

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Carmen Smoot)	OEA Matter No. 2401-0154-09
Employee)	
)	Date of Issuance: February 23, 2010
v.)	
)	Joseph E. Lim, Esq.
D.C. Department of Human Services)	Senior Administrative Judge
Agency)	

Frank McDougald, Esq., Agency Representative
Carmen Smoot, Employee pro se

INITIAL DECISION

INTRODUCTION

On July 9, 2009, Employee, a Motor Vehicle Operator, RW-5703-5/7, at \$19.87/hour, in the Career Service, filed a petition for appeal from Agency’s final decision separating her from Government service pursuant to a modified reduction-in-force (RIF).

This matter was assigned to me on February 3, 2010. I conducted a Prehearing Conference on February 22, 2010. Since the matter could be decided based on the documentary evidence and the parties’ positions as set forth during the conference, no further proceedings were conducted. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency’s action separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

FINDINGS OF FACT

The following facts are not subject to genuine dispute:

1. On July 2, 2009, the effective date of her RIF, Employee occupied the position of Motor Vehicle Operator, RW-5703-5/7 in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's competitive level.
2. Employee's Retention Register shows that her RIF service computation date was March 18, 1996. Because her position was eliminated along with two others in her competitive level, Employee was terminated.
3. Employee received the requisite 30-day notice prior to the effective date of her separation.
4. At the prehearing conference, Employee simply wanted answers from Agency to her questions about her RIF. Once they were answered, Employee said she really had no legal basis for challenging her RIF.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." Further, § 1-624.08(f)(2) reads as follows: "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." Section 1-624.08(d) states in part that: "[a]n employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],¹ which shall be limited to positions in the employee's competitive level."

Section 1-624.08(e) states that an employee who is "selected for separation" as a result of a RIF is entitled to 30 days written notice prior to the effective date of the RIF. Thus, an employee whose position was abolished as a result of a RIF may only contest the following before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days' notice prior to the effective date of his/her separation.

Thus, an employee whose position was abolished as a result of a RIF may only contest before this Office: 1) that she was not afforded one round of lateral competition within her competitive level; and/or 2) that she was not given 30 days notice prior to the effective date of her separation.

Here, it is undisputed that Employee received her round of lateral competition within her competitive level; and that she was given 30 days' notice prior to the effective date of her separation.

¹ Chapter 24 of the DPM contains the regulations implementing the RIF law.

In addition, Employee conceded that she had no legal grounds for appealing her RIF.

Based on the foregoing, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

It is hereby ORDERED that Agency's action separating Employee pursuant to a RIF is UPHELD.

FOR THE OFFICE:

Joseph Edward Lim, Esq.
Senior Administrative Judge