

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Gina Vaughn) OEA Matter No. 2401-0020-12R16
Employee)
) Date of Issuance: September 9, 2016
v.)
) Joseph E. Lim, Esq.
Metropolitan Police Department) Senior Administrative Judge

Agency)

Frank McDougald, Esq., Agency Representative
Leslie Deak, Esq., Employee Representative

INITIAL DECISION ON REMAND

INTRODUCTION

On November 10, 2011, Gina Vaughn (“Employee”) filed a Petition for Appeal from the Metropolitan Police Department’s (the “Agency”) final decision to separate her from government service pursuant to a Reduction-in-Force (“RIF”). This matter was assigned to me on August 2, 2013. I reversed Agency’s action on December 11, 2014. On appeal, the OEA Board remanded the matter back to the undersigned with instructions to conduct further proceedings to properly determine whether Employee was placed in the correct competitive level and whether the inconsistencies in the RIF document constitute reversible error.¹

I held a conference on May 27, 2016, and ordered the parties to submit briefs on the issues identified by the Board. After a postponement requested by the parties, I moved the deadline to August 23, 2016. The parties have complied. Since this case could be decided based upon the documents of record, no additional proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUES

1. Whether Employee was placed in the correct competitive level.
2. Whether the inconsistencies in the RIF documents constitute reversible error.

¹ *Vaughn v. MPD*, OEA Matter No. 2401-0020-12, *Opinion and Order on Petition for Review*, (May 10, 2016).

FINDINGS OF FACT

The following facts are undisputed:

1. In July 1994, Employee was appointed to the position of Computer Specialist, DS-334-09, with the Metropolitan Police Department (Agency). Over time, Employee was promoted to Computer Specialist, CS-334-12.
2. On or about August 24, 2011, the Chief of Police submitted a memorandum (Memo) “requesting authorization to realign programs and functions within the Office of Chief Information Officer (OCIO), Executive Office of the Chief of Police [to] conduct a Reduction in Force (RIF) to abolish 14 positions in the OCIO.”²
3. Attached to the Memo was Administrative Order (AO) FA-2011-01, which cited the reasons for the RIF and identified the positions recommended for abolishment by the RIF and the competitive area in which the RIF would be conducted.³
4. The reasons cited for the RIF were shortage of work and realignment. The competitive area for the RIF was identified as the Executive Office of the Chief of Police, Office of the Chief Information Officer. *Id.* One of the fourteen (14) positions recommended for abolishment in the AO was Computer Specialist, CS-334-12, a position encumbered by Employee.
5. On September 8, 2011, Agency’s request to conduct a realignment was signed and approved by Shawn Stokes, the Director of the District of Columbia Department of Human Resources, and on September 13, 2011, the City Administrator concurred “in the Realignment action.”⁴
6. On September 14, 2011, Agency’s request to conduct the RIF was approved.⁵
7. Pursuant to the approval to conduct the RIF, and in accordance with applicable RIF regulations, competitive levels were identified and retention registers were developed. A competitive level encompasses only those positions that are of the same grade and classification series. D.C. Mun. Reg. Tit. 6 § 2410.4. A retention register is a document that lists employees in the same competitive level who are ranked on the retention register according to seniority, with the most senior person ranked first and the least senior person ranked last. D.C. Mun. Reg. Tit. 6 § 2499.

2 Undated memo from Police Chief Cathy Lanier to City Administrator Allen Lew.

3 Agency Reply to Employee Vaughn’s Brief in Response to the Remand Order Opposing the RIF, Attachment 1. August 24, 2011, Administrative Order FA-2011-01.

4 Agency Reply to Employee Vaughn’s Brief in Response to the Remand Order Opposing the RIF, Attachment 3.

5 Reply to Employee Vaughn’s Brief in Response to the Remand Order Opposing the RIF, Agency Attachment 4.

8. In its RIF notice, the competitive level for the Computer Specialist position encumbered by Employee was identified as DS-0334-12-10-N.⁶ The retention register that was developed for that competitive level (DS-0334-12-07-N) listed Employee and another individual.⁷ The “07” designation in the Competitive Level DS-0334-12-07-N does not refer to a step in the pay scale grade but the actual position description.
9. The Competitive Level Code consists of five elements. The first element, DS, is the pay plan. The second element, 0334, is the classification series of the Computer Specialist position. The third element, 12, is the pay grade of the Computer Specialist position. Element four, 7, is a numerical designation for the position description of Employee that is established for the purpose of differentiating the duties and responsibilities of her position from other Computer Specialist grade 12 positions whose duties and responsibilities are significantly unlike those of her position. The fifth element, N, indicates that the position encumbered by Employee was a non-supervisory position.⁸
10. In a letter to Employee dated September 14, 2011, Employee was advised that pursuant to a RIF, she would be “separated from District government effective October 14, 2011.”⁹
11. Employee was separated effective October 14, 2011.

ANALYSIS AND CONCLUSION

Whether Employee was placed in the correct competitive level.

With respect to competitive levels, the applicable RIF regulation, 6B DCMR § 2410.4, provides the following:

A competitive level shall consist of **all positions** in the competitive area identified pursuant to section 2409 of this chapter 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

6 Agency Reply to Employee Vaughn’s Brief in Response to the Remand Order Opposing the RIF, Attachment 6, September 14, 2011, RIF Notice to Employee.

7 Retention Register for Computer Specialist, DS-0334-12-07-N, dated September 14, 2011.

8 Affidavit of Lewis C. Norman, Supervisory Human Resources Specialist with the Administration of Recruitment and Classification, within the D.C. Department of Human Resources (“DCHR”), dated January 15, 2015.

9 *Id.*

any new but fully qualified employee (emphasis added).

Thus, a competitive level will only include those positions that have the same classification series and the same grade.

Based on their briefs, both Agency and Employee agree that Employee's position as Computer Specialist has the competitive level DS-0334-12. The Personnel Action Form 1 submitted by both parties effective October 7, 2001, indicate that Employee's official position is Computer Specialist, DS-00334-11, wherein DS is the pay schedule, 00334 is the job series, 11 is the pay grade, and N means non-supervisory.¹⁰ Both parties also agree that Employee has since been promoted a pay grade, thus her last official position is Computer Specialist, DS-00334-12. Thus, there is no dispute that Employee's correct competitive level is Computer Specialist, DS-00334-12.

Employee's Computer Specialist competitive level, 0334-12, includes only her position and any other 0334-12 positions in the competitive area. A retention register ranks individuals in the same competitive level according to "their reduction-in-force service computation date," otherwise known as seniority.¹¹

The retention register for the Computer Specialist 0334-12 competitive level shows that there were only two (2) positions in the 0334-12 competitive level.¹² It shows that there were only two individuals in the Computer Specialist 0334-12 competitive level, Employee and another employee, Zack Gamble.

What is in dispute is whether Employee's complete competitive level code is DS-00334-12-10-N or DS-00334-12-7-N. Both parties also agree that the "10" designation in the Competitive Level DS-00334-12-10-N refers to the actual position description, and not to a step in the pay scale.¹³

Employee contends that her complete competitive level code is DS-00334-12-10-N and points to her last Personnel Form 1 Personnel Action dated October 18, 2001, and DC Standard Form 52 Request for Personnel Action dated October 7, 2001. Employee also points to her position description in D.C. Optional Form 8, Position Description, dated June 1, 1999.

Employee admits that her competitive level was Computer Specialist 0334-12, but she then departs from the 6B DCMR § 2410.4 definition of a competitive level and contends that

10 Agency's Reply to Employee Vaughn's Brief in Response to the Remand Order Opposing the RIF, Attachment 5, and Employee Vaughn's Brief in Response to the Remand Order Opposing the RIF, Exhibit 1.

11 6B DCMR § 2413.4.

12 Agency's Reply to Employee Vaughn's Brief in Response to the Remand Order Opposing the RIF, Attachment 1.

13 See also page 2 of *Vaughn v. MPD*, OEA Matter No. 2401-0020-12, *Opinion and Order on Petition for Review*, (May 10, 2016).

“[h]er competitive level from both her SF-1¹⁴ and her position description was DS-0334-12-10-N.”¹⁵

Employee’s argument reflects a fundamental misunderstanding of the difference between a competitive level, as defined in 6B DCMR §2410.4, and a competitive level code. These terms are not interchangeable or synonymous. Agency buttresses its argument that Employee’s correct and complete competitive level code is DS-00334-12-7-N by submitting the January 15, 2015 notarized affidavit of Lewis C. Norman, Supervisory Human Resources Specialist with the Administration of Recruitment and Classification, within the D.C. Department of Human Resources.

Employee’s reference to DS-0334-12-10-N is to a competitive level code (CLC) or identifier for the Computer Specialist 0334-12 competitive level which consists of five elements. The first three elements, DS-0334-12, of the CLC refer to the competitive level of the position encumbered by Employee. The fourth element, “10,” is “a numerical designator for the position description of the Computer Specialist 0334-12 position encumbered by Ms. Vaughn that was established to differentiate her duties and responsibilities from the significantly different duties and responsibilities of other Computer Specialist 0334-12 positions.” The fifth element, “N,” indicates that the position encumbered by Employee was non-supervisory.

Simply stated, the competitive level is the grouping of positions with the same classification series and grade whereas the CLC is used to identify the positions that are in the group. The evidence of record shows that Employee was placed in her correct competitive level, i.e., Computer Specialist 0334-12.

Employee’s argument also fails because in the documents cited by Employee, they merely state that her position is Computer Specialist, DS-00334-12. None of these documents go so far as to delineate her position as either DS-00334-12-10-N or DS-00334-12-7-N. As for the Form 8, the document does not have Employee’s name on it.

Based on the documents submitted, I therefore find by a preponderance of the evidence that Employee’s correct position is Computer Specialist, DS-00334-12-7-N. Looking at the retention register, I therefore find that Employee was placed in her correct competitive level of Computer Specialist, DS-00334-12.

Whether the inconsistencies in the RIF documents constitute reversible error.

Employee’s Competitive Level Code of DS-00334-12-7-N as depicted in the RIF Retention Register is slightly different from Employee’s Competitive Level Code of DS-00334-

14 Personnel Form 1, Personnel Action, dated October 18, 2001. Employee Vaughn’s Brief in Response to the Remand Order Opposing the RIF, Exhibit 1.

15 Employee Brief’s at 3.

12-10-N as shown on her September 14, 2011 RIF notice letter.¹⁶

Employee argues that this error is as consequential and harmful as it resulted in the elimination of her position. However, considering that *ALL* DS-00334-12 positions were abolished by the RIF, this argument fails as her position was eliminated whether or not her Competitive Level Code was DS-00334-12-7-N or DS-00334-12-10-N. (Emphasis added.)

Employee fails to offer any evidence/proof that she was not in the appropriate competitive level based on the fourth element in the CLC. The Agency has shown that Employee's position title, job series classification, and grade established that her competitive level was Computer Specialist DS-0334-12. This fact is not disputed and Employee has not shown that she should have been in a different competitive level, despite the difference in the fourth elements. Further, Employee has failed to show that other people should have been included in her competitive level because the job they were performing was "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" in Employee's competitive level. Based on the aforementioned language, Employee has not shown that she should have been in another competitive level. In the absence of such a showing, Employee's argument that she was not in the appropriate competitive level fails and lacks merit.

Next, Employee argues that because her position number of 0034840 was not included among the two Computer Specialist DS-00334-12 positions in the RIF Administrative Order FA-2011-01 dated August 24, 2011, then her position was not authorized to be abolished. To prove that 0034840 is her position number, Employee submits her DC Standard Form 52, Request for Personnel Action dated June 6, 2001. In that form, the number 34840 is handwritten with the number 36058 crossed out.¹⁷

According to Employee, the RIF Administrative Order listed two (2) grade 12 Computer Specialist positions to be eliminated in the RIF, the first with the Position Number 00013015 and the second with Position Number 00022178. Employee asserts that her Position Number was neither of those and that her position number was 0034840. Employee's argument lacks merit because her position number at the time of the RIF was, as shown on the RIF Administrative Order, 00013015.¹⁸

Prior to 2004, the District of Columbia used a payroll system known as the Unified Personnel Payroll System (UPPS). Under that system, District of Columbia positions were assigned a unique payroll number. In 2004, the District's payroll system changed and UPPS was replaced with the PeopleSoft (PeopleSoft) payroll system. The position numbers used in UPPS

16 As noted above, Employee's argument using D.C. Optional Form 8, Position Description, dated June 1, 1999, cannot be credited as the document does not have Employee's name on it to prove it applies specifically to her.

17 Employee Vaughn's Brief in Response to the Remand Order Opposing the RIF, Exhibit 1.

18 Agency's Reply to Employee Vaughn's Brief in Response to the Remand Order Opposing the RIF, Attachment 1.

were not compatible in the PeopleSoft payroll system. Therefore, the position numbers used in UPPS were replaced with new numbers to be used in the PeopleSoft payroll system. It was true that Employee's position number under UPPS was 0034840 but that position number was replaced with another number when Peoplesoft was adopted in 2004. Based on Employee's SF-50, her position number under Peoplesoft was 00013015.¹⁹ That number, 00013015, was referenced in the Administrative Order and the RIF Personnel Action.²⁰ Thus, Employee was separated from the position number identified with the position she encumbered and her argument otherwise lacks merit.

To summarize, based on the preponderance of the evidence,²¹ I find that Employee was placed in her correct competitive level and position number, and that the minor inconsistency of a 10 instead of a 7 in the numerical designator for the position description of the Computer Specialist 0334-12 position would not have resulted in a different result. 6-B DCMR § 631.3 defines "Harmless error" as "an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." Thus, it was not a reversible error.

ORDER

Based on the foregoing, it is hereby ORDERED that:

Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge

¹⁹ *Id.*, Attachment 5. Standard Form 50, Notification of Personnel Action, dated October 14, 2011.

²⁰ *Id.*, Attachment 7.

²¹ OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. 59 DCR 2129 (March 16, 2012). "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."