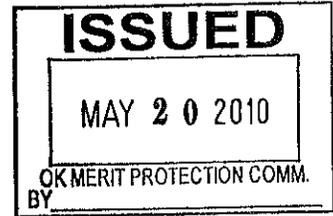


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

CAROL R. CRAIG,)
)
 Appellant,)
)
 v.)
)
 DEPARTMENT OF REHABILITATION)
 SERVICES,)
)
 Appellee.)

Case No. MPC-09-197
MPC-10-089



FINAL ORDER

This matter came on for hearing before Jami J. Fenner, Administrative Law Judge, on May 13, 2010, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant, Carol R. Craig, appeared in person and represented herself. Appellee Department of Rehabilitation Services ("DRS") appeared through its counsel, Richard D. Olderbak, and through the party-representative, Noel Tyler.

Appellant is a permanent, classified employee of DRS, appealing from an adverse action of demotion. (Case No. MPC-10-089). Additionally, Appellant alleges a violation of the Oklahoma Personnel Act or Merit Rules, claiming DRS demoted Appellant because of her age. (Case No. 09-197).

The undersigned heard the sworn testimony of witnesses, viewed the exhibits admitted into evidence, and heard argument from the parties. The undersigned admitted into evidence Appellee's Exhibit Nos. 1, 2, 3, 4, 5, 6, 9 and 10 and Appellant's Exhibit Nos. 1, 5, 14, 16, 18A and 18B. After receiving all evidence and closing arguments, the undersigned closed the record on May 13, 2010.

Upon consideration of the record, the undersigned Administrative Law Judge issues the

following findings of fact and conclusions of law pursuant to 74 O.S. § 840-6.7(B).

FINDINGS OF FACT

On August 14, 2009, DRS issued a Notice of Final Involuntary Demotion, signed by Noel Tyler, Administrator of the Disability Determination Division of DRS, demoting Appellant from Programs Manager I to Disability Determination Specialist IV effective September 1, 2009. The Notice indicates the involuntary demotion is the result of the reallocation by the Office of Personnel Management (“OPM”) of Appellant’s position to a different job family. According to the Notice, DRS made the decision, pursuant to OAC 530:10-5-91, to reclassify Appellant to the job family to which her position had been reallocated.

The Notice provides the decision to reclassify Appellant was part of a reorganization of the Division in order “to accomplish mandates by the Social Security Administration to hire and train an unprecedented number of staff by September 30, 2009.” Appellant asserts a desire to reorganize the Division was not the real reason for the reclassification and thus her demotion. She claims the real reason is age discrimination.

The evidence showed DRS properly reclassified Appellant pursuant to the reallocation by OPM of Appellant’s position. More specifically, the evidence showed DRS requested OPM reallocate all Program Manager I positions as part of a plan to reorganize in order to achieve smaller workgroups and to have supervisors (former Programs Manager Is) carry a caseload.

Appellant’s evidence did not establish DRS demoted Appellant for a reason other than that stated by DRS. Nor did the evidence show DRS violated the Personnel Act or Merit Rules by demoting Appellant based on her age.

Based on the record, DRS met its burden of proof that the involuntary demotion of Appellant was proper. Appellant failed to meet her burden of proof that DRS committed a

violation of the Personnel Act or Merit Rules.

CONCLUSIONS OF LAW

1. Any finding of fact that is properly a conclusion of law is hereby incorporated as a conclusion of law.

2. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.

3. In appeals from demotion, the burden of proof rests with the appointing authority by a preponderance of the evidence. 74 O.S. § 840-6.5(C).

4. The burden of proof was on Appellant to show by a preponderance of the evidence that a violation within the Commission's jurisdiction occurred. OAC 455:10-9-2(f)(2).

5. If OPM reallocates a position and the classification of the incumbent employee does not match the new allocation, the appointing authority must take action within 60 days "to ensure that the employee is properly classified." OAC 530:10-5-91(a). The appointing authority may do so by reclassifying "a permanent employee to the job family to which the position occupied by the employee was reallocated." OAC 530:10-5-91(a)(3). The appointing authority may promote, demote or transfer the employee, whichever is necessary under the circumstances, to accomplish the reclassification. OAC 530:10-5-91(b).

6. DRS met its burden of proof that the involuntary demotion of Appellant was proper pursuant to OAC 530:10-5-91.

7. Appellant failed to meet her burden of proof that DRS committed a violation of the Personnel Act or Merit Rules.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Department of Rehabilitation Services to demote Appellant to the position of Disability

Determination Specialist IV is affirmed and Appellant's appeals are **NOT SUSTAINED**.

Signed this 20th day of May, 2010.



Jami J. Penner
Administrative Law Judge
Oklahoma Merit Protection Commission
3545 N.W. 58th Street
Oklahoma City, OK. 73112