THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EDITH EASTMAN-AJAERO,	)	OEA Matter No. 2401-0221-10
Employee	)	
	)	Date of Issuance: September 18, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Edith Eastman-Ajaero ("Employee") worked as a Special Education Coordinator with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that she was being separated from her position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on December 2, 2009. In it, she argued that she was wrongfully terminated and that Agency's RIF action resulted in discrimination based on her age and disability.[2] Employee also stated that the RIF evaluation process was flawed because the RIF competitive

[1] *Petition for Appeal*, p. 7 (December 2, 2009).
[2] Employee provided that when she returned to work from being on short-term disability, she was not given the opportunity to work as a teacher in the area for which she was licensed and was subsequently terminated through the RIF process. Ultimately, Employee believed that the RIF was a pre-text to terminate her and that she was targeted and dismissed as a result of her disability. *Id.*, 3-5.

criteria was limited. Therefore, she requested an evidentiary hearing, reinstatement with back pay, and reimbursement for attorney's costs.

In its answer to Employee's Petition for Appeal, Agency denied Employee's allegations and explained that it conducted the RIF pursuant to D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It argued that pursuant to 5 DCMR § 1501, Transition Academy was determined to be the competitive area, and under 5 DCMR § 1502, the Special Education Coordinator position was determined to be the competitive level subject to the RIF. Accordingly, Employee was provided one round of lateral competition where the principal utilized the Competitive Level Documentation Forms ("CLDF") to rate each employee, as defined in 5 DCMR § 1503.2.[3] After discovering that Employee was ranked lower than the other Special Education Coordinator in her competitive level, Agency provided her with a written, thirty-day notice that her position was being eliminated. As a result, it believed the RIF action was proper.[4]

Prior to issuing the Initial Decision, the OEA Administrative Judge ("AJ") ordered the parties to submit briefs addressing whether Agency followed the District's laws when it conducted the RIF.[5] In its responsive brief, Agency reiterated its position and submitted that OEA is limited to determining whether it followed D.C. Official Code § 1-624.02, 5 DCMR §§ 1503 and 1506.[6] Employee, in her brief, contested her CLDF rating and asserted that Agency violated D.C. Official Code § 1-624.02(4)(c).[7]

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[3] Agency explained that when it conducted the RIF, its Office of Human Resources computed Employee's length of service, including credit for District residency, veteran's preference and any prior outstanding performance rating.
[4] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal (*January 7, 2010).
[5] *Amended Order Requesting Briefs* (February 15, 2012).
[6] *District of Columbia Public Schools' Brief,* p. 8-9 (March 7, 2012).
[7] Specifically, Employee stated that Agency did not consider her advanced degrees, licenses, or work for the "Office or School Needs" category; that its evaluation for the "Significant Relevant Contributions, Accomplishments, or Performance" category was based on events that had occurred in 2007 when she was on medical leave; that its evaluation for the "Relevant Supplemental Professional Experience as Demonstrated on the Job" category did not

The Initial Decision was issued on June 7, 2012. The AJ found that although the RIF was authorized pursuant to D.C. Official Code § 1-624.02**,** D.C. Official Code § 1-624.08 was the applicable statute to govern the RIF.[8] As a result, he ruled that § 1-624.08 limited his review of the appeal to determining whether Employee received a written, thirty-day notice prior to the effective date of her separation and if she was provided one round of lateral competition within her competitive level. He found that Employee was properly afforded one round of lateral competition and explained that Agency considered all of the factors enumerated in DCMR § 1503.2 when it conducted the RIF.[9] He also found that Agency provided Employee the required thirty-day notice. Accordingly, the RIF action was upheld.[10]

Employee filed a Petition for Review with the OEA Board on July 11, 2012. She argues that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy. Specifically, Employee asserts that the AJ failed to consider her prior performance. Moreover, she reasoned that the AJ erred and misapplied the law when he failed to consider her claims that

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consider her attendance at various workshops offered by Agency or her special education records; and that it violated D.C. Official Code § 1-624.02(4)(c) because it did not consider her D.C. Residency status when assessing the "Length of Service" category. *Employee's Brief,* p. 4-12 (May 25, 2012).

[8] The AJ cited the District of Columbia Court of Appeals' position in *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* 960 A.2d 1123 (D.C. 2009) when finding that D.C. Official Code § 1-624.08 or the "Abolishment Act" was the applicable statute because the RIF was conducted for budgetary reasons, and the statute's 'notwithstanding' language is used to override conflicting provisions of any other Code section. *Initial Decision,* p. 2-4 (June 7, 2012).

[9] With regard to Employee's claim that she received an improper rating during the RIF process, the AJ held that her arguments regarding her rating in the "Office or School Needs" category were meritless; she did not provide credible evidence suggesting that she should have earned a higher score for the "Significant Relevant Contributions, Accomplishments, or Performance" category or the "Relevant Supplemental Professional Experience as Demonstrated on the Job" category; and her assertion that Agency should have given her credit for her D.C. Residency was not credible because at the time of the RIF, she resided in Hyattsville, MD. Furthermore, even if Agency did award her residency points, the AJ found that the other Special Education Coordinator's score was much higher and would have still trumped her score. *Id.,* 8-10.

[10] With regard to Employee's claim of discrimination, the AJ held that this allegation was outside the scope of OEA's jurisdiction because pursuant to D.C. Official Code § 2-1411.02, discrimination complaints are reserved for the Office of Human Rights. Finally, the AJ ruled that OEA lacks jurisdiction to consider Employee's grievances, including her claim that she was improperly rated at previous schools; that she was denied access to her leave; and that Agency failed to provide the proper accommodations for her disability. *Id.*, 11-12.

Agency improperly rated the factors on her CLDF.[11] Finally, she reiterates her position that the RIF was improper.

Employee argued that Agency failed to consider her argument regarding her prior performance. The court in *Onuche David Shaibu v. D.C. Public Schools,* 2012 CA 003606 P(MPA)(D.C. Super. Ct. January 29, 2013) held that "the fact that [an employee] got better evaluations from prior principals . . . does not mean that [their] evaluation was not supported by substantial evidence . . . . It means only that different supervisors reached different conclusions about [employee's] performance." The Court further provided that unless an employee can show that each supervisor based their evaluation on materially identical information, then different supervisors may disagree about an employee's performance and reach different opinions that may be supported by substantial evidence.[12] Employee offered no evidence that each of her supervisors based their assessment of her abilities on materially identical information. Consequently, Employee's past ratings do not mean that the assessment by Agency was wrong or unsupported by substantial evidence. As the AJ properly held, school principals have total discretion to rank their teachers.[13] Thus, Agency was free to make determinations about Employee's performance evaluation as it saw fit.

In response to Employee's claim that the AJ misapplied the law and failed to consider

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[11] As she did in her brief, Employee argued that in the "Office or School Needs" category Agency should have considered her curriculum, specialized education, degrees, licenses or areas of expertise. However, she contends that Agency did not consider these accomplishments, and the AJ did not point any procedural application for the evaluation of Agency's rating. Employee believes that when Agency rated this factor, it considered her leave status and disability, and such considerations were prohibited. Employee further provides that the AJ did not consider her accomplishments relevant to the "Significant Relevant Contributions, Accomplishments, or Performance" category, explaining that her accomplishments were positive factors that should have had an effect on her rating. Additionally, Employee states that according to the RIF regulations, her accomplishments related to the "Relevant Supplemental Professional Experience as Demonstrated on the Job" category warranted a score of 7-10. Lastly, Employee reiterates that for the "Length of Service" category, Agency violated D.C. Official Code § 1-624.02(4)(c). *Employee's Petition for Review* (July 11, 2012).

[12] *Id.,* 8-9.

[13] *Initial Decision,* p. 7 (June 7, 2012) (quoting *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia,* 109 F.3d 774 (D.C. Cir. 1997)).

claims regarding the scoring of her CLDF, the D.C. Court of Appeals held in *Anjuwan v. District of Columbia Department of Public Works*, 729 A.2d 883 (D.C. 1998) that OEA's authority regarding RIF matters is narrowly prescribed. The Court reasoned that OEA may not determine whether the RIF was bona fide or violated any law, other than the RIF regulations. In accordance with D.C. Official Code § 1-624.08(d) and (e), OEA is tasked with determining if Agency afforded Employee one round of lateral competition within her competitive level and if they provided a thirty-day notice. Recently, the Superior Court of the District of Columbia held that "implicit in the authority to determine whether an employee has been given one round of lateral competition is the jurisdiction to decide whether an employee's CLDF is supported by substantial evidence."[14]

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[15] The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. After reviewing the record, this Board believes that the CLDF and the AJ's assessment of this matter were based on substantial evidence.[16]

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[14] *Evelyn Sligh, et al. v. District of Columbia Public Schools*, 2012 CA 000697 P(MPA), p. 4 (D.C. Super. Ct. March 14, 2013).

[15] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

[16] The AJ properly found that Employee was afforded one round of lateral competition and provided a detailed assessment of all the factors in DCMR § 1503.2 that Agency used when it conducted the RIF. With regard to Employee's claim that she received an improper rating during the RIF process, the AJ held that her arguments submitted against her rating in the "Office or School Needs" category were meritless. He found that she did not provide credible evidence suggesting that she should have earned a higher score for the "Significant Relevant Contributions, Accomplishments, or Performance" category or the "Relevant Supplemental Professional Experience as Demonstrated on the Job" category. *Initial Decision*, p. 7-10 (June 7, 2012). This Board agrees with his assessment and finds that a reasonable mind would accept that there is adequate evidence to support his ruling.

Additionally, the AJ considered Employee's claims regarding her District residency preference. He found that her assertion that Agency should have given her credit for her D.C. Residency was not credible because at the time of the RIF, she resided in Hyattsville, MD. He held that *assuming aguendo*, even if Agency did award her these

Employee fails to adequately address the allegations raised in her CLDF. The *Shaibu* court held that if an employee offers evidence that directly contradicts any of the factual basis for the CLDF, then OEA must conduct a hearing to address the material fact in question. Agency specifically claimed in Employee's CLDF that she rarely reported to work on time; she rarely completed tasks; she was difficult to locate within the school; she failed to increase student productivity; and she lacked the skills for an instructional model of the school.[17] However, Employee offered no evidence to contradict the assessments made on her CLDF. She provided nothing more than conjecture about Agency's scoring her CLDF.[18] The Superior Court in *Sligh* held that when the record contains no evidence that would raise a material issue as to the veracity of the CLDF, employee's contentions amount to mere allegations. Because Employee failed to provide any evidence that the CLDF or the AJ's decision was not based on substantial evidence, we must DENY her Petition for Review.

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points, the other Special Education Coordinator's score was much higher and would have still trumped her score. *Initial Decision,* p. 8-10 (June 7, 2012). A retention register was provided to show that Employee was ranked lower than the other Special Education Coordinator after one round of lateral competition. Employee received a score of 12.5, and the other coordinator received a 63.5 score. *District of Columbia Public Schools' Brief*, Exhibit A, p. 6 (March 7, 2012). As the AJ provided, even with credit for the residency preference, Employee still would have been the lower ranked Special Education Coordinator. Agency also provided Employee the required thirty-day notice. She received notice on October 2, 2009, and she was effectively RIFed on November 2, 2009. *District of Columbia Public Schools' Answer to Employee's Petition for Appeal,* Tab #4 *(*January 7, 2010).

[17] *District of Columbia Public Schools' Brief*, Exhibit B, p. 3 (March 7, 2012).

[18] Employee argues that Agency failed to consider her curriculum, specialized education, degrees, licenses or areas of expertise. She claimed that Agency improperly considered her leave status and disability. Employee further provides that the AJ did not consider her accomplishments relevant to the "Significant Relevant Contributions, Accomplishments, or Performance," which should have warranted a score of 7-10.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

_____
Vera M. Abbott

_____
A. Gilbert Douglass

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.