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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Chantel Harris,)	
Employee)	OEA Matter No. J-0017-18
)	
v.)	Date of Issuance: December 18, 2018
)	
Department of Youth Rehabilitation)	
Services,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Chantel Harris (“Employee”) worked as a Management Liaison Specialist with the Department of Youth Rehabilitation Services (“Agency”). On November 7, 2017, Employee received a notice that she would be terminated from Agency. According to Agency, Employee was removed from her position during her probationary period pursuant to Chapter 8, § 814 of the D.C. Personnel Regulations (“DPR”). The effective date of Employee’s removal was November 24, 2017.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 1, 2017. She argued that according to DPR § 813.8, she was in a Career Permanent status, not a probationary status, at the time of termination. Employee contended that she

¹ *Petition for Appeal*, p. 14 (December 1, 2017).

completed her probationary period at another District agency prior to working at Agency. Accordingly, she requested that she be reinstated to her position and made whole.²

On January 2, 2018, the OEA Administrative Judge (“AJ”) issued an order directing Employee to brief whether her appeal should be dismissed for lack of jurisdiction because she was in a probationary status at the time of her appeal. In response, Employee asserted that she was a permanent, non-probationary Career Service employee who was improperly treated as a probationary employee.³ Further, she argued that in accordance to DPR § 813.2, an employee hired under a Career Service Appointment shall be required to serve a probationary period of one year. It was Employee’s position that because she did not have a break in service of one workday or more between her positions at CFSA and Agency, it was unlawful for Agency to require her to serve a second probationary period. Consequently, Employee opined that because she was a permanent, non-probationary employee, she could only have been removed for cause, as provided in Chapter 16 of the DPR. Thus, she requested that she be reinstated with back pay and attorney’s fees.⁴

On February 27, 2018, Agency filed its response to Employee’s Petition for Appeal. It argued that Employee’s offer letter explicitly stated that her appointment to that position would be on a probational basis. Agency acknowledged that Employee completed a probationary period with another District agency; however, it explained that the director of the Office of Human Resources determined that it was necessary to engage Employee on a probationary basis

² *Id.* at 2.

³ Prior to holding this position, Employee explained that she was a Human Resources Generalist at the Child and Family Services Agency (“CFSA”). Employee provided that she successfully completed her probationary period when she was employed at CFSA, as reflected in her Standard Form 50 (“SF-50”) issued on September 17, 2016. Additionally, she contended that her SF-50 issued on August 30, 2017, made clear that she was reassigned from CFSA to Agency, effective August 20, 2017.

⁴ *Employee’s Brief in Support of OEA’s Jurisdiction and Motion for Summary Reversal on the Pleadings*, p. 1-6 (January 10, 2018).

as the duties and responsibilities of the new position differed significantly from those of her prior position. Agency provided that pursuant to Chapter 8 of the DPR, an employee who is terminated from their position prior to their one-year anniversary in the position, does not have appeal rights. Accordingly, Agency requested that Employee's appeal be dismissed for lack of jurisdiction.⁵

In addition to its Response to Employee's Petition for Appeal, Agency filed its Brief on Jurisdiction and Response to Motion for Summary Reversal on the Pleadings on February 27, 2018. It argued that Employee was designated as a probationary employee because the circumstances fit the requirements outlined in DPR § 813.9(c). According to Agency, this section provided that "an employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee is appointed because of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee's actual duties and responsibilities." Additionally, Agency contended that Employee was previously employed in the 201 class and moved into the 301 class when she began working at Agency. It provided that each class is distinguished by the line of work and level of difficulty. It is Agency's position that the distinguished classes supports its contention that it was appropriate for Employee to serve a second probationary period under the DPR § 813.9 exception. Moreover, Agency highlighted the distinguishing duties between the Management Liaison Specialist and Human Resources Generalists positions. Accordingly, it requested that Employee's appeal be dismissed.⁶

On March 9, 2018, the AJ issued his Initial Decision. He agreed with Agency and held

⁵ *Agency's Answer to Employee's Petition for Appeal*, p. 1-5 (February 27, 2018).

⁶ *Agency's Brief on Jurisdiction and Response to Motion for Summary Reversal on the Pleadings*, p. 1-5 (February 27, 2018).

that although both positions were within the Human Resources field, the Management Liaison Specialist position required additional duties and a higher level of complexities than the Human Resources Generalist position at CFSA. Thus, the AJ reasoned that Employee's position with Agency was within a different line of work as provided in DPR § 813.9. Additionally, the AJ found that Employee's position with Agency was a result of open competition. He held that Employee's offer letter from Agency provided that Employee was selected under Job Requisition No. JO-1706-924, which is the same job requisition number indicated on her SF-50. Moreover, the AJ found that Agency made clear in its offer letter to Employee that her appointment would be probational. Thus, he held that Agency was within its authority to require Employee to undergo another probationary status. The AJ ruled that because a termination during a probation period is not appealable or grievable to OEA, the matter was dismissed for lack of jurisdiction.⁷

Employee filed her Petition for Review on April 4, 2018. She argues that the AJ's decision was not supported by substantial evidence because he improperly relied only on the position descriptions submitted by Agency, without affording her the opportunity to present evidence or testimony of her actual job duties and responsibilities. Additionally, she asserts that the AJ failed to address the fact that her positions were in the same occupational series and same grade. Employee also argues that under DPR § 813.9(c) the determination of whether an employee is in a different line of work must be made by appropriate personnel authority which was the D.C. Department of Human Resources ("DCHR") in this case. Moreover, Employee argues that the AJ's determination that positions with additional duties and more complexity is not enough to establish that positions are within a different line of work. Accordingly, Employee

⁷ *Initial Decision*, p. 3-4 (March 9, 2018).

requests that the Board grant her petition for review.⁸

On May 9, 2018, Agency filed its Reply to Employee's Petition for Review. It argues that the AJ correctly determined that OEA does not have jurisdiction over probationary employees. Agency explains that the AJ provided Employee with an opportunity to submit facts and evidence before rendering his decision. Agency contends that Employee addressed the issue in a brief filed on January 10, 2018. Furthermore, Agency maintains that it was within its right to require Employee to complete another probationary period upon hire. Because Employee was still in her probationary period upon her termination from Agency, it is Agency's position that her termination was neither appealable nor grievable. Finally, Agency opines that the AJ's legal conclusion of the meaning of a different line of work was accurate. It provides that the increased complexity of the new position was only one factor in the AJ's decision. Therefore, it requests that Employee's Petition for Review be denied.⁹

Agency included the position descriptions for both positions, and although there are some similarities, there are also clear differences outlined. The Management Liaison Specialist position duties are the following:

Oversee and monitor Agency's compliance with the D.C. Merit Personnel System and related policies, procedures, and directives issued by the D.C. Office of Personnel, the Office of the Chief Financial Officer, and the Office of the Chief Technology Officer.

Interpret personnel rules, policies, and procedures that affect the Agency's operations and provide advice and counseling to management staff regarding sensitive personnel issues.

Make recommendations to the Supervisory Management Liaison Specialist concerning approval or disapproval of requests for various personnel actions.

⁸ *Employee's Petition for Review of Initial Decision*, p. 4-6 (April 4, 2018).

⁹ *Agency's Reply to Employee's Petition for Review*, p. 4-9 (May 9, 2018).

Ensure the timely and accurate processing of personnel action requests inclusive of recruitment, promotion, reassignment, and adverse actions in accordance with department and personnel policies, procedures, and requirement.

Maintain records, files, and status reports with the appropriate department offices, Office of Labor Relations and Collective Bargaining, Office of Pay and Retirement Services, and the Office of Personnel.

Analyze personnel trends and provide requested statistical data and reports.

Assist in the administration of the performance standards and performance appraisal program, ensuring the adherence of documentation and scheduling requirements. Ensure full compliance with developing and carrying out Affirmative Action EEO efforts regarding staffing, promotions, detail assignments, employee awards, and employee development programs.

Recommend solutions for the most complex recruiting, staffing, position management, and labor employee relation issues.

Coordinate and/or participate in the investigation of general personnel problems, such as formal and informal discrimination complaints.

Monitor the timely initiation of personnel action requests, coordinates with the D.C. Office of Personnel to identify problems in processing and resolve those issues in support of the department, office, or business unit.

Research, compile, organize information and data; prepare periodic statistics and reports upon request and in support of the workforce planning for Agency.

Review and monitor personnel reports to identify and address emergent problems with excessive turnover, recruitment, and retention.

Participate in and/or coordinate special projects and implementation of change management initiatives. Assist management in identifying developmental training needs and organizational training needs. In conjunction with the Agency's Office of Professional Development, develop, facilitate, and evaluate the effectiveness and application of training programs.

Plan and coordinate training materials and sessions for applicable personnel. Conduct orientation sessions for new staff and as requested, represent Agency at job fairs.

Conversely, Employee's duties as Human Resources Generalist included the following:

Work as a Human Resource Generalist in the Human Resources Administration, Office of the Deputy Director for Administration, and Child and Family Services Administration with a broad range of human resources management functions to include, but not limited to, recruitment, staffing, benefits administration, employee and labor relations, and time and payroll management.

Serve as a HR advisor to program management, supervisors, and employees. Consult with managers, supervisors, and organizational groups to better understand their needs and views to develop appropriate staffing strategies and support efforts to sustain and evolve employee relation activities and programs.

Provide specialized support in recruitment and selection including developing new vacancy announcement, applying qualification standards and Merit Promotion ranking procedures, screening candidate pools, and coordinating interviews with programs for a wide variety of positions.

Provide support on and resolution to customers, key program stakeholders, and applicants/candidates as needed and elevate critical hiring challenges and/or request to the Lead Human Resources Specialist and/or HR Management as necessary.

Provide information to applicants and employees regarding benefits, basic policy interpretation, and other human resources programs. Provide information to employees on eligibility for payroll deductions, tours of duties, and pay tables.

Coordinate and ensure effective new hire on-boarding by scheduling and administering employee orientations and liaising with department partners to ensure efficient job readiness supports are in place and well planned.

Assist in the establishment, coordination, and maintenance of the employee relations program and/or segments for the program. Devise special emphasis projects to meet the needs of employees, supervisors, and managers.

Evaluate and report on trends relative to performance management, employment engagement, labor relations, and workforce well-being.

Advise supervisors regarding performance to include assisting with the establishment and management of performance improvement plans and individual development plans.

Advise in areas of progressive discipline to include performance and/or conduct related offenses that warrant corrective and adverse action, and resolves grievances and appeals. Provide information to supervisors and managers on Agency and District regulatory requirements affecting employee relations.

Conduct creative and sound instructional workshops and seminars; develops and delivers course content, based on a variety of instructional strategies and aids, which include policy, standards, and practical application.

Prepare communications outlining Human Resources programs, policies, and services. Conduct training for supervisors and employees on assigned HR program. Develop and maintain the organization's policy and procedure manual as it relates to the HR function.

Provide technical assistance in the application of Human Resources Information System (HRIS) upgrades or patches, collaborating with HR staff to coordinate application of procedural upgrades or fixes. Maintain HRIS system tables, to include the human resources and payroll components of Peoplesoft; documents processes and results. Provide information on various HRIS systems, processes, and procedures, to include application job aides and other HR documents to employees and management.

Perform specialized and technical work in the areas of staffing and recruitment. Coordinate the staffing function with other personnel disciplines to facilitate the recruitment of qualified child and family service professionals with a specific emphasis on social workers.

Meet with operating official to gather information concerning staffing needs and specifications; develops recruitment plans that will meet the demands of filling vacant social worker positions and provides a full range of technical assistance and guidance to supervisors and managers with regard to staffing and recruitment efforts, personnel policies and procedures to ensure compliance with Federal and District personnel laws, regulations, and procedures.

Partner with HR management to develop strategic recruitment plans by administration area, and assess on a routine basis staffing trends to include but not be limited to attrition, turnover, and changes in workforce capacity. Recommend and justify new approaches, methods,

and procedures compatible with overall needs and standards of each department.

Provide advice and guidance to supervisory and managerial personnel pertaining to personnel requests to assure adherence to procedural requirements of the Office of Human Resources, and the Agency's goals and objectives. Assist employees with regard to personnel questions and concerns.

Research and identify recruitment sources for positions in shortage categories and/or hard to fill opportunities. Establish and maintain contacts with local and national societies and professional associations. Work with representatives of educational institutions, news media, and public employment services, and other activities necessary to develop recruitment sources and to attract potentially qualified job applicants.

Visit educational institutions and participate in or arrange for job fairs to educate applicants about the Agency and to provide literature on the Agency or Social Worker positions.

Analyze the experience and training of applicants in terms of job requirements through an organized rating and ranking process. Coordinate and participate in the screening of job candidates and liaises with hiring management to ensure proper determinations of suitability for positions.

Provide continuing services to the Agency in the areas of selection, placement, appointments, and merit promotions with primary emphasis on social workers.

Assist in the establishment, coordination, and maintenance of the employee relations program and/or segments for the program. Devise special emphasis projects to meet the needs of employees, supervisors, and managers.

Performs other related duties as assigned.

As it relates to the AJ's determination that the Management Liaison Specialist position was in a different line of work than Employee's previously held Human Resources Specialist position, this Board believes that there is substantial evidence in the record to support this ruling. Agency described, in great length, the difference between the Human Resources Specialist and Management Liaison Specialist positions. Agency provided that as a Management Liaison

Specialist, Employee served as a subject matter expert on staffing, recruiting, labor and employee relations, compensation, classification, benefits, and human resources information technology. According to Agency, Employee was responsible for interpreting personnel rules, policies, and procedures that impact the Agency, as required by DCHR. It also explained that Employee required training on its internal human resources policies, as well as those in DCHR upon starting as the Management Liaison specialist.¹⁰

By contrast, Agency provided that as a Human Resources Specialist with CFSA, Employee engaged in more independent personnel practices. However, the Management Liaison position required more coordination with DCHR. Additionally, as a Human Resources Specialist, Employee was employed in the 201 class, and the Management Liaison position was in the 301 class.¹¹ Moreover, Agency explained that the Director of Agency's Office of Human Resources determined that the position duties were different given the unique operations at Employee's previous agency, CFSA. Because DPR Section 813.9(c) provides that the determination that a position is in a different line of work is made by the appropriate personnel authority, there is no basis for this Board to disturb the AJ's ruling that the positions are different or that Agency was the appropriate personnel authority. Thus, there is substantial evidence to support the determination that Employees duties and responsibilities were different for each position.

As it relates to the AJ's ruling on open competition, DPR Section 813.2 provides that "a person hired to serve under a Career Service Appointment (Probational), including initial appointment with the District government in a supervisory position in the Career Service, shall

¹⁰ *Agency's Brief on Jurisdiction and Response to Motion for Summary Reversal on the Pleadings*, p. 3-4 (February 27, 2018).

¹¹ *Id.*, 5-6.

be required to serve a probationary period of one (1) year” Section 813.8 goes on to provide that “except when the appointment is effected with a break in service of one (1) workday or more, or as specified in sections 812.2 (a) of this chapter or section 813.9 of this section, an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.”¹² In the current matter, Employee argues that she was in a Career Permanent status at the time of termination because she completed her probationary period at another District agency prior to working at Agency. The record reflects that Employee was hired on February 9, 2015, as a Human Resources Specialist at D.C. Child and Family Services.¹³ According to Employee, she left employ with CFSA on August 18, 2017. Subsequently, on August 20, 2017, she was hired as a Management Liaison Specialist by Agency. Because August 18, 2017, was a Friday, and August 20, 2017 was a Sunday, there does not appear to be a break in service of one workday or more.

However, DPR Section 813.9(c) provides that “an employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee is appointed as a result of open competition to a position in a different line of work, as determined by the appropriate personnel authority based on the employee’s actual duties and responsibilities.” The record is void of any documents which show that the Management Liaison Specialist position was subject to open competition. The offer letter alone, along with a mention of the job requisition number, does not establish that the position was the result of open competition. Accordingly, this Board will remand this matter to the AJ for the limited purpose of determining if Employee was appointed to the Management

¹² It appears that the AJ incorrectly cited to DPR Section 813.3 when outlining this language in the Initial Decision. This Board deems this mistake as *de minimus* because the content remains intact.

¹³ *Petition for Appeal*, Attachment A (December 1, 2017).

Liaison Specialist position as a result of open competition.

ORDER

Accordingly, it is hereby ordered that this matter is **REMANDED** to the Administrative Judge for further consideration.

FOR THE BOARD:

Clarence Labor, Chair

Vera M. Abbott

Patricia Hobson Wilson

Jelani Freeman

Peter Rosenstein

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.