition, as well as the related RIF provisions of 6-B DCMR §2420.3, are both inapplicable (emphasis added).²¹ Based on the documents of record, I find that Employee was properly placed into a single-person competitive level. I further find that no further lateral competition efforts were required and that Agency was in compliance with the lateral requirements of the law.

Employee contends that her SCD was incorrect, noting that she had been employed with Agency since May 1974. Agency acknowledges that Employee’s SCD was incorrectly calculated as December 10, 1985. Agency provided documentation showing that Employee was notified in a letter that her SCD was amended to May 1, 1974. Although the SCD is one of the factors used to determine an employee’s standing on the Retention Register, in this case, because Employee was the only person listed in her competitive level, the SCD error had no bearing on her retention standing.²²

Employee also contends that her placement in Tenure Group 3, as reflected in her RIF Notice was incorrect and her thirty-six (36) years of service should have placed her in Tenure Group 2. However, Employees are placed in specific tenure groups according to their employment status, not their years of service. Tenure Group 2 includes employees serving on a probationary period or employees who completed a probationary period and are in obligated

¹⁸ DPM §2412.3.

¹⁹ DPM §§ 2413, 2415.

²⁰ Agency Answer, Tab 5 (November 23, 2010).

²¹ *Perkins v. District Department of Transportation*, OEA Matter No. 2401-0288-09 (October 24, 2011); *Allen v. Department of Health*, OEA Matter No. 2401-0233-09 (March 25, 2011); *Wigglesworth v. D.C. Department of Employment Services*, OEA Matter No. 2401-0007-05 (June 11, 2008); *Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005).

²² See 6-B DCMR §§2413.1-2413.4.

positions, whereas Tenure Group 3 includes employees serving in a Term position.²³ Employee's SF-50 for the instant RIF shows that she was classified as a Term employee.²⁴ Thus, I find that Employee was properly placed in the correct tenure group. Additionally, the undersigned notes that while the tenure group classification may affect an employee's retention standing during lateral competition, it is inapplicable in this case as Employee was the only person in her competitive level.²⁵

Thirty (30) Days Written Notice

Title 6-B, § 2422 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 2422.1 states that "[a]n employee selected for release from his or her competitive level ... shall be entitled to written notice at least thirty (30) full days before the effective date of the employee's release." The specific notice shall state specifically what action is to be taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights.²⁶ Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Agency's RIF Notice was dated August 20, 2010, with an effective date of September 24, 2010. The RIF Notice stated that Employee's position was eliminated as part of a RIF and provided Employee with information about her appeal rights. Employee has not alleged that she did not receive the requisite statutory notice and the record shows that Employee refused to sign and acknowledge receipt of her RIF Notice on August 20, 2010.²⁷ An employee's refusal to acknowledge receipt of a separation notice may be used as evidence of service.²⁸ Thus, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

Grievances

Employee claims that Agency has failed to provide her full personnel record and improperly denied her severance, benefits, and a compensation differential. She also contends that she was incorrectly reassigned and given job duties outside the scope of her position. Claims regarding her personnel file request, re-employment benefits, severance pay, job duties, position reassignment, and compensation differentials are considered grievances and do not fall within the purview of OEA's scope of review. 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, OEA no longer has jurisdiction over grievance appeals.

²³ See 6-B DCMR §§2413.6, 2413.7.

²⁴ Agency Answer, Tab 8- SF-50, box 38 (November 23, 2010).

²⁵ See also D.C. Code §1-628.01(c) (OEA has limited jurisdiction over Career and Educational Service employees, in RIF cases, regardless of the employee's date of hire).

²⁶ See 6-B DCMR §2423.

²⁷ See Agency Answer, Tab 6 (November 23, 2010).

²⁸ *Aygen v. District of Columbia Office of Employee Appeals*, No. 2009 CA 006528; No. 2009 CA 008063 at p. 9 (D.C. Superior Ct. April 5, 2012).

Additionally, in response to Employee's claims surrounding job duties and position reassignments, this Office has held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.²⁹ Further, Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

Priority Reemployment

Employee also argues that she was not provided with priority reemployment benefits. Claims regarding priority reemployment constitute post-RIF activity and are generally considered grievances that do not fall within the purview of OEA's scope of review, as noted above. Moreover, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at Agency.³⁰ The undersigned also notes that DPM §2427.1 provides that the priority reemployment provisions are limited to employees separated in a RIF who are classified in Tenure groups 1 and 2. Additionally, Employee's RIF Notice explains that the right to priority placement consideration is limited to employees in Tenure Groups 1 and 2, and as noted above and based on the documents of record, Employee was properly classified in Tenure Group 3.

Discrimination Claims

Employee claims that she was subject to the instant RIF due to retaliation and age discrimination. However, Employee has failed to submit any credible evidence to corroborate this claim. Employee also alleges that the instant RIF was used as a pretext to terminate her without cause, but she has provided no evidence or documentation for corroboration, which renders it a generalized unsubstantiated allegation.

Further, D.C. Code §2-1411.02, specifically reserves complaints of unlawful discrimination and retaliation to the Office of Human Rights ("OHR").³¹ Per this statute, the purpose of OHR is to "secure an end to unlawful discrimination in employment...for any reason other than that of individual merit." Additionally, DPM § 1631.1(q) reserves allegations of unlawful discrimination to OHR. Moreover, the Court in *Anjuwan v. D.C. Department of Public Works*³² held that OEA's authority over RIF matters is narrowly prescribed. This Court explained that OEA lacks the authority to determine broadly whether the RIF violated any law except whether "the Agency has incorrectly applied...the rules and regulations issued pursuant thereto." This court further explained that OEA's jurisdiction cannot exceed statutory authority and

²⁹ See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); See also *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985) (OEA's review is limited to determining if "managerial discretion has been legitimately invoked and properly exercised").

³⁰ *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

³¹ See also D.C. Code §2-1402.11 (Employment Prohibitions).

³² 729 A.2d 883 (December 11, 1998).

thereby, OEA's authority in RIF cases is to "determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs."³³

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*³⁴ stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he was targeted for whistleblowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation..."³⁵ Here, Employee's claims, as described in her submissions to this Office do not allege any whistleblowing activities as defined under the Whistleblower Protection Act. Thus, I find that Employee's claims of age discrimination and retaliation fall outside the scope of OEA's jurisdiction.

Family and Medical Leave Violation

Employee contends that she was under medical care when she was separated via the instant RIF, which is a violation of the FMLA. Agency provided a copy of Employee's FMLA request from April 2009 and argues that the fact that Employee had an approved FMLA request for intermittent leave does not prevent her separation from the instant RIF.³⁶ In a RIF, claims regarding FMLA violations generally fall outside the scope of OEA's jurisdiction.³⁷ Moreover, Employee has not provided any evidence showing that she was still under FMLA status at the time of the instant RIF. Further, Employee has failed to provide any statutes, case law, or other regulations showing that an employee under FMLA status is immune from an Agency's properly invoked RIF.

Employees of the District of Columbia are governed by the District of Columbia Family and Medical Leave Act ("DCFMLA").³⁸ D.C. Code §32-505 states that an employee is only entitled to the same rights and employment benefits they were entitled to before they took leave under DCFMLA. In this case, that equates to Employee being entitled to one round of lateral competition and thirty (30) days notice prior to the effective date of the RIF. Further, in *Price v. Washington Hospital Center*,³⁹ the D.C. District Court found that there was no violation of the DCFMLA where an employee's position was eliminated as part of a RIF, while an employee was on medical leave. Therefore, I find that there is no legal requirement that exempts an employee under DCFMLA leave from being subject to a RIF, based solely on leave status.

³³ See *Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

³⁴ 730 A.2d 164 (May 27, 1999).

³⁵ *El-Amin*; citing *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

³⁶ Agency Answer, Tab 2 (November 23, 2010).

³⁷ See also *Anjuwan v. D.C. Department of Public Works*, 729 A.2d 883 (December 11, 1998) (OEA's authority over RIF matters is narrowly prescribed).

³⁸ D.C. Code §32-501.

³⁹ 321 F.Supp.2d 38 (D.C. 2004).

Employee Representative Withdrawal

Employee listed Guity Deyhimy, Esq., as her representative in this matter. In response to the February 21st Order for Statement of Good of Cause, Mr. Deyhimy stated that he ceased representing Employee in this matter on April 6, 2011. He also provided documentation showing that his legal representation of Employee had ended and requested that his name be withdrawn as the Employee Representative in this matter.⁴⁰ Based on the documents submitted by Mr. Deyhimy, I find that he is no longer representing Employee in this matter.

In addition to requesting he be withdrawn from this case, Mr. Deyhimy requests that the undersigned “issue a new Order Convening a Prehearing Conference, for at least forty-five (45) days after the request herein, so that [Employee] may have an opportunity to either comply or seek dismissal of the appeal.” Mr. Deyhimy states that he recently left Employee a message on her mobile telephone regarding the recent Orders in this case, but has not gotten a response.

Mr. Deyhimy’s request for an extension of time in this matter is denied. As noted above, since Mr. Deyhimy has requested to be withdrawn from this case, he cannot simultaneously make a request on behalf of Employee because he is no longer her representative. Further, Employee has not notified this Office of a change of address and none of the aforementioned Orders were returned to this Office, so it is presumed that Employee received them. Moreover, Employee has had ample time to file a response to the February 21st Order for Statement of Good Cause, and as of the date of this decision, she has failed to do so.

Failure to Prosecute

Additionally, Employee’s failure to respond to the January 31st and February 21st Orders provides a basis to dismiss this petition. OEA Rule 621.3 grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice.⁴¹ The AJ may, in the exercise of sound discretion, dismiss the action if a party fails to take reasonable steps to prosecute or defend her appeal.⁴² Additionally, OEA Rule 621.3(a)-(b), states that failure to prosecute an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice; or
- (b) Submit required documents after being provided with a deadline for such submission.

Moreover, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.⁴³ Employee did not appear at the scheduled Prehearing Conference and she failed to submit a Prehearing Statement and a response to the February 21st Order for Statement of Good

⁴⁰See Guity Deyhimy, Esq. Correspondence (February 25, 2013).

⁴¹ 59 DCR 2129 (March 16, 2012).

⁴² See OEA Rule 621.2, 59 DCR 2129 (March 16, 2012).

⁴³ See also *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Cause. Both the January 31st and February 21st Orders advised Employee of the consequences for not responding, including sanctions resulting in the dismissal of this matter. Employee's responses to these Orders were required for a proper resolution of this matter on the merits. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this presents an alternate ground for dismissal of this matter.

CONCLUSION

Based on the foregoing, I find that Employee was properly separated via the instant RIF after she was properly placed in a single-person competitive level and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge