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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
VINCENT SWANN)	OEA Matter No.: 2401-0113-12
Employee)	
v.)	Date of Issuance: October 17, 2013
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Lois Hochhauser
Agency)	Administrative Judge
_____)	
Vincent Swann, Employee <i>Pro-Se</i>)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 21, 2012, Vincent Swann, Employee, filed a Petition for Appeal with the Office of Employee Appeals (OEA) alleging that he was improperly terminated by the District of Columbia Public Schools, Agency, as part of a reduction-in-force (RIF). He stated that the effective date of the Agency action was April 8, 2012 and that the effect date of the RIF was August 10, 2012. In his petition, Employee identified his position as “General Ed Aide,” his grade/step as EG-4 and his salary as \$30,438. He stated that he was in career service and held a permanent appointment.

In its response, Agency asserted that this Office lacked jurisdiction of the matter because Employee had not been terminated as a result of a RIF, but rather had been reassigned to another position with no break in service. It attached a number of documents to its submission in support of its position. I was assigned the matter on or about September 19, 2012.

Upon reviewing the submissions, I determined that the jurisdiction of this Office was at issue. On September 12, 2012, I issued an Order directing Employee to submit written argument and/or documentation that supported his position that he was terminated as a result of a RIF. Employee responded in a timely manner. In his response, he contended that Agency had not followed proper RIF regulations, that he was dissatisfied with his new position and that he thought he merited a higher salary. Among the documents he submitted was a Standard Form 50 which stated that he had been reassigned to another position.

On October 26, 2012, I issued another Order stating that the reasons provided by Employee, i.e., his dissatisfaction with his reassignment and his salary, were insufficient to establish this Office's jurisdiction. I directed him to respond to specific questions, i.e., whether he was removed pursuant to a RIF; whether he had been reassigned to another position; and whether there had been a break in service. I advised the parties that unless they were notified to the contrary, that the record would close on November 12, 2012. Employee filed a timely response. The record closed on November 12, 2012.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

By letter dated June 18, 2012, Agency notified Employee that his position was being eliminated effective August 10, 2012 as a result of a RIF. In the letter, his position was identified as "Aide, General Ed." .

In his November 13, 2012 submission, Employee stated that OEA has jurisdiction of his appeal because he was dissatisfied with his reassignment from Malcolm X Elementary School to McKinley Technology High School. He contended that he was overqualified for the position and attached copies of his transcripts and educational records. He contended that DCPS "failed to review [his] qualifications, skills, education, and experience to determine [his] accurate salary." He attached copies of his resume and position descriptions for non-DCPS positions which he contended he was qualified to fill and which paid higher salaries. He did not specify the basis for his contention that Agency placed him in the incorrect tenure group.

Agency's position is that Employee was a ten month employee, that it did issue a letter to Employee advising him that he was being terminated as a result of a RIF, effective August 10, 2012; and that it administered the RIF procedures appropriately, stating that Employee was in a single-person competitive level. However, it maintains that Employee was reassigned to a similar position without a break in service. In support of its position, it attached a Notification of Personnel Action, Standard Form 50, dated August 12, 2012. It identified the "nature of action" as "reassignment." It also stated that Employee was being reassigned to a position of "Aide, 10 mo General Ed" with an annual salary of \$31,234.00 at a Grade 4, Step 8 to a position of "Aide, 10 mo, Special Ed" with the same annual salary and at the same Grade and Step. Employee's "class" was identified as "continuing." The Form was signed by Crystal Jefferson, Interim Deputy Chief, DCPS Office of Human Resources. DCPS also attached a letter from Ms. Jefferson, dated August 21, 2012, notifying Employee that he had been selected "to fill a permanent position as a ten month McKinley Technology HS-Educational Aide, Full-time" with

an annual salary of \$31,234.00 and at a Grade 4, Step 8. The first date of employment was stated to be August 20, 2012. Agency asserted, and Employee does not dispute, that he accepted the position.

The jurisdiction of this Office is set forth in Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001). D.C. Official Code §1-606.03(a) states in pertinent part:

An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force [RIF].

Employee does not dispute Agency's explanation of how it administered the RIF procedures or explain why he believes those actions were improper. Rather, he contends that the position at McKinley had more duties and responsibilities but not a higher salary. He asserts that he "did not receive a pay raise matching [his] experience, skills and education."

The record supports the conclusion that Employee was transferred to a position with the same title, at the same grade and with the same salary. It also supports the conclusion that Employee did not experience any break in service, i.e., that Employee did not lose any salary as a result of the transfer.

The Administrative Judge concluded that this appeal concerns Employee's reassignment rather than a RIF, since Employee was reassigned to a position before the RIF was implemented. *Kundu v. District of Columbia Department of Health*, OEA Matter No. J-0016-01 (May 1, 2003). Therefore, the jurisdiction of this Office is at issue since this Office does not have jurisdiction of an agency decision to reassign an employee to a position, with the same grade, title and salary, unless the reassigned employee can establish that his or her decision to accept the position was the result of duress or coercion or was based on misleading or mistaken information. *Holmes v. Department of Corrections*, OEA Matter No. J-0129-00 (February 3, 2003). Employee has neither made these allegations nor presented any argument that would support the position that his decision to accept the reassignment was in any way involuntary. The resume and transcripts that he submitted establish that he is a well-educated individual, but his credentials are not relevant to this appeal. Further, even if Employee is qualified for the positions that he submitted to support his contention that he deserves a higher salary, Agency did not reduce his salary or force him to accept the reassignment. The fact that he could command a higher paying position if employed elsewhere or in another position is similarly not relevant to this appeal.

In sum, Employee's appeal regarding his dissatisfaction with the reassignment, does not identify a category over which this Office has jurisdiction, as provided in D.C. Official Code § 1-606.03(a), *infra*. This Office has no authority to review issues beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012) provides that employees have the burden of proof on issues of jurisdiction. I conclude that Employee did not meet the burden of proof on the issue of jurisdiction and that this petition for appeal should therefore be dismissed.

ORDER

Based on the foregoing, it is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge