THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 2401-0136-09-R14-R23
Employee	)	
	)	
v.	)	Date of Issuance: May 13, 2025
	)	
OFFICE OF CONTRACTING & PROCUREMENT,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Stephen Leckar, Esq., Employee Representative
David Wachtel, Esq., Employee Representative
Michele McGee, Esq., Agency Representative

SECOND INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 19, 2009, Employee filed a petition for appeal with the Office of Employee Appeals contesting the Office of Contracting and Procurement ("OCP" or "the Agency") action of abolishing their last positions of record through a Reduction-In-Force ("RIF"). Employee's last position of record was Program Analyst in the competitive area of OCP – Office of Procurement Support.[1] For both matters, the effective date of the RIF was May 22, 2009. Both of the Employees herein were the only person in their respective competitive level and area when the instant RIF was effectuated. On or about November 30, 2009, both matters were initially assigned to Administrative Judge Sheryl Sears. On or around April 2010, due to Administrative Judge Sears' retirement, both of these matters were then reassigned to Senior Administrative Judge Rohulamin Quander. On or around June 2011, due to Senior Administrative Judge Quander's retirement, these matters were then reassigned to Senior Administrative Judge Joseph Lim. On or around October 2011, these matters were then reassigned to the undersigned Senior Administrative Judge for adjudication. Thereafter, the parties were present for multiple status conferences.

[1] This matter was initially joined with another Employee who shared a similar fate. However, the disposition of her former joined comrade was severed by the District of Columbia Court of Appeals as will be explained more thoroughly below.

Employee originally alleged that the Agency did not adhere to all the requirements of D.C. Official Code § 1-624.02. Moreover, she contended that her positions was eliminated so that other person(s) could illegally take their former positions of record. OCP disagreed with the Employees' position and contended that the RIF of their respective positions were done in accordance with applicable law, rules and regulations.

An evidentiary hearing was held on May 7, 8, 9, and 31, 2012. Afterwards, the parties were required to submit written closing arguments in support of their positions. After granting extensions of time in which to file their closing arguments, both parties complied with this order by submitting their closing arguments in or around September 2012. Thereafter, I issued an Initial Decision ("ID") in this matter on February 8, 2013. In the ID, I found in favor of the Agency and upheld its RIF action against both Employees. Employees appealed the ID to the District of Columbia Superior Court. The Superior Court of the District of Columbia issued its first Opinion in these matters on August 26, 2014. This Opinion was the original Opinion that brought this matter back under the Undersigned's purview. Subsequently, the Court issued an Amended Opinion which superseded the Court's August 26, 2014, Order. On January 12, 2016, the Honorable John M. Mott issued the Amended Opinion on these matters on appeal wherein he held the following:

> The court affirms OEA's determination that § 1-624.08 applied to the RIF because the conclusion is supported by substantial evidence in the record. The court likewise affirms OEA's determination that it lacked jurisdiction to consider petitioners' reemployment rights. The court finds that OEA's conclusion that the RIF was executed in accordance with the relevant laws and regulations is not supported by substantial evidence and remands this case to OEA for further proceedings.[2]

The Amended Opinion granted District of Columbia's motion for reconsideration (before the Superior Court). The issues that were remanded to the undersigned were lessened pursuant to the Amended Opinion. According to the Initial Decision on Remand OEA Matter No. 2401-0136-09-R14 p. 3 (July 8, 2016), "Employees herein are only able to contest whether they "receive[d] written notice thirty (30) days prior to the effective date of their separation from service; and/or [whether they were] afforded one round of lateral competition within their competitive level." In that decision, the Undersigned once again upheld Agency's RIF action. Employee sought review of the IDR and in a decision dated June 15, 2023, the District of Columbia Court of Appeals ("DCCA") affirmed in part and reversed in part the IDR.[3] Pursuant to this decision, the only matter that was tendered for further review was whether Employee had a right to priority reemployment consideration and if so, whether that consideration was violated.[4] Thereafter, the parties appeared for a Status Conference wherein a briefing schedule was provided. The parties complied with the

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[2] Sarinita Beale *et al* Civil Case No. 2012 CA 003434 B at 2 (January 12, 2016).
[3] No. 17-CV-1123.
[4] The other employee that was linked in this matter did not press a priority reemployment claim before the DCCA. Accordingly, the parties were severed by the DCCA and Employee who was designated as OEA Matter No. 2401-0136-09R14-R23, now proceeds alone.

schedule. After review, the Undersigned has determined that no further proceedings are required.[5] The record is now closed.

JURISDICTION

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

ISSUE

Whether Employee had a right to priority reemployment consideration and if so, whether that consideration was violated.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee first attempts to relitigate which authority the instant RIF was conducted - General RIF versus Abolishment Act. Notwithstanding that argument, OCP correctly notes that this is not an area that is subject to review by the Undersigned given that the DCCA already determined that the Abolishment act was the RIF procedure that was adopted in this matter.[6] Turning attention to matters that are under my purview, in *Employee v. DCPS*, OEA Matter No. 2401-0041-21, p. 8 - 9 (July 13, 2023), the Board of the OEA noted the following regarding priority reemployment consideration:

> Under D.C. Code § l-624.02(a)(3), employees separated pursuant to a RIF are afforded consideration for priority reemployment. Agency's RIF notice

[5] On April 23, 2025, Employee submitted a Renewed Motion for A Status Conference. Given that this decision dispenses with the matter, that motion is DENIED.

[6] *Employee v. Office of Contracting and Procurement, et al* 2012 CA 003434 B (August 27, 2014). *See also*, Agency's Response to Employee's memorandum of Points and Authorities on Jurisdiction and Remedies pp. 1 – 3 (November 20, 2023).

> to Employee stated in part that "…you may apply for any job vacancies at DCPS or within the District government that arise in the future. Note, however, that while you will receive some priority consideration, you are not guaranteed reemployment…" While Employee understandably takes issue with being rehired at a lower level than his previous Custodian Supervisor position, this Board nonetheless finds that Agency complied with D.C. Code § l-624.02(a)(3) since the record reflects that it provided Employee with priority reemployment consideration.

Under the preceding matter, the OEA Board opted to make a decision regarding priority reemployment consideration ("PRC") in a RIF action. I note that Employee herein had similar language in her RIF Notice informing her that PRC was available during the RIF removal process. For the Undersigned, Opinion and Orders from the Board of the OEA are mandatory authority. Given this guidance, this decision will review PRC surrounding the instant matter.

Employee argued that a violation of PRC is grounds for a full reversal of the RIF and seeks to argue that prior OEA precedent should prevail where reversal of a RIF action occurred even though those decisions were primarily predicated on other factors not involving PRC. Employee also questions the hiring process of other persons since their hiring process seemingly occurred close in time to the RIF and she posits other allegations of hiring irregularities with this person. Agency vehemently disagrees and *inter alia* argues that review of PRC is limited to only whether it was provided not whether it should have resulted in rehire/reassignment. Agency further contends that PRC was provided to Employee herein and considering this, her appeal must fail.[7] Agency further notes that even if it is found the PRC was not properly done, reinstatement and backpay are not warranted given the circumstances.[8]

Agency notes that Employee was provided with notification in her RIF notice that she was being placed in PRC.[9] To support this contention, Agency points out that in her RIF Notice dated April 20, 2009, at p. 2, it states as follows:

> Employees in tenure groups I and II who have received a notice of separation by [RIF] have a right to [PRC] through the Agency Reemployment Priority Program. Placement assistance through the D.C. Department of Human Resources Displaced Employee Program for vacancies in other District agencies will also be provided to employees in tenure groups I and II.

Agency also notes that in the record is Agency Reemployment Priority Program Displace Employee Program Sheet for Employee (also known as D.C. Standard Form 1203A) wherein Employee and Agency's HR Specialist both executed and submitted this form on April 29, 2009, so that Employee could participate in the PRC.[10] It bears noting that the effective date of Agency's

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[7] *Id*. pp. 4 – 11.
[8] *Id*. pp. 11 – 14.
[9] *See* Agency's Response to Employee's Memorandum of Points & Authorities on Jurisdiction and Remedies, pp. 4 -6 (November 20, 2023).
[10] Bates number 006195.

RIF action was May 22, 2009. Agency further notes that during the evidentiary hearing in this matter, the following exchange took place between Employee and Mr. Leckar:

> Q: Did there come a time when you went to a RIF seminar?
>
> A: Yes.
>
> Q: Do you remember anybody speaking about the Displaced Employee Program?
>
> A: Yes, Louie Shaderi…
>
> Q: … Did you apply for the Re-employment Priority Program?
>
> A: Yes, that was one of the requirements when we had to come back down so they could discuss the benefits and things, so I think that was around April 29th of '09. We had to go back again to the agency or to Personnel so they could tell us about the benefits and what we were entitled to and the type of thing, so it was a requirement at that point.
>
> Q: Is Exhibit 105 your registration for the Re-employment Priority Program?
>
> A: Yes.[11]

The record is clear in noting that Employee was notified that PRC (*vis a vis* through the Agency Reemployment Priority Program ("ARPP") and the Displaced Employee Program ("DEP")) was available in her RIF notice; that she attended a seminar sponsored by OCP during which the PRC process was discussed; that she signed documentation (prior to the effective date of her separation via RIF) noting that she wanted to participate in the PRC process; and ultimately she was unsuccessful in finding another position within the District government.

Accordingly, I find that being placed on the ARPP or DEP does not equate to automatic reemployment. It simply means that the individual would receive some priority consideration for vacant positions they apply to. These employees on the ARPP lists such as Employee in this matter, still have to compete with other candidates, including other employees on the ARPP list, who also qualify for the position. As was noted above, Employee unsuccessfully navigated the reemployment register and was not able to find another position within the District government. Notwithstanding Employee's failed job search, I find that Agency complied with the RIF requirement to consider Employee for priority reemployment. Since Employee did not prevail in her quest to have her removal via RIF reversed, I am unable to address the other facets of her voluminous arguments citing that she should be reinstated with backpay.[12] Given this decision, I

[11] Bates number 004797 through 004799.

[12] Employee cited OEA precedent and strained precedent from the federal government concerning multiple federal agencies and their ability to regulate air traffic over U. S. National Parks. *Marin Audubon Society v. Fed Aviation Admin*., 2024 WL 4745044 (D.C. Cir. No. 23-1067, Nov. 12, 2024). I find that the argument(s) presented in this line

cannot decide on Employee's other ancillary arguments since I am generally prohibited from providing an advisory opinion.[13]

Conclusion

I find that Employee has failed to proffer any credible argument(s) or evidence that would indicate that the RIF was improperly conducted and implemented.[14] I further find that the Agency's action of abolishing her last position of record was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in her removal is upheld.[15]

ORDER

Based on the foregoing, it is ORDERED that Agency's action of abolishing Employee's last position of record through a Reduction-In-Force is hereby UPHELD.

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

of cases by Employee have no tangential relationship regarding the issue that remained in this matter, whether Agency adequately afforded Employee with PRC.

[13] On important questions of law, "this court may not render in the abstract an advisory opinion." *Holley v. United States,* 442 A.2d 106, 107 (D.C.1981). In re Wyler, 46 A.3d 396, 399–400 (D.C. 2012).

[14] The parties agree that Employee received her RIF notice at least 30 days prior to her removal.

[15] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").