THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No. 2401-0133-09
ARMETA ROSS	)	
Employee	)	Date of Issuance: March 30, 2010
	)	
v.	)	Sheryl Sears, Esq.
	)	Administrative Judge
OFFICE OF CONTRACTING AND PROCUREMENT	)	
Agency	)	

Wendy L. Kahn, Esq.,
Lionel Sims, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Armeta Ross ("Employee") was a Program Analyst in the Office of Contracting and Procurement ("Agency" or "OCP"). According to the retention register constructed by Agency on April 14, 2009, Employee, DS-0343-14-07N, was the only one in her competitive level. Agency separated Employee pursuant to a reduction in force (RIF) effective on May 22, 2009.

On June 18, 2009, Employee filed an appeal challenging the RIF on the grounds that, "with [her] seniority, skill level and accomplishments, a re-assignment would have been a more obvious choice for [her]." Employee noted that "there was no one in [her] competitive level" in her unit. Employee also noted that, "one person (a male)" did not receive a letter. She recalled that "two other colleagues in different units of OCP were riffed also; at that point it all involved BLACK women." Agency responded to Employee's appeal with the argument that Employee's challenges to the RIF are not within the jurisdiction of this Office.

On February 12, 2010, this Judge issued an order setting forth the law applicable to Employee's appeal and ordering her to present, in writing, a statement of the reasons why this appeal should not be dismissed for lack of jurisdiction. The deadline for Employee's submission was March 10, 2010. On March 4, 2010, Employee contacted this Judge by telephone to request an extension of the deadline so that she can retain the services of an attorney. This Judge ruled that, because Employee had from June 18, 2009, when she filed her appeal, to designate a representative, she would not be allowed additional time to do so.

On March 5, 2010, the same date on which Employee submitted a "Designation of Employee Representative" form designating Wendy L. Kahn as her representative, this Judge issued an order denying her request for an extension and advising her of the final date for her submission. Employee was notified that "Failure to make a submission by that date will result in dismissal of the appeal for failure to prosecute."

On Monday, March 15, 2010, Wendy L, Kahn, Esq., employee's designated representative, contacted this Judge to ask for an extension. She said that she had a cold over the weekend. She was advised again of the deadline. On March 22, 1010, she submitted a jurisdictional statement on behalf of the employee along with a motion for an extension. That motion was denied. The record is now closed.

JURISDICTION

In accordance with D.C. Official Code § 1-606.03 (2001), this Office has jurisdiction over appeals from removals by reduction-in-force. However, as will be explained, this Office does not have jurisdiction over the claims of this appellant.

ISSUE

Whether Employee has stated challenges to the removal by reduction-in-force over which this Office has jurisdiction.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that "[t]he employee shall have the burden of proof as to issues of jurisdiction . . ." Pursuant to OEA Rule 629.1, *id*., the applicable standard of proof is by a "preponderance of the evidence." OEA Rule 629.1 defines a preponderance of the evidence as "[t]hat 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." Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over her appeal.

ANALYSIS AND CONCLUSIONS

According to the D.C. Official Code § 1-624.08 (2001), an employee can challenge a RIF as follows:

> 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 as follows--
>
> (1) an employee may file with the Office of Employee Appeals an appeal contesting that separation procedures of subsections (d) and (f) were not properly applied.
>
> 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 1 *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 . . .
>
> (f) 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. (Emphasis added).

In accordance with these provisions, the only facts and legal conclusions that are relevant to this appeal are those that go to establish whether the appellants received a "round of lateral competition" and "written notice of at least 30 days" before the effective dates of their separations. Employee has not claimed that she did not get the requisite 30 day notice in advance of her removal. Nor has she claimed that she was denied a round of lateral competition. Employee was the only one in her competitive level and her position was identified for abolishment.

Although Employee was given the opportunity to make a submission supporting her claim that her appeal presents challenges over which this Office has jurisdiction, she missed the deadline for doing so.

Employee failed to meet her burden of proving that this Office has jurisdiction over her appeal. Therefore it must be dismissed.

ORDER

It is hereby ordered that the petition in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE: _____

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE