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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
RICHARD HUNT,)	OEA Matter No. 2401-0172-95X
Employee)	
)	Date of Issuance: December 21, 2006
v.)	
)	
DISTRICT OF COLUMBIA)	
GENERAL HOSPITAL,)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Richard Hunt ("Employee") worked as a DS-12 auditor with D.C. General Hospital ("Agency"). On March 31, 1995, Employee received a reduction-in-force ("RIF") notice from Agency. The notice provided that Employee would be terminated due to a shortage in funding. Employee appealed Agency's decision by filing a Petition for Appeal with the Office of Employee Appeals ("OEA").

Employee's petition provided that he was unfairly targeted to be RIFed. He believed that he was RIFed because the Executive Director was admonished as a result of internal audits that he conducted. Employee also argued that his competitive level was

inaccurately analyzed and that he should have been considered for several other positions before being terminated.¹

On August 11, 1995, Agency responded by outlining the regulation it used to determine which positions would be RIFed. It stated that according to Chapter 24 of the D.C. Personnel Manual ("DPM"), Employee was unable to displace any other employees through the "bump" or "retreat" process. Therefore, he was terminated.² Agency further alleged that according to the regulation, there were no positions in which Employee was qualified.³

The Administrative Judge ("AJ") issued an Initial Decision on March 30, 1998. The AJ had several unanswered questions regarding Mr. Hunt's right to retreat or bump other employees. Therefore, she remanded the matter back to Agency to determine if Employee had a later service computation date than seven other employees who were allowed to keep their jobs.⁴ She also tasked Agency with determining if any of the positions held by these other employees were essentially the same as the position held by

¹ *Petition for Appeal*, p. 5-7 (May 25, 1995).

² The relevant section of Chapter 24 of the DPM is as follows:

- 2426.3 During the second round of competition, the [] employee shall be entitled to a position of the same representative rate or the least possible reduction in representative rate and shall displace another employee who is:
- (a) in a lower tenure group and is occupying a position no more than two (2) grades or the equivalent on the basis of comparison of representative rates below the position from which the [] employee was released; or
 - (b) in the same tenure group with a later service date and:
 - (1) who occupies a position previously held or a position essentially the same as one previously held by the [] employee in a District agency; and
 - (2) whose position is at the same grade as or no more than two (2) grades or equivalent on the basis of comparison of representative rates below the position from which [] employee was released.

³ *Response to Petition for Appeal*, p. 6-8 (August 11, 1995).

⁴ The seven other employees were Linda Ivy, Annie Jackson, Wendy Patterson, Wilson Akindojuntimi, Marva Baird, Michael Ridley, and Wade Fitzgerald.

Mr. Hunt.⁵

Agency filed its response to the remand and again held that Employee could not bump or retreat to any of the other positions held by the seven employees named in the Initial Decision. It reasoned that according to Chapter 24 of the DPM, Employee could only bump those no more than two grades lower than his DS-12 grade. Therefore, he could only bump those in a DS-11 or DS-10 position. Hence, he could not bump Wendy Petterson, DS-9; Annie Jackson, DS-13; or Linda Ivy, DS-13. Agency further reasoned that Employee could not bump Wade Fitzgerald, DS-12, because his position had a heavy emphasis on computer skills. Likewise, it argued that Employee could not bump Michael Ridley, DS-11, because he held a supervisory accountant position, and Employee was an auditor. As for Wilson Akindojutimi, DS-11, and Marva Baird, DS-11, Agency argued that their positions were not essentially the same as Employee's. Therefore, it determined that Employee was properly terminated.⁶

Because the original AJ retired from OEA, a new AJ was assigned to this case. The new AJ held two hearings on July 15 and August 26, 2003. To effectively address the requirements of Chapter 24 of the DPM, he first had to determine the positions held by Employee during his employment with Agency.⁷ He then allowed both Agency and Employee to present expert witnesses to help determine Employee's ability to bump or retreat to those positions held by others.⁸ Both witnesses heavily relied on the Factor

⁵ *Initial Decision*, p. 6-9 (March 30, 1998).

⁶ *Agency's Response to Remand Order*, p. 2-3 (June 12, 1998).

⁷ Employee held positions as a DS-7 accountant, a DS-9 accountant, a DS-9 budget analyst, a DS-11 auditor, and a DS-12 auditor.

⁸ It was determined during the hearing that the only positions that Employee could retreat to were those held by Wilson Akindojutimi, Marva Baird, Michael Ridley, or Wade Fitzgerald. However, no evidence

Evaluation System when presenting their testimony.⁹

David Knudsen testified as an expert witness on behalf of Employee while Lewis Norman presented his findings for Agency. Knudsen provided that the DS-11 accountant position, held by Akindojuntimi and Baird, was essentially the same as Employee's DS-12 auditor position. The factors that he considered in reaching his findings were the complexity of the positions as well as the supervisory controls.¹⁰ However, Norman argued that the positions significantly differed on the knowledge requirement, supervisory controls, and complexity.¹¹

The AJ thoroughly analyzed both expert witness' testimonies, and he found Employee's expert testimony to be more sustaining, compelling, and reasonable. In his review of the DS-12 auditor position and that of a DS-11 accountant, he held that they were sufficiently alike in knowledge requirements, duties, responsibilities, and working conditions. He also reasoned that Employee could have successfully held the DS-11 accountant position "without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee."¹²

Agency disagreed with the AJ's ruling and filed a Petition for Review on October 7, 2004. It asserted that the AJ's Addendum Decision was not based on substantial

was presented for the positions held by Michael Ridley nor Wade Fitzgerald. Therefore, the AJ only considered Employee's retreat rights as it pertained to Akindojuntimi and Baird.

⁹ The Factor Evaluation System consists of the following factors: (1) Knowledge Required by the Position; (2) Supervisory Controls; (3) Guidelines; (4) Complexity; (5) Scope and Effect; (6) Personal Contacts; (7) Purpose of Contacts; (8) Physical Demands; and (9) Work Environment.

¹⁰ *OEA Hearing Transcript*, Employee Exhibit # 8 (July 15, 2003). It should be noted that Knudsen considered the knowledge requirement for the DS-9 accountant position to be essentially the same as the DS-11 accountant position. This is relevant because Employee previously held a DS-9 accountant position.

¹¹ *OEA Hearing Transcript*, p. 236-245 (August 26, 2003).

¹² *Addendum Decision*, p.17 (September 2, 2004) quoting §2412.3, 32 D.C. Reg. At 1189.

evidence and that he erroneously interpreted the regulation. Agency argued that the DS-11 accountant position and the DS-12 auditor position were not essentially the same. To bolster its argument, Agency outline the duties and responsibilities provided in both position descriptions. There are eleven major duties and responsibilities for the accountant position while only eight are listed for the auditor position.¹³ Therefore, Agency requested that the OEA Board grant its Petition for Review.

Employee, of course, agreed with the AJ's Addendum Decision. In his response to Agency's Petition for Review, he argued that the decision was based on substantial evidence. He provided that both parties were allowed to present expert witnesses. The AJ had to decide which witness he considered more credible, and he sided with Employee. Employee also asserted that the AJ had adequate evidence to support his conclusion and that Agency's disagreement with his decision was not a basis for appeal. He further provided that Agency did not show how the AJ's decision contradicted the regulation. Therefore, Employee requested that Agency's Petition for Review be denied.

This Board believes that both parties and their expert witnesses have made compelling arguments. Hence, it will carefully apply the facts to section 2426.3(b) of the DPM when determining if the AJ's decision was based on substantial evidence. Section 2426.3(b) provides that:

During the second round of competition, the [] employee shall be entitled to a position of the same representative rate

¹³ Agency offers several examples of why it believes the positions are significantly different. The duties and responsibilities for an incumbent of the accountant position are to aid in the month-end and year-end closing of the ledger systems; assist in the preparation of monthly cash flow analysis and projections; and prepare journal entries regarding the financial status of the hospital. Agency then contrasted this with the responsibilities of the auditor incumbent who was to review safeguarding assets and verify the existence of assets; collect, analyze, interpret and document information to support audit results; and report audit results.

or the least possible reduction in representative rate and shall displace another employee who is:

- (b) in the same tenure group with a later service date and:
 - (1) who occupies a position previously held or a position essentially the same as one previously held by the [] employee in a District agency; and
 - (2) whose position is at the same grade as or no more than two (2) grades or equivalent on the basis of comparison of representative rates below the position from which [] employee was released.

Agency does not dispute that Employee had an earlier service date than any of the other employees in question. Therefore, the first requirement of 2426.3(b) is met.

Moreover, it is without question that Employee never held a DS-11 accountant position. As previously stated, he held positions as a DS-7 accountant, a DS-9 accountant, a DS-9 budget analyst, a DS-11 auditor, and a DS-12 auditor. Therefore, the Board must determine if the DS-11 accountant position that he wishes to retreat is essentially the same as positions he previously held.

Both expert witnesses provided that the knowledge required to perform the position is the most important factor in determining if positions are essentially the same.¹⁴

As a DS-9 accountant, Employee was expected to have knowledge of:

- generally accepted accounting and business management principles
- the cost reimbursement in a health care institution
- the medicare and medicaid regulations
- computer systems reports.

As a DS-12 auditor, Employee was required to possess:

¹⁴ *OEA Hearing Transcript*, p. 124-125 (July 15, 2003) and *OEA Hearing Transcript*, p. 234-235 (August 26, 2003).

- knowledge of organization and structure with particular emphasis on the hospital environment
- knowledge of development of accounting theory, valuation, and measurement of income, financial statement presentation, government and other regulations and professional accounting body recommendations (AICPA/CICA), current issues and developments
- knowledge of managerial accounting including budgeting, costs, capital budgeting, and current developments in management accounting
- knowledge of auditing theory including relationship of internal and external auditing, internal control, fraud, procedures for audit of balance sheets items, particularly cash, accounts receivable, inventories, internal auditing standards, codes of ethics, and internal audit reports
- knowledge of audit tools and techniques including fraud investigations, flow charting and statistical sampling, audits of business operations, hospital operations, inventory, procurement, information systems, planning and control procedures, and managerial performance, current developments in internal auditing
- knowledge of audit administration including organizing, planning, and controlling, coordination with outside auditors, selling internal auditing to management, and planning, conducting, reviewing progress, and reporting results of the audit
- knowledge of human and organization behavior, effective communications, fundamental concepts of computers, and computer systems, and of auditing in the Electronic Data Processing environment
- knowledge of economics, business mathematics, and information systems.

The knowledge requirement for the DS-11 accountant position to which Employeee wished to retreat required:

- Extensive healthcare knowledge and experience

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- Knowledge of generally accepted accounting principles
- Financial statement preparation including, but not limited to, the Balance Sheet, the Profit & Loss Statement, and the Statement of Changes in Financial Position.

It is the Board's belief that as it pertains to the knowledge requirement of the DS-11 accountant position, Employee possessed a wide range of healthcare knowledge and experience. He worked with Agency for seventeen years. Therefore, he had health care experience. As a DS-9 accountant, he was required to have knowledge in cost reimbursement as it pertains to health care institutions and knowledge of the medicare and medicaid regulations. As a DS-12 auditor, he possessed knowledge of hospital organization and structure. Additionally, he conducted audits of business and hospital operations. Therefore, Employee clearly possessed a considerable amount of healthcare knowledge and experience.

Furthermore, Mr. Hunt had extensive knowledge of general accounting principles. As previously stated, he worked as a DS-7 accountant, a DS-9 accountant, a DS-9 budget analyst, a DS-11 auditor, and a DS-12 auditor. Before he became an auditor, he served in two accountant positions. As a DS-9 accountant, he was specifically required to acquire knowledge of generally accepted accounting and business management principles. Because you do not lose knowledge when you are promoted to another position, it is safe to assume that Employee still possessed knowledge of accounting principles when he was terminated. Therefore, it is reasonable for one to conclude that he has a vast knowledge of accounting principles.

The final knowledge requirement for the DS-11 accountant position was the ability to prepare financial statements like balance sheets, profit and loss statements, and statements of changes in financial position. As a DS-12 auditor, one of Employee's duties was to present financial statements. Although it is not clear that the financial statements he prepared as an auditor included balance sheets or profit and loss statements, this Board is confident that he could have prepared these documents. Moreover, section 2426.3(b) does not require that the position be identical to one previously held by Employee but that the positions are essentially the same.

The last requirement of section 2426.3(b) is that the position is no more than two grades below the position from which the employee was released. At the time of termination Employee held a DS-12 position. The one that he sought to retreat to was a DS-11 position. This falls within the two grade requirement. Therefore, the final requirement was met.

Based on the aforementioned, it is clear that AJ's decision was based on substantial evidence. The AJ properly concluded that the DS-11 position was essentially the same as those previously held by Employee. Agency highlighted the position description of the DS-11 accountant and DS-12 auditor positions in its Petition for Review. However, it did not carefully consider what both expert witnesses considered the most important element in determining if positions are essentially the same and that is the knowledge requirement of the Factor Evaluation System. This Board carefully considered the facts of this case, the knowledge requirement, and the regulation

governing the case. As a result, we confidently agree with the AJ's decision.

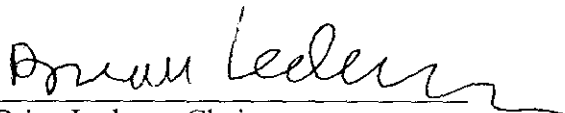
Accordingly, Agency's Petition for Review is denied.

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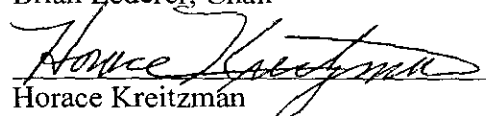
ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

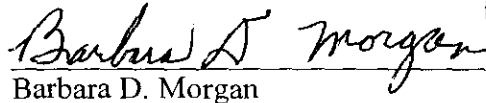


Brian Lederer, Chair



Horace Kreitzman

Keith E. Washington



Barbara D. Morgan

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.

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