Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under JTPA, the participant may not receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

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MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM. The Board's request to OPM is reproduced below: Pursuant to 5 U.S.C. 1204(e)(1)(A), the members of the Merit Systems Protection Board request that you provide an advisory opinion concerning the interpretation of regulations promulgated by the Office of Personnel Management (OPM).

Background

After the agency issued the appellant a notice that he would be separated by reduction in force (RIF), the agency reassigned him under its Priority Placement Program. On appeal to the Board, he alleged that his nonselection for reassignment to a different position constituted a violation of his reemployment priority rights under 5 CFR part 330, subpart B (entitled ''Reemployment Priority List (RPL)'').

The Board dismissed the appeal, finding that it lacked RPL jurisdiction because the appellant was not separated from the agency by the RIF. *Sturdy* v. *Department of the Army,* 80 M.S.P.R. 273 (1998). The appellant filed a petition for judicial review before the U.S. Court of Appeals for the Federal Circuit, and the court in a nonprecedential order granted the agency's motion to remand this case to the Board for reconsideration of its jurisdictional determination.

Applicable Regulations

The Board's RPL jurisdiction is derived from 5 CFR 330.209, which provides that:

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another

person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

Our review of the regulatory history reveals that this provision was not revised in pertinent respects, since 1979. Because the Board's jurisdiction under this provision is based on reemployment priority rights, it is necessary to examine the nature and extent of such rights under part 330, subpart B.

The RPL regulations are derived form 5 U.S.C. 3315(a), which provides that ''[a] preference eligible who has been *separated* or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists * * * '' (Emphasis added.) See 53 FR 408 (1988). The RPL regulations themselves provide, at 5 CFR 330.201, that:

(a) The reemployment priority list (RPL) is the mechanism agencies use to give *re*employment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. * * *

(Emphasis added.) We note that Sturdy does not involve recovery from a compensable injury that, therefore, the discussion here will ignore that aspect of the Board's RPL jurisdiction.

In addition, 5 CFR 330.206(a)(3) provides that ''[a]n eligible employee may be entered on the RPL only for the commuting area in which *separated.''* (Emphasis added.) Subsection (a)(2) of the same section provides that ''[a]n employee is considered for positions having the same type of work schedule as the position from which *separated* * * * .'' (Emphasis added.) These provisions suggest that only ''former'' employees who were ''separated'' by RIF have reemployment priority rights under subpart B.

Other provisions of the RPL regulations suggest, however, the employees who have not been separated by RIF may have reemployment priority rights. For instance, 5 CFR § 330.202(a)(1) provides that ''[r]egistration [on the RPL] may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued.'' Section 330.203(a)(3) provides in pertinent part that, to be eligible to apply for the RPL, the employee must ''[h]ave received a specific notice of [RIF] separation * * * or a Certification of Expected Separation * * *'' These provisions suggest that employees may have RPL rights once they receive a specific notice of RIF separation or a Certification of Expected Separation and enroll in the RPL, even before they are a separated by RIF.

Discussion

The Board has consistently held that it has jurisdiction over an RPL appeal only if the appellant has been separated by RIF. Stuck v. Department of the Navy, 72 M.S.P.R. 153, 157 (1996); Gometz v. Department of the Navy, 69 M.S.P.S.R. 284, 289 (1996); Horner v. Department of the Navy, 41 M.S.P.R. 20, 24 n.2 (1989); Bartlett v. Department of the Army, 18 M.S.P.R. 75, 77 (1983); see also Sweeney v. Department of the Interior, 76 M.S.P.R. 644, 647 (1997) (listing the jurisdictional criteria for an RPL appeal to include a showing that the employee was separated by RIF).

In Freeman v. Department of Agriculture, 2 M.S.P.R. 224, 226–27 (1980), the Board held that RPL rights vest only upon the employee's RIF separation, and noted that ''the very name of the right under discussion, a 'Reemployment Priority right,' clearly implies a right to return to employment'' and that ''[o]ne can only return after one is no longer employed.'' In Roberts v. Department of the Army, 168 F.3d 22, 23 (Fed. Cir. 1999), Roberts, who was not on any RPL, appealed his nonselection for a position, alleging that the selection of an individual on an RPL was improper. In holding that the Border lacked jurisdiction over the appeal, the court stated that ''[a]s Roberts has not been separated by RIF * * * Roberts does not have reemployment priority rights as set forth in the applicable regulations.'' *Id.*

As the agency has pointed out before the court in its motion for remand in this appeal, and as the Board noted in Sweeney, 76 M.S.P.R. at 648 n.2, OPM revised the RPL regulations in 1992 to permit enrollment in the RPL up to 6 months prior to the date of a RIF separation. Specifically, the regulations were revised by interim rules to permit enrollment in the RPL upon the employee's receipt of a specific notice of RIF separation (which must be issued at least 60 days before the RIF action, 5 CFR § 351.801(A)(1)) or a Certification of Expected Separation (which may be issued up to 6 months before the RIF action, 5 CFR § 351.807(a)). 57 FR 21899, 21890 (1992); 5 CFR § 330.203 (1993). Contrary to the agency's argument before the court in its motion for remand, however, RPL enrollment prior to 1992 was not ''restricted * * * to persons already actually separated by RIF,'' as discussed below.

Prior to 1988, 5 CFR § 330.201(e) provided, in pertinent part, that an agency's reemployment priority list ''shall consist of: (1) *Former* employees in the competitive service in tenure groups I or II who were *separated* [by RIF] under Part 351 of this chapter.'' (Emphasis added.)

On January 7, 1988, OPM proposed to revise its RPL regulations, noting that ''[t]he RPL is the mechanism agencies use to give reemployment consideration to employees who have been *separated* by reduction in force * * *'' 53 FR 408, 408 (1988). OPM stated that the proposed ''changes are intended to improve the operation of the RPL and clarify requirements.'' Id. OPM explained that ''[u]nder current regulations, * * * employees in the competitive service are eligible for the RPL when they have *received a notice of separation* by reduction in force (RIF).'' Id. This rule is not mentioned in the 1988 RPL regulations themselves, and it appears that the rule was contained in the Federal Personnel Manual (FPM). See Washington v. Garrett, 10 F.3d 1421, 1435 (9th Cir. 1993) (the court stated that, as of June 1988, when Washington was separated by RIF, ''an employee's name was to be placed automatically on the RPL by the agency the day after she received notification of her impending separation,'' citing FPM, ch. 330, subch. 2, sec. 2–3)c)). OPM further explained that the proposed revision of the RPL regulations ''would require an employee separated by RIF to complete an application specifying the conditions under which he or she would accept a job offer,'' instead of automatic enrollment in the RPL upon receipt of a RIF separation notice, and that the ''period of enrollment would run from the date the eligible is entered on the RPL, rather than from the date of separation.'' 53 FR 408.

On November 8, 1988, OPM issued its final regulations revising its RPL regulations pursuant to the proposal. 53 FR 45065 (1988). The revisions provided that an ''employee must submit the application [for the RPL] within 30 calendar days after the RIF separation date,'' 53 FR 45067; 5 CFR § 330.202(a)(1) (1989), and that to be eligible to apply for the RPL, an employee must ''[h]ave received a specific notice of [RIF] separation,'' 53 FR 45067; 5 CFR § 330.203(A)(3) (1989). They further provided that the employee must be enrolled on the RPL ''no later than 10 calendar days after receipt of an application or request.'' 53 FR 45067; 5 CFR § 330.202(b) (1989).

Thus, as early as 1988 and apparently before, employees could be enrolled in the RPL upon their receipt of a specific RIF separation notice; they were not required to wait until their actual RIF separation.

On May 26, 1992, OPM issued interim rules that provided for early warning of expected RIF separations. 57 FR 21889 (1992). The early warning was given in the form of a Certification of Expected Separation issued up to 6 months prior to the expected separation date, and employees were allowed to enroll in the RPL upon their receipt of the Certification. *Id.* OPM noted that, ''[p]reviously, participation in * * * the RPL * * * was limited to employees who had received a specific RIF notice'' and that ''[e]perience has shown that the earlier individuals are registered in such programs, the greater their chances of finding other employment and avoiding or minimizing any period of unemployment.'' *Id.* These interim rules become final rules when OPM revised the RPL regulations in 1995, upon sunsetting the FPM. 60 FR 3055 (1995). OPM noted at that time that ''[t]here was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL).'' *Id.* The 1995 revision added to the regulations the explanatory language used by OPM at the time it proposed to revise the RPL regulations in 1988. To wit, section 330.201(a) was revised to add the statement that RPL is ''the mechanism agencies use to give *re*employment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) * * *.'' *Id.* at 3,058 (emphasis added). The RPL regulations have not been revised since 1995.

As discussed, the RPL regulations are ambiguous on their face regarding whether the Board has jurisdiction over an RPL claim brought by an employee, such as Sturdy, who has not been separated by RIF, and our review of the regulatory history does not shed light on this issue.

Request for an Advisory Opinion

The members of the Board therefore request that you provide an advisory opinion on whether the Board has jurisdiction over an alleged violation of reemployment priority rights where the appellant was not separated by RIF.

The Director is requested to submit her advisory opinion to the Clerk of the Board within 30 days of her receipt of this letter, and to serve copies of her opinion on the parties and their representatives in the above-captioned appeal. (The addresses of the parties and their representatives are set forth below in the ''cc'' list.) The parties may file any comments on the Director's opinion no later than 30 days from the date of service of her opinion.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before April 10, 2000.

ADDRESSES: All briefs should include the case name and docket number noted above (Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–5903 Filed 3–9–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to amend records systems.

SUMMARY: NARA proposes to amend 3 system of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

Sections 552a(e)(4) and (11) of the Privacy Act require that the public be given 30 days to comment on new routine uses of information in the system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 40 days to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by April 19, 2000.

DATES: The revised system notices will be effective without further notice on April 19, 2000, unless comments received before that date cause a contrary decision. If, based on the review of comments received, NARA determines to make changes to the system notices, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to 301–713–6040.

FOR FURTHER INFORMATION CONTACT: Mary Ronan at 301–713–6025, extension 226.

SUPPLEMENTARY INFORMATION: NARA proposes to amend the routine uses of 3 system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The routine use statements for NARA 1, Researcher Application Files; NARA 5, Conference, Workshop, and Training Course Files; and NARA 6, Mailing List Files, are being modified to allow the NARA Development Staff to use the records to generate mailing lists for sending out fundraising materials for the Foundation for the National Archives. Use of records in Privacy Act systems NARA 1 and NARA 5 by the Development Staff is limited to those records where the subject individual has not requested that his or her name not be included on the mailing list. These 3 systems are also being modified to update addresses and contact points, and the authority citations.

We are also modifying Appendix B to update addresses of NARA facilities.

Dated: March 6, 2000.

John W. Carlin,

Archivist of the United States.

NARA 1

SYSTEM NAME:

Researcher Application Files.

SYSTEM LOCATION:

Researcher application files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Customer Services Division (College Park, MD);

(2) Presidential libraries and projects; and

(3) regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who apply to use original records for research in NARA facilities in the Washington, DC, area, the Presidential libraries, and the regional records services facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Researcher application files may include: Researcher applications; related correspondence; and electronic records. These files may contain the following information about an