THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JEWEL NELSON	)	OEA Matter No. 2401-0041-05
Employee	)	
	)	
v	)	Date of Issuance: March 14, 2006
	)	
DEPARTMENT OF EMPLOYMENT SERVICES	)	Muriel A. Aikens-Arnold Administrative Judge
Agency	)	
	)	

Jewel Nelson, *Pro se*
Thelma Brown, Assistant Attorney General, D.C.

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 23, 2005, Employee, a Special Assistant, DS-301/13, filed a Petition for Appeal from Agency's action to separate her from service effective February 11, 2005 as a result of a reduction-in-force (RIF).[1] Agency was notified by this Office regarding this appeal on April 5, 2005 and directed to respond by May 5, 2005. Agency filed its response as

[1] The mailing envelope reflects a March 10, 2005 postmark.

directed.[2]

This matter was assigned to this Judge on October 4, 2005. On January 12, 2006, an Order Convening a Prehearing Conference was issued scheduling said conference on February 21, 2006 with prehearing submissions due by February 15, 2006. Although no prehearing submissions were received by either party (by the due date or thereafter), Employee appeared for said conference. Agency's representative did *not* appear; nor was there any communication with the Judge, prior thereto, regarding her absence.[3] However, said conference was held. As there were no material facts in dispute, no hearing was held. Accordingly, the record is closed.

JURISDICTION

For purposes of dismissing this appeal, the Office has jurisdiction pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

Employee's Position.

In Section D (Reduction-In-Force), item number R7 of her Petition For Appeal, Employee stated that she should not have been riffed because:

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[2] Agency contends that Employee's appeal was not filed within 30 days of the effective date of the agency appealed action (in accordance with OEA Rules 604.1 and 604.2) and should, therefore, be dismissed. Alternatively, Agency asserts that the RIF was consistent with applicable regulations and based solely on budgetary constraints.

[3] See OEA Rule 622.3, 46 DCR at 9313 (1999). This Judge subsequently learned that Agency's designated representative was involved in another matter during the time of the prehearing. To sanction the agency, solely, for failure to defend the appeal, under the circumstances, would not serve the ends of justice.

1) her competitive level was too narrow; and 2) that she was riffed from a position to which she was reassigned and that her former position was not among the competitive levels of the RIF action.

Prehearing Conference.

During the prehearing conference, Employee was questioned regarding her failure to submit a prehearing statement. In response, Employee stated that she mistakenly submitted her prehearing statement, via regular mail, to Eugene E. Irvin, Agency's General Counsel. She showed the Judge the only copy in her possession and stated her position.[4]

Employee was informed that this Office is not authorized to address all aspects of a RIF; and that our jurisdiction is limited to two provisions of Chapter 24 of the D.C. Official Code, §1-624.08 (d) and (e); ie., whether the employee was afforded one round of lateral competition in his or her competitive level and/or whether the employee was given written notice at least 30 days before the effective date of his or her separation.

D.C. Official Code § 1-624.08(f) reads 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 the separation pursuant to this section shall be subject to review except that . . . (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.

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[4] See Employee's prehearing submission which listed six (6) proposed witnesses and provided various staffing documents to support her contention that she was reassigned to a position contemplated to be included in a RIF. Employee subsequently mailed a copy of the prehearing statement to this Office to complete the record. No negative inference was drawn due to Employee's misdirection of the prehearing statement, as it, likewise, would not serve the ends of justice.

Section 1-624.08(d) reads as follows:

> An 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, which shall be limited to positions in the employee's competitive level.

Section 1-624.08(e) reads as follows:

> 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.

Employee was also advised that Agency's initial response requested dismissal of her appeal based on its untimely filing. In response, Employee advised that she placed the appeal in the mail on March 10, 2006.[5] She was further informed that, even if her appeal is found timely filed, the arguments she raised do not, otherwise, fall within the limited review of this Office.[6]

Findings, Analysis and Conclusions.

Employee's allegations have no merit. First, Employee's contention that the competitive area in which the RIF was conducted was too narrow cannot be considered by this Office. That argument does not present a challenge to either the one round of competition or thirty (30) days notice

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[5] Although the stamped date on Employee's appeal reflects receipt in this Office on 3/23/05, the postmark on the mailing envelope reflects 3/10/05. OEA Rule 603.2 reads: If a party has a right or duty to act or proceed within a prescribed period after service of a notice or other document upon him or her, three (3) calendar days shall be added to the prescribed period whenever the document or notice is served upon the party by mail. Therefore, the timeliness of Employee's appeal to this Office is *not* an issue as the appeal was otherwise timely filed within 30 days of the effective date of the agency action.

[6] In response to Employee's inquiry regarding the effect of Agency's absence from the proceeding, this Judge advised that a decision would be made on the existing record.

requirements.[7] Similarly, Employee's second argument regarding her reassignment to a position contemplated to be abolished does not meet the criteria for this Office to review. Moreover, if that argument could be considered, this Judge must base her decision on actual events and facts, not on speculation.[8]

Based on the record, this Judge concludes that this Office does not have jurisdiction in this matter and that this appeal should be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Muriel Aikens Arnold

MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge

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[7] See Agency's Response at Tab C filed on 5/6/05. In any event, the record reflects that Employee was the only Special Assistant, DS-301/13, (duties consistent with her grade, title, and series) assigned to the Office of Information Technology, which placed her in a single-person competitive level and the sole name on the retention register. Therefore, the statutory provision of § 1-624.08(d) is inapplicable. *See, e.g., Johnson v. D.C. Public Schools*, OEA Matter No. 2401-0131-04 (March 30, 2005) __ D.C. Reg. __ ( ).

[8] *See* Chapter 24, D.C. Official Code, § 1-624.08 (d)(e) and (f). In any event, the record reflects that Employee was reassigned to her most recent position on 6/17/01, approximately three (3) years prior to the abolishment of said position.