Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matters of:

FELICIA CARMICHAEL,
MARTHA CLOYD-WASHINGTON,
Employees

v.

D.C. DEPARTMENT OF EMPLOYMENT SERVICES,
Agency

OEA Matter No. 2401-0026-05
OEA Matter No. 2401-0027-05

Date of Issuance: February 23, 2006

Eric T. Robinson, Esq.
Administrative Judge

Lathal Ponder, Esq., Employees' Representative
Pamela Smith, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Prior to their positions being abolished, Felicia Carmichael and Martha Cloyd-Washington (hereinafter "the Employees") worked for the D.C. Department of Employment Services (hereinafter "the Agency") as Unemployment Compensation Claims Examiners, Grade 9. By letter dated January 3, 2005, the Employees were notified that their positions would be abolished through a Reduction in Force (hereinafter "RIF") and that the effective date of this RIF was February 11, 2005. I take official notice that February 11, 2005 was a Friday. On February 14, 2005, the first working day after the RIF was executed, the Employees started working for the D.C. Department of Human Services, Income Maintenance Administration. The Employees were employed as Social Service Representatives, DS-187, Grade 9. The new positions provided the Employees with the same grade, pay rate, benefits, and service time as their pre-RIF positions.

The Employees separately filed Petitions for Appeal with the Office of Employee Appeals (hereinafter "the Office") on March 10, 2005. The Employees alleged, in their respective Petitions for Appeals, that the RIF was illegal, that the reasons for the RIF were personal, that the Agency violated the D.C. Personnel Manual in regards to details and transfers, and that the Agency miscalculated their RIF Service Computation Dates. I was assigned both matters on September 1, 2005. For both Employees, I issued separate Orders Convening Prehearing Conferences set to occur on October 18, 2005. During the Prehearing Conference, the Employees requested relief in the form of reinstatement to their pre-RIF positions, back-pay, restoration of benefits, damages for emotional distress, and promotions to DS-12 positions. During the Prehearing Conference, Employees' counsel asked for leave to conduct Discovery in these matters. I granted the request. The Agency noted for the record that it intended to file a Motion to Dismiss. At the conclusion of the Prehearing Conferences, I joined these two matters for consideration and disposition. On December 15, 2005, I held a Status Conference. Based on the parties' position as stated during the various Conferences and on the documents of record, I determined that an Evidentiary Hearing was unnecessary. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating the Employees pursuant to a RIF was conducted in accordance with applicable law, rule, or regulation.

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.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

D.C. Official Code § 1-624.08 states in pertinent part:

(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 pursuant to Chapter 24 of the District of Columbia Personnel Manual, 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, a D.C. Government employee whose position was abolished because of a RIF may only contest before this Office:

1. That she did not receive written notice 30 days notice prior to the effective date of her separation from service[1]; and/or

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

According the documents of record, the Employees positions were subject to abolishment through the enactment of a RIF pursuant to Administrative Order Number DOES 2005-1. This Order was approved by Lisa R. Martin – Acting Director of Personnel; Eric Price – Deputy Mayor for Planning and Economic Development; and Anthony Williams – Mayor of the District of Columbia. According to the Retention Register created by the Agency as part of the RIF process, the Agency had 15 persons employed as Claims Examiners in tenure group one. In effectuating the RIF, the Agency abolished seven of the aforementioned positions. According the Retention Register, when ranked against the other persons encumbering the affected positions, both Employees did not have higher RIF Service Computation Dates than the eight persons that were retained.

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[1] The Employee's have not contested the fact that they each received at least 30 days notice, in writing. Consequently, I find that the Agency properly complied with D.C. Official Code § 1-624.08 (e).

Furthermore, based on the documents of record, there exists no credible evidence of improprieties on the Agency's part in creating the Retention Register, calculating the Employees RIF Service Computation Date, or in implementing the RIF. Employees' allegations that the RIF was carried out because of personal reasons is unwarranted. I find that the Agency properly afforded the Employees one round of lateral competition.

The Employees also argue that the Agency failed to follow proper procedures in implementing the RIF including: consideration of job sharing, reduced work hours among affected employees, and reassigning employees to vacant positions which have been determined to be essential to the continued maintenance of the Agency's operation.

As set forth above there are only two issues that this Office may consider in a RIF appeal, e.g., that the Employees were not given written notice 30 days prior to the effective date of their separation from service; and/or that they were not afforded one round of lateral competition within their competitive level. Therefore, the other arguments that Employees' have raised cannot be considered in a RIF appeal and will not be addressed further.

Based on the foregoing analysis, I conclude that the Agency followed all applicable laws, rules and regulations when it separated the Employees from service as part of the RIF. Therefore, Agency's Motion to Dismiss should be GRANTED.

Further, a complaint may be dismissed for failure to state a claim upon which relief may be granted where "it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Owens v. Tiber Island Condominium Association*, 373 A.2d 890, 893 (D.C. 1977) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

The Employees have received all of the benefits they would have been entitled to if they had prevailed in a proceeding before this Office. According to the documents of record, the Employees, subsequent to their positions being RIFFED, were placed in comparable positions with the same grade, pay rate, and benefits as the positions they previously occupied prior to the RIF. Furthermore, the Employees have suffered no break in service with the D.C. Government.

I find that there is no meaningful relief available to the Employees, assuming *arguendo* that they would ultimately prevail on the merits of the case. Therefore, another reason that I would dismiss these matters is Employees' failure to state a claim for which relief can be granted.

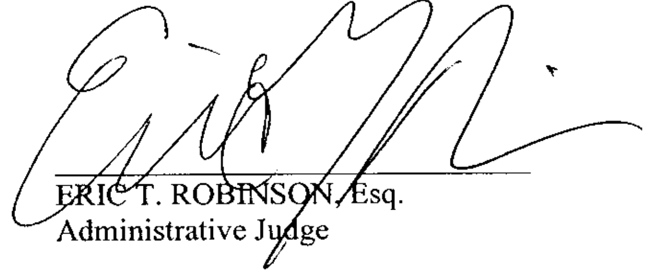
ORDER

It is hereby ORDERED that:

1. Agency's action separating Employees from service as a result of the RIF is UPHELD, and

2. Agency's Motion to Dismiss is GRANTED.

FOR THE OFFICE:



ERIC T. ROBINSON, Esq.
Administrative Judge