THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0253-09
ADRIENNE BLOCKER,)	
Employee)	
)	Date of Issuance: September 29, 2011
v.)	
)	
D.C. DEPARTMENT)	
OF HEALTH,)	
Agency)	Sommer J. Murphy, Esq.
)	Administrative Judge

Robert Mayfield, Employee Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 31, 2009, Adrienne Blocker ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the Department of Health's ("Agency" or "DOH") action of terminating her employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was September 4, 2009. Employee's position of record at the time her position was abolished was a Special Assistant. Employee was serving in Career Service status at the time she was terminated.

I was assigned this matter on or around November of 2011. On March 16, 2011, I held a Status Conference for the purpose of assessing the parties' arguments regarding the RIF. After examining the respective arguments and reviewing the record, I determined that a hearing was not warranted. I subsequently ordered the parties to submit briefs on the subject of the RIF. Both parties submitted timely responses to the order. The record is now closed.

JURISDICTION

The 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 a RIF was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

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

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of the Employee's appeal with this Office:

1. On September 4, 2009, the effective date of her RIF, Employee occupied the position of DS-0301-14-11 Special Assistant in Career Service status.

2. According to the Retention Register submitted by Agency, Employee's Service Computation Date ("SCD") was January 10, 1999.

3. Employee's position was previously classified as a Management Supervisory Service (MSS) position; however, her position was changed to Career Service prior to the implementation of the RIF.

4. The Notice of Termination Letter to Employee stated that "[t]his letter serves as official notice of at least thirty (30) calendar days that you will be separated from District government service effective 09/04/2009."

5. Employee's competitive area was Department of Health: HIV/AIDS Administration.

6. Employee was the only person in her competitive level and was separated from service pursuant to the RIF.

Positions of the Parties

Employee contends that the RIF process was not fair or impartial. Employee further questions whether the RIF created actual savings in the budget. It is also Employee's position that she should have been reassigned to a vacant position after receiving notification that she was being terminated.

According to Agency, DOH experienced spending constraints during the 2009 and 2010 fiscal years. As a result, Administrative Order DOH-09-02-F was issued and identified positions for involuntary separation to help balance the budget. Agency submits that it followed all applicable rules and regulations with respect to the implementation of the RIF.

In a RIF matter, I am guided primarily by D.C. Official Code § 1-624.08, which states in pertinent part that:

> (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... 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.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That he/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

2. That he/she was not afforded one round of lateral competition within his/her competitive level.

This Office has consistently held that when a separated employee is the only member of his/her competitive level or when an entire competitive level is abolished pursuant to a RIF, "the statutory provision affording [him/her] one round of lateral competition was inapplicable.[1] In this case, Employee was the only person in her competitive level; therefore, the requirement that Employee be afforded one round of lateral competition does not apply.[2]

The termination letter was dated July 20, 2009. The letter also stated that the effective date of the RIF was September 4, 2009. I find that Employee received thirty (30) days written notice prior to the effective date of her termination as required by D.C. Official Code § 1-624.08.

Other workers in Employee's competitive area were reassigned to other positions within Agency in lieu of termination. Employee was not reassigned to a new position and objected to Agency's failure to place her in such a position. It should be noted; however, that Employee's arguments concerning this issue are grievances which are outside the purview of this Office's jurisdiction, and cannot be adjudicated in this forum.

Lastly, Employee questions whether an actual budget shortfall existed to justify the RIF. It should be noted that according to the ruling in *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 881 (December 11, 1998), this Office's authority over RIF matters is narrowly prescribed. The court in *Anjuwan* held that OEA does not have the authority to determine whether the agency conducting the RIF was bona fide or violated any law, other than the RIF regulations themselves. Therefore, this Office does not have the ability to adjudicate the issue of whether Agency's claimed budgetary shortfall during the 2009 and 2010 fiscal years did in fact result in savings to Agency.

Based on the record, I find the Agency complied with D.C. Official Code § 1-624.08. Agency properly implemented the RIF which resulted in Employee's termination. Accordingly, this matter should be dismissed.

ORDER

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

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

[1] *See e.g., 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).
[2] D.C. Official Code § 1-624.08.