UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ELAINE A. TYRRELL	
v.	DOCKET NUMBER DC03518210405
CONSUMER PRODUCT SAFETY COMMISSION	Date: 27 SEP 1984

OPINION AND ORDER

The appellant formerly occupied a position as a Project Manager, GM-340-13 with the Office of Program Management, United States Consumer Product Safety Commission, Washington, D.C., when, as a result of a ten million dollar budget reduction, her agency underwent a reorganization. Appellant was displaced from her position by another employee whose position had been abolished, and she was assigned to a position as a Textile Technologist, GS-1384-11 in the agency's Directorate for Engineering Science, the assignment being effective November 15, 1981.

Appellant filed an appeal of this assignment with the Washington Regional Office of the Merit Systems Protection Board. A hearing was held with respect to this matter on February 3, 1982, after which the presiding official issued a

decision on April 6, 1982. The presiding official determined: that the agency had established that it had taken the reduction-in-force action for a legitimate reason, i.e., the reduction in its budget; that the appellant had not been improperly denied two years additional service credit for a highly satisfactory rating she had received; that appellant did not have either "bumping" or "retreat" rights into a GS-345-12 position to which she wanted assignment; that appellant had no assignment rights to certain GS-11 positions that she had identified; that since appellant had no assignment rights to GS-11 and GS-12 positions in the 345 series, the issues of both prior personnel moves and the composition of the competitive levels in that series were irrelevant; and, that the assignment of appellant to the GS-1384-11 position was a proper exercise of retreat rights.

In her petition for review, appellant contends that the Presiding Official either improperly excluded or severely limited the testimony of a number of witnesses. Appellant alleges that if these witnesses had been permitted to testify she would have been able to demonstrate that the agency's conduct of the RIF was marked by a number of irregularities, and that she did not receive a proper assignment. Specifically, the appellant claims that the excluded testimony would have shown that she should not have been assigned to Textile Technologist, GS-1348-11 position, and that she should have been assigned to either a GS-345-11 Program Analyst position or a GS-345-12 Program Analyst position.

Appellant alleged that two fellow employees, Susan V. Jackson and Wanda J. Crigler had been improperly reclassified into the 345 Series, Program Analyst positions. Appellant further asserts that had these two individuals not been in the Program Analyst positions that they encumbered at the time of the RIF, she would have been assigned to one of them. Appellant also contends that the competitive levels for both the non-supervisory GS-345-11 Program Analyst positions and the non-supervisory GS-345-12 Program Analyst positions was too broad. With respect to the "reclassifications" affecting Jackson and Crigler, the Presiding Official found that these personnel actions were competitive promotions, and that the selection of Jackson and Crigler to these positions had occurred sometime before the implementation of the agency's reorganization and subsequent RIF.

In any event, the Board has held that jurisdiction in reduction-in-force appeals is limited to that conferred by the Office of Personnel Management in its regulations. In Bollo v. Department of the Navy, 7 MSPB 181 (1981), the Board held that it had no authority under OPM's regulations to adjudicate the merits of an allegedly illegal prior transfer of function which the appellant argued voided his reduction-in-force action. Similarly, in Brace v. Department of Housing and Urban Development, 11 MSPB 451 (1982), the Board held that it was not within the scope of its jurisdiction in a reduction-in-force appeal to determine what *opportunities* appellant might have

missed or what promotions might have been denied to him because his position had not been properly classified. In the instant case, it is far beyond the scope of the Board's review to evaluate, as part of a reduction-in-force appeal, the qualifications of individuals selected through the merit promotion process. See Langster v. Social Security Administration, 2 MSPB 206 (1980); Grigg v. Department of the Interior, Bureau of Land Management, 5 MSPB 446 (1981); Cunningham v. Interstate Commerce Commission, 3 MSPB 473 (1980).

However, the controlling fact in this appeal is the unrebutted evidence presented by the agency that even had Jackson and Crigler not encumbered Program Analyst positions, there were many other employees on the agency's retention registers who would have been assigned to the Program Analyst positions before appellant. Thus, the Presiding Official's ruling that testimony on these matters would have been irrelevant was correct. Similarly, testimony on the issue of whether the Textile Technologist position to which appellant was assigned was essentially identical to the one she had previously occupied would have been irrelevant since she was, by her own admission, qualified for the job and, in any event, the alternative to this assignment was separation from the federal service. The controlling principle is that appellant was made a proper offer of the GS-1384-11, Textile Technologist position and she was not entitled to a choice of positions. Gayheart v. Department of the Army, 10 MSPB 822 (1982).

In essence, appellant's petition for review is a reassertion of the same arguments she previously made to the Presiding Official, and such unsupported reiteration is insufficient to show error in the initial decision. Weaver v. Department of the Army, 2 MSPB 297 (1980).

Accordingly, having fully considered appellant's petition for review and finding that it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115, the Board hereby DENIES the petition.

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five (5) days from the date of this order. 5 C.F.R. § 1201.113(b).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

Stephen E. Manrose
Acting Clerk

Washington, D.C.