

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Johnny Milligan)	OEA Matter No. 2401-0271-09
Employee)	
)	Date of Issuance: October 11, 2011
v.)	
)	Senior Administrative Judge
Office of Planning)	Joseph E. Lim, Esq.
Agency)	
)	

Johnny Milligan, Employee *pro se*
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On September 4, 2009, Employee, a former Support Services Specialist, DS-342-09-02, filed a Petition for Appeal of the final decision separating him from career government service with the D.C. Office of Planning (the "Agency"), pursuant to a reduction-in-force ("RIF") notification letter dated August 6, 2009, effective September 11, 2009. This matter was assigned to me on February 25, 2011. I conducted a Prehearing Conference on March 23, 2011. Since the matter could be decided based on the documentary evidence and the parties' positions as set forth by their legal briefs, no further 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).

ISSUE

Whether Agency's action separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

FINDINGS OF FACT

The following facts are not subject to genuine dispute:

1. On September 11, 2009, the effective date of his RIF, Employee had occupied the position of Support Services Specialist, DS-342-09-02, in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's

- competitive level. Employee was the only person in his competitive level.
2. Employee's Retention Register shows that his RIF service computation date is June 4, 1997. Because all the positions in his competitive level were eliminated, Employee was terminated.
 3. Employee received the requisite 30-day notice prior to the effective date of his separation.
 4. In his legal brief, Employee alleged that errors were made in his one round of lateral competition. Among other things, Employee asserted that he was not given his veteran's preference in the scoring.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." 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.

Section 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 usually the date on which the employee began D.C. Government service.

Regarding the lateral competition requirement, the record shows that all positions in Employee's competitive level were eliminated in the RIF. Therefore, I conclude that the statutory provision of Code § 1-624.08(e), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.3, are both inapplicable, and that Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position. See *Leona Cabiness v.*

Department of Consumer and Regulatory Affairs, OEA Matter No. 2401-0156-99 (January 30, 2003), __ D.C. Reg. __; *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), __ D.C. Reg. __; *Deborah J. Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003), __ D.C. Reg. __; and *R. James Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001), __ D.C. Reg. __.

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Section 1-624.08(e) states that an employee who is "selected for separation" as a result of a RIF is entitled to 30 days written notice prior to the effective date of the RIF. Thus, an employee whose position was abolished as a result of a RIF may only contest the following before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days' notice prior to the effective date of his/her separation.

Further, § 1-624.08(f)(2) reads as follows: "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." Section 1-624.08(d) states in part that: "[a]n employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],¹ which shall be limited to positions in the employee's competitive level."

This Office's authority is to determine only whether the RIF complied with applicable District personnel statutes and regulations dealing with RIFs. *See Gilmore v. Board of Trustees of the Univ. of the District of Columbia*, 695 A.2d 1164, 1167 (D.C.1997) (noting "the limited scope of review of RIF determinations").

Based on the above cited statute, Employee's stated grounds for appealing his RIF are legally insufficient to overturn his RIF. Here, it is undisputed that Employee received his round of lateral competition within his competitive level; and that he was given 30 days' notice prior to the effective date of his separation. Thus, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

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

¹ Chapter 24 of the DPM contains the regulations implementing the RIF law.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge