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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
GINA VAUGHN,)	
Employee)	
)	OEA Matter No.: 2401-0020-12
v.)	
)	Date of Issuance: May 10, 2016
METROPOLITAN)	
POLICE DEPARTMENT,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Gina Vaughn (“Employee”) worked as a Computer Specialist with the Metropolitan Police Department (“Agency” or “MPD”). On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a Reduction-in-Force (“RIF”). The effective date of her termination was October 14, 2011.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on November 10, 2011. In her appeal, Employee argued that Agency improperly conducted the RIF because it was not initiated for the purpose of the budget, realignment, or reorganization as required under Title 6, § 2401 of the D.C. Municipal Regulation (D.C.M.R.).¹ She also

¹ *Petition for Appeal* (November 10, 2011).

contended that Agency failed to take steps to minimize the adverse impacts that the RIF would have on affected employees.²

Agency filed its answer to the Petition for Appeal on December 13, 2011. It denied the allegations presented in Employee's appeal and requested that an evidentiary hearing be held in this matter.³ An OEA Administrative Judge ("AJ") was assigned to the case on August 2, 2013. On August 8, 2013, the AJ issued an order, scheduling a prehearing conference for the purpose of assessing the parties' arguments.⁴ The conference was rescheduled for October 2, 2013, due to scheduling conflicts.⁵ The AJ subsequently ordered the parties to submit briefs addressing whether the RIF should be analyzed under D.C. Official Code § 1-624.02 or D.C. Official Code § 1-624.08.⁶ After reviewing the parties' submissions, the AJ determined that D.C. Official Code § 1-624.02 was the appropriate statute to utilize in evaluating the instant RIF.⁷ On October 22, 2014, the AJ issued an order requesting briefs that addressed whether Agency's RIF action was done in accordance with all applicable rules, laws, and regulations.⁸

The AJ issued an Initial Decision ("ID") on December 11, 2014. He held that Employee's separation from service was based on inaccurate documents. Specifically, the AJ noted that Employee's official position of record, as evidenced by her Standard Form 50 ("SF-50"), was a Computer Specialist, CS-334-12, Step 8.⁹ However, the September 14, 2011 RIF letter provided by Agency listed Employee's competitive level as DS-0034-12-10-N. The AJ, therefore, concluded that Employee was improperly separated from service from a position that she did not

² *Id.*

³ *Agency Answer to Petition for Appeal*, p. 1 (December 13, 2011).

⁴ *Order Convening a Prehearing Conference* (August 8, 2013).

⁵ *Order Convening a Prehearing Conference* (September 4, 2013).

⁶ *Post-Conference Order* (October 11, 2013).

⁷ *Decision and Order on Discovery* (February 27, 2014).

⁸ *Briefing Order* (October 22, 2014).

⁹ *Initial Decision* at 6. Employee's position of record on the SF-50 is listed as a DS-334-12, Step 8. The AJ incorrectly listed the position as a CS-0334-12.

officially occupy. The RIF action was reversed, and Employee was ordered to be reinstated with back pay and benefits.

Agency filed a Petition for Review with OEA's Board on January 15, 2015. In its petition, Agency argues that the AJ should have afforded it an opportunity to provide a response regarding the discrepancies in Employee's RIF documents.¹⁰ According to Agency, Employee did not submit a brief or response brief as was directed in the AJ's October 22, 2014 order. Thus, it was unable to respond to any of Employee's arguments or the discrepancies that were raised by the AJ in the Initial Decision. Agency posits that if it had been given an opportunity to respond, it could present evidence to prove that any differences between the retention register and Employee's SF-50 constituted a harmless error.¹¹ It further contends that the AJ's failure to allow a response to the "discrepancy issue" should result in the Initial Decision being reversed. In the alternative, Agency requests that the matter be remanded for further proceedings.

Employee filed an Opposition to Agency's Petition for Review on February 19, 2015. She contends that Agency committed a reversible error when it included her in the incorrect competitive level than was designated by her position description.¹² According to Employee, Agency should have allowed her to compete in the DS-0334-12-10-N level, and not the DS-0334-12-07 level.¹³ Next, Employee submits that her termination was improper because the Administrative Order that authorized the 2011 RIF did not identify her position number as one that would be eliminated.¹⁴ Employee, therefore, asks this Board to uphold the Initial Decision and find that Agency committed reversible error in separating her from service. In the

¹⁰ *Petition for Review*, p. 4-5 (January 15, 2015).

¹¹ *Id.* at 5.

¹² *Answer to Petition for Review*, p. 3 (February 19, 2015). Employee agrees with Agency's argument that the AJ made a mistake of fact in finding that the "07" designation in the Competitive Level DS-0334-12-07-N refers to a step in the pay scale grade instead of the actual position description.

¹³ *Id.* at 4.

¹⁴ *Id.*

alternative, she asks that this matter be remanded to the AJ for the purpose of correcting the mistake of fact and to rule on the additional facts and evidence presented.¹⁵

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

In this case, the AJ ordered both parties to submit legal briefs addressing whether Agency's action of separating Employee from service was done in accordance with all applicable laws, rules, and regulations.¹⁶ The deadline for submitting briefs was November 3, 2014, and the deadline for submitting a response brief to the opposing party's brief was November 14, 2014.¹⁷ Agency submitted its brief on November 3rd; however, Employee did not file a brief in response to the AJ's order. Thus, Agency was not given an opportunity to address any of Employee's material allegations pertinent to the RIF. Agency was not given a chance to provide an explanation regarding the discrepancies and inaccuracies that the AJ used as a basis for reversing its RIF action. Moreover, this Board believes the AJ made a mistake of fact in finding that the "07" designation in the Competitive Level DS-0334-12-07-N refers to a step in the pay scale

¹⁵ *Id.* at 6.

¹⁶ *Briefing Order* (October 22, 2014).

¹⁷ *Id.*

grade instead of the actual position description. Accordingly, this matter should be remanded for further proceedings to properly determine whether Employee was placed in the correct competitive level and whether the inconsistencies in the RIF documents constitute a reversible error.

ORDER

Accordingly, it is hereby **ORDERED** that this matter is **REMANDED** to the Administrative Judge for further determinations to be made.

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.