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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LEON GRAVES,)	
Employee)	OEA Matter No. 2401-0018-14
)	
v.)	Date of Issuance: March 25, 2015
)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	

Johnnie Louis Johnson III, Esq., Employee Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 12, 2014, Leon Graves (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was October 11, 2013. On January 10, 2014, Agency filed its Answer to Employee’s Petition for Appeal, wherein, Agency asserted that OEA does not have jurisdiction because Employee’s Petition for Appeal was untimely.

This matter was assigned to me on June 16, 2014. Subsequently, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency. Employee submitted a timely response to the Order. On July 3, 2014, the undersigned Administrative Judge (“AJ”) issued an Order Regarding Jurisdiction. This AJ found that OEA had jurisdiction over Employee’s Petition for Appeal. The Order Regarding Jurisdiction also required the parties to submit briefs addressing the issue of whether the RIF was properly conducted in this matter. Both parties have submitted their respective briefs. Upon review of the parties’ submissions, the undersigned AJ determined that the Standard Form 50 (“SF-50”) submitted by Agency was not signed by the approving official. Consequently, in an Order dated September 22, 2014, Agency was required to submit a signed copy of Employee’s SF-50 no later than October 3, 2014. Pursuant to Agency’s failure to comply with the September 22, 2014, Order, on October 6, 2014,

the undersigned AJ issued an Order for Statement of Good Cause wherein, Agency was ordered to submit a statement of good cause based on its failure to provide the document requested in my September 22, 2014, Order. Agency had until October 15, 2014, to respond. On October 10, 2014, Agency filed a response to my October 6, 2014, Order. A Prehearing Conference was held in this matter on January 7, 2015. After considering the parties' arguments, the undersigned issued an Order dated January 9, 2015, wherein, the parties were again given an opportunity to submit briefs and documentation in support of their position as it pertains to Employee's position of record at the time of the instant RIF. Both parties have complied. After reviewing the documents of record, the undersigned has determined that an Evidentiary Hearing is not warranted. 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.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Jurisdiction Issue

As noted in the July 3, 2014, Order Regarding Jurisdiction, I find that Employee's Petition for Appeal was timely filed with this Office, and as such, this Office has jurisdiction over this Petition for Appeal.

A "[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within thirty (30) calendar days of the effective date of the action being appealed."¹ The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.² Also, while this Office has held that the statutory thirty (30) day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,³ there is an exception whereby, a late filing will be excused if an agency fails to provide the employee with "adequate notice of its decision and the right to contest the decision through an appeal."⁴

¹ DC Official Code §1-606.03.

² See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

³ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

⁴ OEA Rule 605.1; See also *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, Opinion and Order on Petition for Review (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5,

Here, the effective date of the RIF was October 11, 2013. Consequently, Employee had thirty (30) days from this date to file a timely Petition for Appeal with OEA. Employee filed his appeal on November 12, 2013, thirty-two (32) days after the effective date of the RIF. Although Employee's Petition for Appeal was filed two (2) day after the thirty (30) days requirement, I find that his appeal was timely. Pursuant to OEA Rule 603, "...for calendar days, if the last day of the time period is a Saturday, Sunday, or legal holiday, the period shall be extended to the end of the next business day." Employee had until November 10, 2013, to file a timely appeal. However, because November 10, 2013, was a Sunday, and November 11, 2013 was a legal holiday, (Veteran's day), pursuant to OEA Rule 603, the time period within which Employee could file his appeal was extended to the next business day following the legal holiday (Veteran's day) – November 12, 2013. Employee filed his appeal on November 12, 2013. Accordingly, I conclude that Employee's Petition for Appeal is timely, and OEA has jurisdiction over this matter.

RIF Analysis

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Although D.C. Official Code § 1-624.02,⁵ encompasses more extensive RIF procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act or the Act") is the more applicable statute to govern this RIF.

Section § 1-624.08 states in pertinent part that:

(a) *Notwithstanding any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).*

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a

2003); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, Opinion and Order on Petition for Review (May 23, 2011).

⁵ D.C. Code § 1-624.02 states in relevant part that:

(a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:

(1) A prescribed order of separation based on (1) tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) *Notwithstanding any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(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.

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.”⁶ The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”⁷

However, the Court of Appeals took a different position. In *Washington Teachers' Union*, the District of Columbia Public Schools (“DCPS”) conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.”⁸ The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the

⁶ *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

⁷ *Id.* at p. 5.

⁸ *Id.* at 1132.

Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”⁹ The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”¹⁰

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.¹¹ The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”¹² Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”¹³

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹⁴ Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding’, suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Here, the Administrative Order authorizing the RIF highlighted that the RIF was conducted for budgetary reasons.¹⁵ Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That he did not receive written notice thirty (30) days prior to the effective date of his separation from service; and/or
2. That he was not afforded one round of lateral competition within his competitive level.

Employee’s Position

In his submissions to this Office,¹⁶ Employee submits that he was a Pre-Commitment Case Manager and has never been a Detention Review Specialist as Agency noted. Employee also notes that he applied and he was hired by Agency as a Social Service Representative. He was detailed to several positions under the status of a Detention Review Specialist, however, his position was never reclassified. Employee explains that the Detention Review Specialist position was abolished in 2009 and Agency’s claim that Employee was a Detention Review Specialist is fraudulent. Employee further notes that he did not perform detention review services. Employee

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

¹² *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

¹³ *Id.*

¹⁴ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹⁵ Agency’s Answer (January 10, 2014) at Exhibit 2. *See also* Agency’s Brief (July 21, 2014) at Exhibit 2.

¹⁶ Petition for Appeal (November 12, 2013); *See also* Employee’s Briefs (June 25, 2014; February 25, 2015; and March 10, 2015).

also states that he was detailed to Pre-Commitment services in 2008, and he is known as a Pre-Commitment Case Manager by the D.C. Superior Court judges, and attorneys. Employee explains that Agency has no record of him conducting Detention Review Specialist services. Employee maintains that at the time of the RIF, he had been a Pre-Commitment Case Manager for three (3) – four (4), and he was working on about thirty (30) cases when he was RIFed. He submitted his pre-commitment reports for 2013. Employee further states that Agency listed him as a Pre-Commitment Case Manager in 2010.

Additionally, Employee states that the Pre-Commitment Case Manager position was not abolished by the instant RIF. He contends that he was separated as a result of Agency's totally inaccurate job description and records. Employee states that the SF-50 provided by Agency was not dated, has no approval signature and Employee never received a copy. Employee argues that Agency's Retention Register is inaccurate because it does not list Employee as a Pre-Commitment Case Manager. Employee notes that Agency has not submitted any signed document refuting Employee's position of Pre-Commitment Case Manager. He maintains that, the only position targeted for the current RIF was the Detention Review Specialist position.

Employee contends that the RIF was improper and discriminatory in nature as it targeted Employee, as well as other employees who were over forty (40) years of age. Employee also states that he was not given credit for his previous District government employment. He explains that if he had received credit for his previous District government employment, he would have received civil service status.

Agency's Position

Agency states that it had authority to conduct the instant RIF and in separating Employee, it complied with the procedures required by law, as well as the related provisions set forth in Chapter 24 of the District Personnel Manual ("DPM"). Agency explains that due to budgetary reasons, it had to eliminate twenty-five (25) full time positions. According to Agency, it requested approval to conduct a RIF, and the D.C. Director of Human Resources ("DCHR") issued Administrative Order ("AO") No. DYRS-2013-01 in September of 2013 approving the RIF.¹⁷ Agency explains that Employee was a Detention Review Specialist ("DRS") in Agency's Court/Commitment Service Division, and his competitive level was DS-010-09-02-N. Agency explains that all DRS at the same grade constitute the same competitive level, and Employee was one (1) of the three (3) DRS at the same competitive level that was subject to the RIF. Further, Agency explains that because all the positions in Employee's competitive level were abolished, there was no one against whom Employee could compete with for identical position and duties, thus, he was not provided one round of lateral competition.

Agency also highlights that Employee was given more than thirty (30) days written notice prior to the effective date of the RIF pursuant to Chapter 24 of the D.C. Personnel Regulations. Agency maintains that it issued the RIF Notice on September 6, 2013 and

¹⁷ Agency's Answer (January 10, 2014) at Exhibit 2. *See also* Agency's response to July 3, 2014 Order (July 21, 2014).

Employee received it on September 9, 2013. The Notice stated that Employee was being separated effective October 11, 2013.¹⁸

Agency also submitted an affidavit from Jessica Anayannis, Supervisory Management Liaison Specialist at Agency attesting that Employee's position of record was Detention Review Specialist. Ms. Anayannis further attested that Employee applied for and was competitively selected and hired for the Detention Review Specialist position. She explains that Employee's job data page in PeopleSoft identifies him as a Detention Review Specialist.¹⁹ Additionally, Agency submits that a signed copy of Employee's SF-50 does not exist. Agency explains that it maintains its records electronically and as a practice, does not print out SF-50 Personal Action Forms, collect signatures and then scan them back into its system. Agency however notes that, upon request, an employee can receive their SF-50.²⁰

Agency highlights that Employee was employed in November of 2004 as a Social Service Representative. In May 2008, Employee applied for the Detention Review Specialist position and he was hired effective August 17, 2008. Thus, as of August 17, 2008, up until the time of the RIF, Employee was a Detention Review Specialist. Agency also avers that Employee noted in his Petition for Appeal that his position was Detention Review Specialist. Agency further notes that Employee's pay received clearly shows that his pay was based on the Detention Review Specialist position. Agency explains that prior to August 2008, Employee received pay as a Social Service Representative. However, effective August 17, 2008, the date of Employee's appointment, he began receiving pay for the position of Detention Review Specialist.²¹ Agency contends that, the documents submitted clearly establishes by a preponderance of evidence that on August 17, 2008, Employee was appointed to the position of Detention Review Specialist and he occupied that position until he was separated from that position on October 11, 2013. Agency maintains that the position title Pre-Commitment Case Manager has never existed at Agency, and Employee has not, and cannot present any pay record that shows him being paid from the position of Pre-Commitment Case Manager.

Round of Lateral Competition

Employee asserted that he did not receive one round of lateral competition because Agency placed him in the wrong position for purposes of the RIF. Employee explains that he was a Pre-Commitment Case Manager, and not a Detention Review Specialist. In order to determine if Agency conducted the instant RIF properly, the undersigned must determine whether an employee was placed in the proper competitive level in order to determine if the lateral competition requirement has been met. Regarding the establishment of a competitive level, DPM §2410.1 states that each personnel authority shall determine the positions comprising the competitive levels that employees compete for retention. Additionally, DPM §§2410.2, 2410.3 states that assignment to a competitive level "shall be based upon the employee's position of record," which is the position that the employee receives pay. Further, DPM §2410.4, states that a competitive level shall consist of all positions which are sufficiently alike in qualification

¹⁸ *Id.* at Exhibit 4.

¹⁹ Affidavit of Jessica Anayannis (November 7, 2014).

²⁰ Agency's response to OEA's Order for Statement of Good Cause (October 10, 2014).

²¹ Agency's Brief (February 2, 2015) at Exhibits 9-12.

requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions. Generally, an employee's position of record is shown through the issuance of an SF-50 Notification of Personnel Action.²²

Here, while Employee contends that his position of record at the time of the RIF was a Pre-Commitment Case Manager, Agency on the other hand argues that Employee was Detention Review Specialist in the Court/Committed Service division. Although the issuance of an SF-50 is typically used to determine an employee's position of record, pursuant to DPM §2410.3 an employee's position of record is the position that the employee receives pay. Because Agency was unable to provide this Office with a signed SF-50 substantiating its argument that Employee's position of record at the time of the RIF was a Detention Review Specialist, the undersigned will have to rely on Employee's pay record. Agency submitted copies of Employee's PeopleSoft pay record for August 2008 along with its brief.²³ A review of Employee's PeopleSoft paystub highlights that Employee was paid as a Social Service Representative from when he was hired up until August 17, 2008. Thereafter, the record shows that Employee was paid as a Detention Review Specialist until when his position was abolished pursuant to the instant RIF. Moreover, Employee has not provided any evidence to refute Agency's assertion that he was paid as a Detention Review Specialist from August 17, 2008 up to when his position was abolished by the instant RIF nor the fact that he applied for a Detention Review Specialist position in 2008. Employee had more than five (5) years from August 2008 to when he was RIFed in 2013 to review his payroll information and request that Agency change his position as stated in his payroll from Detention Review Specialist to Pre-Commitment Case Manager. Just like Employee made several attempts to get Agency to recalculate his years of service to include his previous employment with the District government, Employee could have made some effort in the past five (5) to indicate to Agency that his pay stub had the wrong position title.

Also, Employee has not provided any evidence to show that the Detention Review Specialist position was eliminated in 2009 as he claims. Contrary to Employee's assertion, a review of the Administrative Order proves that the Detention Review Specialist was not eliminated in 2009. The Administrative Order lists several Detention Review Specialist positions in different divisions of Agency.

Further, Employee noted in his Petition for Appeal that his position of record was Detention Review Specialist. Employee further contradicts himself when he stated that he was detailed to several positions under the status of a Detention Review Specialist.²⁴ Although Employee has submitted several documents and statements from his day to day duties at Agency highlighting that Employee was a Pre-Commitment Case Manager, I find that Agency has met its burden of proof by a preponderance of evidence that Employee was transferred to the Detention Review Specialist position on August 17, 2008 and that was the position he held when the instant

²² See *Armata Ross v. D.C. Office of Contracting & Procurement*, OEA Matter No. 2401-0133-09-R11 (April 8, 2013).

²³ Agency's Brief regarding Employee's position of record, *supra*.

²⁴ Petition for Appeal, *supra*.

RIF was conducted. Based on the record, I conclude that Employee's position of record was a Detention Review Specialist in the Court/Committed Services division.

Chapter 24 of the DPM, § 2410.4, 47 D.C. Reg. 2430 (2000), defines "competitive level" as:

All positions in the competitive area ... in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

In this matter, Administrative Order No DYRS-2013-01 lists the various position number, position title, series, grade, and organization location of all positions that were affected by the RIF.²⁵ According to this Administrative Order, three (3) Grade 09 Detention Review Specialists positions in the Court/Committed Services division of Agency, with position numbers listed as 00033147; 00035778; and 00032448 were listed for abolishment. Employee was placed into this competitive level based on his position of record.

In addition, pursuant to Chapter 24 of the DPM, § 2410.5, 47 D.C. Reg. 2430 (2000) "[t]he composition of a competitive level shall be determined on similarity of the qualification requirements, including selective factors, to perform the major duties of the position successfully, the title and series of the positions, and other factors prescribed in this section and section 2411 of this chapter." Further, Chapter 24 of the DPM, § 2411.2 highlights that, "[e]mployees whose official position description have the same title, series, and grade, but who have specialties which are identified on their position descriptions by parenthetical titles in accordance with applicable classification standard, shall be assigned to separate competitive levels." This is not the case here. Employee's official position of record was a Grade 09 Detention Review Specialist and his position number was 00033147.²⁶

Pursuant to Chapter 24 of the DPM, § 2409, each Agency shall generally constitute a single competitive area, and Agency personnel are authorized to establish lesser competitive areas when conducting RIFs. Additionally, DPM §2409.4 also states that lesser competitive areas may be established where they are no smaller than a major subdivision of an agency or an organizational segment that is clearly identifiable and distinguished from others in the agency in terms of mission, operation, function, and staff. Here, pursuant to Administrative Order No. DYRS-2013-01, the Director of DCHR signed and approved Agency's RIF request and designation of lesser competitive areas, including Employee's division – Court/Committed Services for purposes of the instant RIF. Moreover, contrary to Employee's assertion that Detention Review Specialist was the only position abolished by the RIF, there were other positions within this lesser competitive area that were affected by the instant RIF. A total of nine

²⁵ Agency's Brief regarding Employee's position of record at Exhibit 6.

²⁶ *Id.* at Exhibit 12.

(9) positions within this competitive level, and twenty-five (25) positions within this competitive area, including Employee's position were abolished as a result of the RIF.²⁷

Furthermore, § 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a "Retention Register" for each competitive level, and provides that the Retention Register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level." Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the Retention Register. An employee's standing is determined by his/her RIF service computation date (RIF-SCD), which is generally the date on which the employee began D.C. Government service. Here, Employee was entitled to compete with the other employees in one round of lateral competition. According to the Retention Register, all positions in Employee's competitive level were eliminated in the RIF. Therefore, I conclude that the statutory provision of the D.C. Official Code § 1-624.08(d), according Employee one round of lateral competition is inapplicable because all the positions were eliminated, and thus Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position. Moreover, OEA has consistently held that where an entire competitive level is eliminated, there is no one against whom an employee can compete. Therefore, one round of lateral competition is inapplicable.²⁸

Thirty (30) Days Written Notice

The D.C. Official Code § 1-624.08(e) which governs RIFs provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added). Here, the record shows that Employee received his RIF Notice on September 9, 2013, and the RIF effective date was October 11, 2013. The notice stated that Employee's position was being abolished as a result of a RIF. The Notice also provides Employee with information about his appeal rights. Moreover, Employee does not contest that he did not receive the required thirty (30) days notice. It is therefore undisputed that Employee was given the required thirty (30) days written notice prior to the RIF effective date.

Discrimination

Employee submits that the RIF was improper and discriminatory in nature as it targeted Employee, as well as other employees who were over forty (40) years of age. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful

²⁷ *Id.* at Exhibit 6.

²⁸ See *Laura Smart v. D.C. Child and Family Services Agency*, OEA Matter No. 2401-0328-10, Opinion and Order on Petition for Review (March 4, 2014); *Jessica Edmond v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0344-10, p. 6 (November 6, 2012); *Nicole Sivoletta v. D.C. Public Schools*, OEA Matter No. 2401-0193-04, p. 3 (December 23, 2005); *Evelyn Lyles v. D.C. Dept of Mental Health*, OEA Matter No. 2401-0150-09 (March 16, 2010); *Leona Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003); *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003); *Deborah J. Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003); and *R. James Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001).

discrimination in employment...for any reason other than that of individual merit.” Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.²⁹ Additionally, District Personnel Manual (“DPM”) § 1631.1(q) reserves allegations of unlawful discrimination to the OHR. Moreover, the Court in *Anjuwan* held that OEA’s authority over RIF matters is narrowly prescribed. This Court explained that, OEA lacks the authority to determine broadly whether the RIF violated any law except whether “the Agency has incorrectly applied...the rules and regulations issued pursuant thereto.” This court further explained that OEA’s jurisdiction cannot exceed statutory authority and thereby, OEA’s authority in RIF cases is to “determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs.”³⁰

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*³¹ stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is “contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation...”³² In the instant case, Employee simply alleges that the RIF affected only employees who were aged forty (40) or older. Employee has not offered any credible evidence in support of his above-referenced assertion. Moreover, Employee’s claim as described in his submissions to this Office do not allege any whistle blowing activities as defined under the Whistleblower Protection Act nor does it appear to be retaliatory in nature. Consequently, I find that Employee’s claims are unsubstantiated and as such, fall outside the scope of OEA’s jurisdiction.

Grievances

Employee avers that he was not given credit for his previous District government employment. Generally, complaints of this nature are grievances, and do not fall within the purview of OEA’s scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee’s other ancillary arguments are best characterized as grievances and outside of OEA’s jurisdiction to adjudicate. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee’s other claims.

Based on the foregoing, I conclude that Agency’s action of abolishing Employee’s position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e) and that OEA is precluded from addressing any other issue(s) in this matter.

²⁹ D.C. Code §§ 1-2501 *et seq.*

³⁰ *Citing Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

³¹ 730 A.2d 164 (May 27, 1999).

³² *El-Amin; citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge