

Notice: This opinion is subject to formal revision before publication in the District of Columbia Register and OEA website. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE)	OEA Matter No. 2401-0018-12R19R21
)	
v.)	Date of Issuance: January 11, 2022
)	
METROPOLITAN POLICE DEPARTMENT)	JOSEPH E. LIM, ESQ.
<u>Agency</u>)	Senior Administrative Judge
Rahsaan Dickerson, Esq., Agency Representative)	
Lateefah Williams, Esq., Employee Representative)	

SECOND INITIAL DECISION ON REMAND

PROCEDURAL HISTORY

On November 10, 2011, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the Metropolitan Police Department’s (“MPD” or “Agency”) final decision to separate him from government service pursuant to a Reduction-in-Force (“RIF”). This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on July 26, 2013. After several continuances requested by the parties, I conducted a Prehearing Conference on October 3, 2013, and held an Evidentiary Hearing on July 7, 2015. On August 31, 2015, I issued an Initial Decision (“ID”) upholding the validity of the RIF.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA’s Board on October 5, 2015. He argued that the AJ failed to address all the issues raised in his April 3, 2015 legal brief and the evidentiary hearing. Based on a review of the record, the Board found no clear error in judgment by Agency. It held that there was substantial evidence in the record to support a finding that Employee was separated from service pursuant to the RIF in accordance with all applicable laws, rules, and regulations. Furthermore, the Board found that the Initial Decision addressed all issues raised by Employee on Petition for Appeal, and consequently, the Board denied Employee’s Petition for Review.¹

On April 7, 2017, Employee filed an appeal to the Superior Court for the District of Columbia (“DCSC”), asserting that the ID and the Board’s decisions were not supported by

¹ *Gamble v. MPD*, OEA Matter No. 2401-0018-12, *Opinion and Order on Petition for Review*, (March 7, 2017).

substantial evidence, and that new and material evidence had come to light which contradicts the ID. On April 30, 2018, the DCSC denied Employee's appeal and affirmed the ID.² Employee appealed the matter to the D.C. Court of Appeals ("DCCA"). On March 19, 2019, the Court of Appeals issued its Order pursuant to a request by the MPD to remand the matter to the Superior Court with instructions to vacate its decision and remand the matter to OEA for additional findings.³

I held a Telephone Conference on January 21, 2020, and ordered the parties to submit a joint stipulation of facts and briefs addressing the issue of whether Agency's failure to consider job sharing and reduced hours in the RIF constituted reversible error. After the parties' submission, I issued an Initial Decision on Remand ("IDR"), finding that Agency failed to prove that it considered job sharing and reduced hours in conducting the RIF for Employee, but that the failure to do so was harmless error. I held that because all the positions in Employee's competitive level had been abolished, consideration of job sharing or reduced hours was not necessary and would not have prevented Employee from being removed pursuant to the RIF.

Employee filed a second Petition for Review ("2nd PFR") with the DCSC. The Court issued an Order on July 14, 2021, finding that "OEA erred when it considered the 'harmful error' standard. The Court also held that the factors set forth in D.C. Code §1-624.02 are substantive rights that every employee must be afforded when subject to a RIF."⁴ On August 6, 2021, Agency appealed the DCSC Order to the DCCA. Agency argued that the principal issue on appeal was whether the Superior Court erred when it decided that a harmful standard error does not apply to D.C. Code §1-624.02(a)(4).

On September 30, 2021, the DCCA dismissed the appeal for "having been taken from a non-final and non-appealable order because damages (benefits, back pay, and attorney's fees) have yet to be calculated."⁵ On October 22, 2021, the DCCA sent the Clerk of the DCSC a certified copy of the Decision. The case was then remanded back to the undersigned. After a November 17, 2021, Status Conference, I issued an Order to the parties to submit a procedural history of the matter by December 6, 2021. The record is closed.

JURISDICTION

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

² *Gamble v. D.C. Office of Employee Appeals, et.al.* 2017 CA 002472 (D.C. Super. Ct. April 30, 2018).

³ *Gamble v. D.C. Office of Employee Appeals, et.al.* CAP 2472-17 (D.C. Court of Appeals March 19, 2019).

⁴ *Gamble v. Metropolitan Police Department.* 2020 CA 003074 (D.C. Super. Ct. July 14, 2021).

⁵ *Metropolitan Police Department v. D.C. Office of Employee Appeals, et.al.* 2020 CAP 2472 (D.C. Court of Appeals September 30, 2021).

ISSUE

Whether Agency's action separating Employee pursuant to a RIF should be overturned due to its failure to prove that it properly implemented the D.C. RIF statute, D.C. Official Code §1-624.02(a)(4).

ADDITIONAL FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW⁶

Whether Agency's action of separating Employee pursuant to a RIF should be overturned due to its failure to prove that it properly implemented the D.C. RIF statute, D.C. Official Code §1-624.02(a)(4).

The RIF statute clearly provides that Agency should consider job sharing and reduced hours for employees that have been subjected to a RIF. Of specific relevance to this case is D.C. Official Code § 1-624.02, which tracks the Omnibus Personnel Reform Amendment Act (OPRAA) of 1998 § 101(x). This section reads in pertinent part as follows:

D.C. Official Code § 1-624.02. Procedures

- (a) Reduction-in-force procedures shall apply to the Career and Educational Services . . . and *shall* include:
- (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veteran's preference, and relative work performance;
 - (2) One round of lateral competition limited to positions within the employee's competitive level;
 - (3) Priority reemployment consideration for employees separated;
 - (4) *Consideration of job sharing and reduced hours*; and
 - (5) Employee appeal rights. *See* D.C. Official Code § 1-624.04. [emphasis applied.]

Following the July 7, 2015, Evidentiary Hearing, I found that Agency failed to prove that it considered job sharing and reduced hours in its RIF of Employee. Accordingly, the DCSC held that the steps set forth in D.C. Official Code § 1-624.02(a) are substantive, rather than procedural, rights. As such, the Court held that OEA's consideration of the "harmful error" standard is erroneous when measured against statutory requirements. Consequently, DCSC vacated the IDR and remanded to OEA for further proceedings consistent with its Order.

On November 17, 2021, I held a Status Conference. Based on our discussion, the parties agreed that the proper response to the DCSC's remand order was for the undersigned to issue a 2nd ID on Remand putting Employee back to work. Thus, based on the Court's holding that Agency's failure to fully comply with D.C. Official Code § 1-624.02 (4) amounts to reversible error, I find

⁶ These additional findings of fact are in addition to the findings of fact listed in the *Gamble v. MPD*, OEA Matter No. 2401-0018-12 (August 31, 2015) ID and *Gamble v. MPD*, OEA Matter No.2401-0018-12R19 (May 6, 2020).

that Employee should be reinstated to his prior position of record.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee pursuant to a RIF is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

s/ Joseph Lim
Joseph E. Lim, Esq.
Senior Administrative Judge

cc:

Rahsaan Dickerson, Esq., Agency Representative
Rahsaan.dickerson@dc.gov
Office of the Attorney General for the District of Columbia
441 4th Street NW, Suite 1180
Washington, DC 20001

Lateefah Williams, Esq., Employee Representative
lwilliams@nage.org
National Association of Government Employees
1020 N. Fairfax Street, Suite 200
Alexandria, VA 22314