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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
EMPLOYEE) OEA Matter No. 2401-0020-12R16R19R22
)
) Date of Issuance: April 25, 2022
v.)
) JOSEPH E. LIM, ESQ.
METROPOLITAN POLICE DEPARTMENT) Senior Administrative Judge

Agency)
Andrea Comentale, Esq., Agency Representative
David Branch, Esq., Employee Representative

SECOND INITIAL DECISION ON REMAND

INTRODUCTION

On November 10, 2011, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the Metropolitan Police Department’s (“MPD” or “Agency”) final decision to separate her from government service pursuant to a Reduction-in-Force (“RIF”). This matter was assigned to the undersigned on August 2, 2013. I reversed Agency’s action on December 11, 2014.¹ 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.²

After the parties submitted briefs by the extended deadline of August 23, 2016, I issued an Initial Decision on Remand (“IDOR”) on September 9, 2016. The IDOR upheld Agency’s RIF action and found that Employee was placed in the correct competitive level in the retention register and that the other inconsistencies in the RIF documents constituted harmless error because they did not significantly affect the Agency’s final decision to separate Employee from employment. After another appeal by Employee, the OEA Board dismissed her appeal as untimely on July 11, 2017.³

1 *Employee v. Metropolitan Police Department*, OEA Matter No. 2401-0020-12 (December 11, 2014).

2 *Employee v. Metropolitan Police Department*, OEA Matter No. 2401-0020-12, *Opinion and Order on Petition for Review* (May 10, 2016).

3 *Employee v. Metropolitan Police Department*, OEA Matter No. 2401-0020-12R16, *Opinion and Order on Remand* (July 7, 2017).

Employee then filed an appeal with the Superior Court of the District of Columbia on February 8, 2018. In its November 27, 2018, ruling, the Court held that although Employee's letter to OEA was filed beyond the thirty-five-day period, the Board erred in failing to equitably toll the deadline for submitting her Petition for Review. Further, the Court believed that Employee took several steps to comply with the filing requirements and to preserve her rights before OEA. As a result, the matter was remanded to the OEA Board for briefing on Employee's Petition for Review.⁴

In its Opinion and Order, the Board found that the AJ's findings on remand were supported by substantial evidence. Employee was separated from service pursuant to the RIF in accordance with all applicable laws, rules, and regulations and was placed in the correct competitive level of Computer Specialist, DS-0334-12, in accordance with DCMR § 2410.4. Information Technology Specialist K.A. was not eligible to compete in Employee's competitive level because his position constituted a separate classification series. Agency's error in incorrectly listing the fourth element in Employee's Competitive Level designation on its RIF notice constituted a harmless error and Agency correctly identified Employee's position number for abolishment in its FA-2011-01 Administrative Order. Accordingly, the Board denied Employee's Petition for Review.⁵

Employee again filed a timely appeal with the Superior Court for the District of Columbia. In its February 23, 2022, ruling, the Court rejected Employee's other arguments but agreed that Employee had the right to compete for another position in the same competitive level, which means jobs in the same classification series and grade. The Court held that MPD's failure to reclassify the 334 series position to the existing 2210 series should not result in Employee losing her right to compete. MPD's failure to formalize the reclassification of Ms. Vaughn's position after cancellation of the 334 series does not change the fact that the reclassification in 2001 changed the classification of Employee's position. Thus, the Court concluded that Employee still had the right to compete for a position in the 2210 series at the same competitive level and remanded the matter back to OEA for further proceedings consistent with its Order.⁶

I held a Status Conference on March 25, 2022, and April 1, 2022. On April 4, 2022, Agency submitted a Notice Regarding Remand wherein it agreed with Employee that the Superior Court's February 23, 2022, Order requires a reversal of Agency's 2011 removal of Employee pursuant to a Reduction-in-Force. The record is closed.

JURISDICTION

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

⁴ *Employee v. Metropolitan Police Department*, Case No. 2017 CA 005525 P (MPA) (Super. Ct. November 27, 2018).

⁵ *Employee v. Metropolitan Police Department*, OEA Matter No. 2401-0020-12R16R19, *Second Opinion and Order on Petition for Review* (May 19, 2020).

⁶ *Employee v. Metropolitan Police Department*, Case No. 2020 CA 002891 P(MPA) (Super. Ct. February 23, 2022).

ISSUE

Whether Employee's removal pursuant to a 2011 Reduction-in-Force should be reversed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

As noted above, Agency and Employee agree that Employee's position as Computer Specialist had the competitive level DS-0334-12. It is undisputed that when Agency abolished the Computer Specialist 0334-12 series, it replaced it with the new competitive level 2210 series. It is also undisputed that Agency then failed to reclassify its 334 series position to the existing 2210 series. Based on these facts and the Superior Court for the District of Columbia's February 23, 2022, Order, both parties agreed that a reversal of Agency's 2011 removal of Employee pursuant to a Reduction-in-Force is required.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee pursuant to a RIF is **REVERSED**; and
2. Agency shall reinstate Employee to her last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

s/Joseph Lim
Joseph E. Lim, Esq.
Senior Administrative Judge