**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| JAMES LIGHTFOOT, | ) | OEA Matter No. 2401-0206-10 |
| Employee | ) | |
| | ) | Date of Issuance: September 18, 2013 |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | |
| Agency | ) | |
| | ) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

James Lightfoot ("Employee") worked as an Art Teacher with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that he was being separated from his position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on December 1, 2009. He asserted that he was involuntarily terminated and that Agency violated the RIF procedures. Therefore, he requested reinstatement with back pay.[2]

In its answer to Employee's Petition for Appeal, Agency explained that it conducted the RIF pursuant to D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It argued that pursuant to 5 DCMR § 1501,

[1] *Petition for Appeal*, p. 6 (December 1, 2009).
[2] *Id*., 3-5.

Dunbar Senior High School was determined to be the competitive area, and under 5 DCMR § 1502, the Art Teacher position was determined to be the competitive level subject to the RIF. Accordingly, Employee was provided one round of lateral competition where the principal rated each employee in the competitive level through the use of Competitive Level Documentation Forms ("CLDF"), as defined in 5 DCMR § 1503.2.[3] After discovering that Employee was ranked the lowest in his competitive level, Agency provided him a written, thirty-day notice that his position was being eliminated. Therefore, it believed the RIF action was proper.[4]

Prior to issuing the Initial Decision, the OEA Administrative Judge ("AJ") ordered the parties to submit legal briefs addressing whether Agency followed the District's statutes, regulations, and laws when it conducted the RIF.[5] Agency's brief reiterated its position and provided that OEA is limited to determining whether it followed D.C. Official Code § 1-624.02, 5 DCMR §§ 1503 and 1506.[6] Employee submitted in his brief that he was not provided with one round of lateral competition or considered for priority reemployment.[7] Therefore, he requested that OEA find that he was erroneously terminated and reinstate him with back pay and benefits.[8]

The Initial Decision was issued on May 21, 2012. The AJ found that although the RIF was authorized pursuant to D.C. Official Code § 1-624.02**,** D.C. Official Code § 1-624.08 was the applicable statute to govern the RIF.[9] As a result, the AJ ruled that § 1-624.08 limited her

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[3] Agency explained that its Office of Human Resources computed Employee's length of service, including credit for District residency, veteran's preference, and any prior outstanding performance rating when it conducted the RIF.
[4] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal (*December 31, 2009).
[5] *Order Requesting Briefs* (February 10, 2012).
[6] *District of Columbia Public Schools' Brief,* p. 8 (March 5, 2012).
[7] Employee claimed that when Agency provided him with one round of lateral competition, it failed to give him the proper credit for his years of service. He provided that he began teaching with Agency in 1991, but his CLDF provided that he began teaching in 1997. Additionally, he argued that he did not receive credit for his rating of "Exceeds Expectations" for his performance during the 2008-2009 school year and did not receive credit for his master's degree. *Employee James Lightfoot's Response to District of Columbia Public Schools' Brief,* p. 7-8 (March 26, 2012).
[8] *Id.* at 9.
[9] The AJ cited the District of Columbia Court of Appeals' position in *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*, 960 A.2d 1123 (D.C. 2009) and found that D.C. Official Code § 1-624.08 or

review of the appeal to determining whether Employee received a written, thirty-day notice prior to the effective date of his separation and if Agency provided one round of lateral competition within his competitive level.[10] In addressing Employee's argument concerning the one round of lateral competition, the AJ found that although Agency did not award the proper credit for Employee's length of service, Employee offered no evidence to suggest that a re-evaluation of his CLDF score in this category would have yielded a different result.[11] Thus, she found that he was properly afforded one round of lateral competition.[12] She also found that Agency provided Employee the required thirty-day notice. Accordingly, the RIF action was upheld.[13]

On June 25, 2012, Employee filed a Petition for Review with the OEA Board. He now argues that the RIF notice did not provide information regarding the elements of the one round of lateral competition within his competitive level.[14] He contests the veracity of his ranking on his CLDF. He provided that Agency failed to consider his background and that the dates and times of his professional activities are inaccurate. Additionally, Employee believes that the narrative in the CLDF for the "Needs of School" category is unfair and legally unsound and that the AJ should have considered having its author testify to the truthfulness of the statements, as well as identify a third party to support what was provided in the narrative.[15] Therefore, he requests that

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the "Abolishment Act" was the applicable statute because the RIF was conducted for budgetary reasons, and the statute's 'notwithstanding' language is used to override conflicting provisions of any other section. *Initial Decision,* p. 2-4 (May 21, 2012).

[10] Although the AJ found that §1-624.08 limited her review of the appeal, she considered Employee's argument regarding priority reemployment rights under § 1-624.02. She ruled that there was no evidence to suggest that Employee applied for and was not given priority reemployment consideration. *Id.* at 8.

[11] The AJ found that a recalculation of Employee's length of service would have increased his total score by five (5) points, but the next lowest employee in his competitive level received a total score of forty-five (45) points.

[12] The AJ explained that the principal had discretion to rank Employee when completing the CLDF, and the principal was in the best position to evaluate the criteria in DCMR § 1503.2.

[13] *Id.* at 9.

[14] Specifically, Employee states that it was not until after his appeal to OEA that he received key documents that led to his removal, including the names and positions of administrators involved in executing the RIF. *Employee's Petition for Review of Initial Decision*, p. 4-5 (June 25, 2012).

[15] Employee believes that assumptions were made in the narrative, and he was not given an opportunity to confront its content. He states that although the narrative was signed by the principal, the document provides no names,

the appeal be remanded to the AJ for the purpose of conducting a hearing to allow him due process of law.[16]

In Agency's response to Employee's Petition for Review, it asserted that the petition failed to state permissible grounds for review by the Board. It provides that Employee's argument regarding the RIF notice is not a permissible ground for review and is not an objection to the Initial Decision that is supported by the record. Agency reiterates its position that the RIF action was proper, and OEA is limited in its review of the RIF action. It asserts that Employee's Petition for Review does not refute the findings made by the AJ. Therefore, Agency requests that the Board affirm the Initial Decision and declare it final; dismiss Employee's Petition for Review as insufficient; and declare that its RIF action was proper.[17]

In *Anjuwan v. District of Columbia Department of Public Works*, 729 A.2d 883 (D.C. 1998), the D.C. Court of Appeals held that OEA's authority regarding RIF matters is narrowly prescribed, and it may not determine whether the RIF was bona fide or violated any law, other than the RIF regulations. According to D.C. Official Code § 1-624.08(d) and (e), OEA is tasked with determining if Agency afforded Employee one round of lateral competition within his competitive level and if they provided a thirty-day notice. Recently, the Superior Court of the District of Columbia held that "implicit in the authority to determine whether an employee has been given one round of lateral competition is the jurisdiction to decide whether an employee's

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places, specific incidents, third party information, verification, notarization, or truth with "penalty of perjury" language. *Id.*, 5-8.

[16] Employee asserts that OEA's non-compliance with timely adjudicating his appeal pursuant to the Comprehensive Personnel Act and OEA regulations constitutes unreasonable delay under the D.C. Administrative Procedures Act and is in violation of his Fifth Amendment due process rights. He states that OEA's failure to timely act on his appeal has harmed his ability to gather information and its elimination of hearings has allowed for unproven documents to take the place of testimony. *Id.,* 8-10.

[17] *District of Columbia Public Schools' Response to Employee's Petition for Review of Initial Decision* (July 30, 2012).

CLDF is supported by substantial evidence."[18]

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[19] The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. After reviewing the record, this Board believes that the CLDF and the AJ's assessment of this matter were based on substantial evidence.

Employee offers nothing more than conjecture about Agency's scoring his CLDF. His argument focused on the veracity of his ranking on his CLDF and provides that the dates and times of his professional activities are inaccurate. However, he neglected to address any of the specific allegations made against him on his CLDF.[20] The Superior Court in *Sligh* held that when the record contains no evidence that would raise a material issue as to the veracity of the CLDF, employee's contentions amount to mere allegations. Moreover, the court in *Onuche David Shaibu v. D.C. Public Schools*, 2012 CA 003606 P(MPA)(D.C. Super. Ct. January 29, 2013) held that if an employee offers evidence that directly contradicts any of the factual basis for the CLDF, then OEA must conduct a hearing to address the material fact in question. However, in the current matter, Employee offered no evidence that contradicts the assessments made on his CLDF. As a result, we must DENY his Petition for Review.

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[18] *Evelyn Sligh, et al. v. District of Columbia Public Schools*, 2012 CA 000697 P(MPA), p. 4 (D.C. Super. Ct. March 14, 2013).

[19] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

[20] The CLDF provided the following:

> Mr. Lightfoot fails to support the school needs to create a strong learning environment by regularly requiring assistance to address management issues such as discipline. Mr. Lightfoot has a disorganized class and has not established classroom procedures and routines. In addition, Mr. Lightfoot came to work unprepared to teach on the first day of school. He does not follow the instructional model of the school and waste[s] very important instructional time.

**ORDER**

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

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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.