

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

BARRY WEISE,	:
	:
Petitioner,	:
	:
vs.	: Civil Action No. 2014 CA 2929 P(MPA)
	:
DISTRICT OF COLUMBIA DEPARTMENT	: Judge Thomas J. Motley
OF THE ENVIRONMENT	:
and	: Civil II – Cal. 5
DISTRICT OF COLUMBIA DEPARTMENT	:
OF HUMAN RESOURCES,	:
	:
Respondents.	:
_____	:

ORDER GRANTING RESPONDENTS’ MOTION TO DISMISS

UPON CONSIDERATION of Respondent D.C. Department of Human Resources’ Motion to Dismiss,¹ the petitioner’s Opposition filed thereto, the respondents’ Reply, the petitioner’s Surreply, the petitioner’s and respondents’ Briefs concerning questions on jurisdictional issues and the record herein, it is this 25th day of September, 2014, hereby

ORDERED that the Motion to Dismiss is **GRANTED**; and it is

ORDERED that this matter is **DISMISSED WITH PREJUDICE**.

For reasons stated herein and for reasons stated at the hearings held September 11, 2014, and September 25, 2014, this Court has granted Respondents’ Motion to Dismiss. This Court concludes that this matter is controlled by *Coleman v. District of Columbia*, 80 A.3d 1028 (D.C. 2013) and Petitioner’s lawsuit is foreclosed by the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-601.01 et seq. Three factors are the basis for this Court’s decision: (1) Petitioner is a job applicant, rather than an employee of the District of Columbia; (2) Petitioner is seeking


¹ At the hearing held September 25, 2014, the District of Columbia Department of the Environment joined in the Motion to Dismiss.

relief under the CMPA, rather than asserting a claim arising from a distinct substance source of law; and (3) Petitioner's CMPA claim does not rest on a claim of violation of a concrete requirement of CMPA, but rather relies primarily on a claim that the regulations promulgated pursuant to the CMPA failed to comply with requirements of the CMPA. *See Coleman*, 80 A.3d at 1035. The first two factors are not disputed. The third factor is at issue.

In *Coleman*, the Court of Appeals stated "Mr. Coleman's CMPA claim does not rest on a claimed violation of a concrete requirement of the CMPA, but rather relies primarily on claimed violations of regulations promulgated pursuant to the CMPA and the District's Personnel Manual." *Coleman*, 80 A.3d at 1035. In contrast, in the instant case, petitioner contends that the promulgated regulation is contrary to the CMPA, specifically D.C. Code § 1-608.01(e)(1), which states that District of Columbia residents shall be "given a 10-point hiring preference over a nonresident applicant unless the applicant declines the preference." Significantly, this section also states the residency preference shall apply "in addition to, and not instead of, qualifications established for the position." *Id.* D.C. Code § 1-608.01(e)(6) gives the mayor authority to "issue proposed rules to implement the preference system established by this subsection." Regulations were issued; however, petitioner has stated that these regulations were contrary to the "concrete requirement of the CMPA." At the September 25, 2014, hearing, petitioner clarified that the way the residency preference points were administered was contrary to the concrete requirement of the CMPA. As discussed at the September 25, 2014, hearing, this Court disagrees. The regulations are not contrary to the statutory language. Neither the regulations themselves nor the way they were administered contradicts the statutory language that affords D.C. residents a 10-point residency preference. Petitioner's contention that the preference should be awarded during the "qualification" phase of the process in order to more effectively implement the statutory

requirement does not make the regulation a violation of a concrete requirement of the CMPA. *See also Walsh v. D.C. Bd. of Appeals & Review*, 826 A.2d 375, 378 (D.C. 2003) (recognizing that “[u]pon review of an administrative decision, deference is properly accorded an agency’s interpretation of the administrative regulation it enforces unless it is plainly erroneous or inconsistent with the regulation” (citation omitted)).

In addition, this Court agrees with respondents’ argument that review of the issue of whether the promulgated regulation is a violation of the CMPA should not proceed as a review under Super. Ct. R. Civ. P. Agency Rev. §1.



THOMAS J. MOTLEY
Associate Judge

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