THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
PATRICIA MAY Employee	
v.	OEA Matter No.: 2401-0129-09
D.C. DEPARTMENT OF MENTAL HEALTH Agency	Date of Issuance: May 23, 2011

OPINION AND ORDER
ON
PETITION FOR REVIEW

Patricia May ("Employee") worked as a Motor Vehicle Operator, WS-5703-06/6, with the D.C. Department of Mental Health ("Agency"). On June 4, 2009, Agency informed Employee that her position was being abolished pursuant to a reduction-in-force ("RIF"). Her last day of government service was July 6, 2009.

In anticipation of the RIF, Employee filed a Petition for Appeal with the Office of Employee Appeals on June 11, 2009. In her petition she argued that Agency's RIF action should be reversed because, according to Employee, Agency had not followed the proper procedures to effectuate the RIF, Agency had not given her credit for having worked as a

dispatcher and clerk, Agency had failed to consider her bumping rights, and Agency had not terminated all of its Motor Vehicle Operators.

The Administrative Judge determined that D.C. Official Code § 1-624.08 was the starting point in this appeal. That section provides that when an employee's position has been abolished pursuant to a RIF, the employee may raise only the following two issues before this office: that the employee did not receive a written notice of at least 30 days prior to the effective date of the separation; and that the employee was not afforded one round of lateral competition within the competitive level. Employee did not raise either of those issues. Instead, the Administrative Judge considered the issues raised by Employee to be beyond the scope of this Office's jurisdiction. The Administrative Judge stated that "Employee has not alleged that Agency violated her right to a single round of lateral competition within her competitive level, or that she was denied at least 30 days advance written notice prior to the effective date of the RIF. The allegations which she does make are all pre-RIF . . . ."[1] Because Employee failed to "make [any] claim of relief cognizable before this Office[,] [t]he action separating her must, therefore, be upheld."[2] Thus in an Initial Decision issued January 12, 2010, the Administrative Judge upheld Agency's action.

Thereafter, Employee timely filed a Petition for Review. Employee raises only two issues in her petition and they are that "Agency . . . violated [her] right to a single round of lateral competition . . ."[3] and that not all Motor Vehicle Operator positions were abolished.

D.C. Official Code § 1-624.08(d) provides the following:

> (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 entitle to one round of lateral competition

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1 *Initial Decision* at page 3.
2 *Id.*
3 *Employee's Petition for Review* at page 1.

> pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

The term "competitive level" is defined in the personnel manual as follows:

> [A]ll positions in the competitive area. . . in the same pay system, grade or class, and series which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent in any one (1) position can perform successfully the duties and responsibilities of any position. . . .

As mentioned earlier, Employee was a Motor Vehicle Operator and her job series was that of WS-5703. According to the record, there were five other employees within Employee's competitive level. The Administrative Order authorizing the RIF required that all six of the positions within Employee's competitive level be abolished. Thus, Employee's position, as well as the other five Motor Vehicle Operator positions within Employee's competitive level, was abolished. Even though Employee was entitled to compete for retention, she was limited to competing with only those other employees within her same competitive level. Because all of those positions were abolished, there was no one remaining with whom Employee could compete. Employee's second argument, that not all Motor Vehicle Operator positions were abolished, is without merit. As just explained, the evidence contained within the record states otherwise. Furthermore, other than this singular statement, Employee has failed to proffer any evidence to prove her claim.

While we are not unsympathetic to Employee's plight, we have no basis upon which to overturn the Initial Decision. Based on the foregoing we are compelled to uphold the Initial Decision and deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

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Clarence Labor, Jr., Chair

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Barbara D. Morgan

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Richard F. Johns

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.