

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. 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, ¹)	OEA Matter No.: 2401-0017-22R25
)	
v.)	Date of Issuance: May 30, 2025
)	
D.C. DEPARTMENT OF FORENSIC SCIENCE,)	
Agency)	MONICA DOHNJI, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
)	

Ryan Griffin, Esq., Employee Representative
Hillary Hoffman, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 29, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting District of Columbia Department of Forensic Sciences’ (“Agency”) decision to separate her from her position as a Forensic Scientist pursuant to a Reduction-in-Force (“RIF”). Employee was RIFed effective October 22, 2021. On December 6, 2021, OEA issued a Request for Agency Answer to Petition for Appeal. On December 28, 2021, Agency submitted its Motion to Dismiss Employee’s Petition for Appeal stating that Employee’s Petition for Appeal was untimely. This matter was assigned to the undersigned on January 19, 2022. On January 21, 2022, Employee filed an Opposition to Agency’s Motion to Dismiss. On January 27, 2022, the undersigned issued an Order on Jurisdiction and Convening a Prehearing Conference noting that OEA maintained jurisdiction over this matter. A Prehearing Conference was held on February 24, 2022, via WebEx. Subsequently, I issued an order requiring the parties to submit written briefs. Both parties submitted their respective briefs.² After several conferences, an Evidentiary Hearing was held on March 21, 2023. The parties submitted their respective written closing arguments on June 2, 2023. Thereafter, I issued an Initial Decision (“ID”) on August 23, 2023, upholding Agency’s decision to RIF Employee.

Employee appealed the ID to the District of Columbia Superior Court and on January 10, 2025, this Court issued a Memorandum Opinion and Order remanding the Case to OEA.³ Specifically, the D.C.

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² On May 3, and May 19, 2022, Agency filed a Motion to Consolidate this matter with another similar matter assigned to the undersigned. This Motion was DENIED. The facts of the cases did not warrant consolidation. However, for the purposes of the record regarding the RIF, the AJs assigned to these matters before this Office elected to hold a joint Evidentiary Hearing to address issues identified regarding the administration of the RIF.

³ *Employee v. D.C. Office of Employee Appeals, et. al.*, No. 2024-CAB-000343 (January 10, 2025).

Superior Court Judge remanded the matter to OEA “to (1) determine whether Employee was placed on the [Agency Reemployment Priority Program (“ARPP”)] list for priority reemployment consideration by September 22, 2021; (2) determine whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list; and (3) if there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy.” Accordingly, on February 21, 2025, I issued an Order requiring the parties to submit written briefs addressing the above referenced issues. Both parties have submitted their respective briefs. The record is now closed.

JURISDICTION

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

ISSUE

- 1) Whether Employee was placed on the ARPP list for priority reemployment consideration by September 22, 2021.
- 2) Whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list. And
- 3) If there were any vacancies at DFS for which Employee was qualified but not given priority consideration, what is the appropriate remedy.

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 FACT, ANALYSIS, AND CONCLUSIONS OF LAW⁴

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. On August 10, 2021, Administrative Order No. DFS-2021-01

⁴ 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”).

authorizing a RIF pursuant to D.C. Code § 1-624.02; Chapter 24, Reduction-In-Force of Title 6 of the District of Columbia Municipal Regulations (“DCMR”); and Mayor’s Order 2008-91, dated June 26, 2008, was issued. The RIF Authorization Memo stated that the RIF was conducted for “a lack of work due to the loss of accreditation as required pursuant to D.C. Official Code § 5-1501.06(d)(1).”⁵ Following an investigation into an alleged misconduct in the Firearm Examination Unit (“FEU”), Agency’s Forensic accreditation was suspended effective April 12, 2021. The entire Firearms Examination Unit was abolished because of the loss of accreditation. Employee was a Forensic Science Technician in the Firearms Examination Unit. She is a member of the National Association of Government Employees (“NAGE”) which has a Collective Bargaining Agreement with Agency. Agency issued a written RIF Notice on September 15, 2021, to Employee, with an effective RIF date of October 22, 2021. The D.C. Superior Court Judge remanded this matter to OEA “to (1) determine whether Employee was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) determine whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list; and (3) if there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy.”

Summary of Agency’s Position

Agency concedes that it placed Employee on the ARPP list on October 23, 2021, but asserts that the delayed placement was harmless error. Agency explains that there were no vacancies at Agency between September 22, 2021, and October 22, 2021, that Employee was qualified to fill.⁶ Citing 6 DPM § 2426.3, Agency avers that Employee became entitled for priority reemployment considerations at Agency for positions she qualified for when the RIF notice was issued on September 21, 2021. Agency argues that Employee was only entitled to receive priority consideration for any vacancies that existed at Agency during the RIF notice period that she was qualified for. Agency maintains that as a Forensic Science Technician in the Firearms Examination Unit (“FEU”), she would have potentially qualified to receive priority reemployment consideration for vacancies in other Agency units that employ Forensic Scientists. Nonetheless, Agency asserts that the only vacant position that existed at Agency between September 22, 2021, to October 22, 2021, were for human resources specialists in the Human Resources Department. Agency cites that Employee was not qualified to fill the Human Resources Specialist role give her background in laboratory sciences and lack of expertise in human resources. Agency concluded that although it erred by failing to place Employee on the ARPP list by the date of the RIF notice, the error was harmless because there were no vacancies for which Employee qualified and entitled to priority reemployment consideration during the RIF notice period.⁷

Additionally, Agency explains that employees on the ARPP list who receive priority reemployment must still compete with other candidates, including other ARPP listed employees, all of whom may qualify for the position. Agency contends that had Employee been afforded priority reemployment considerations for the human resources positions that were opened at Agency during the RIF notice period, she would have been disqualified because of her lack of qualifications and experience. Therefore, Agency’s lack of priority reemployment consideration for these vacancies was harmless error. Agency also avers that Employee is not entitled to reinstatement at Agency or reconsideration for a position in which she did not qualify, and that priority reemployment consideration does not equate to automatic reemployment.⁸

⁵ See. Employee’s Prehearing Statement (February 16, 2022).

⁶ Agency’s Brief (March 13, 2025).

⁷ *Id.*

⁸ *Id.*

Agency cites in its Sur-reply brief that it was under no obligation to give Employee priority reemployment consideration between August 10, 2021, and September 21, 2021, because this period precedes the RIF approval and the issuance of the RIF notice.⁹ Agency argues that despite Employee's argument that four (4) Forensic Scientists were hired during the relevant time period, this does not indicate that these vacancies existed during the relevant time period. Agency explains that while the four (4) forensic scientists had official 'start dates' during the RIF notice period, they were hired prior to the RIF approval date. Agency also notes that Employee did not consider the date the vacancies were posted, filled, the time (weeks or months) it took for background checks and onboarding. Agency concludes that the official 'start date' of the hired forensic scientists does not conclude that Agency had open vacancies which it filled during the RIF notice period. Agency reiterates that the only available positions at Agency during the RIF notice period were human resources positions.¹⁰

Agency further asserts that Employee's contention that she was placed on the ARPP list on November 15, 2021, is false. Agency avers that the D.C. Superior Court held in its Opinion remanding this matter to OEA that the ARPP registration sheet identifies that Employee was placed on ARPP on October 23, 2021, the day after her separation. Agency notes that Employee is attempting to make a novel argument which is outside the scope of the remand directives from the D.C. Superior Court to OEA.¹¹

Agency reiterates that Employee was not eligible to fill the vacancies that existed at Agency during the RIF notice period and therefore, any delay in placing Employee on the ARPP list was harmless error and does not warrant a 'make-whole relief.'¹² Regarding Employee's contention that Agency did not inquire about her transferrable skills; and that she may have qualified for the vacant human resources specialists positions given her experience with personnel, significant training in management, leadership, organizational structure and organizational behavior, Agency asserts that Employee did not comply with its Departmental Operations Manuals ("DOM"). Agency explains that DFS DOM14, which was active at the time of the current RIF and binding on all DFS employees provides that Employee maintain a Curriculum Vitae ("CV") on Agency's Public Drive that summarizes her education, training and experience until time of termination. Agency cites that it was Employee's responsibility to update her CV within the Public Drive at least once a year. Agency asserts that Employee's CV on file did not include any human resources experience from 2010 to when she was terminated by Agency pursuant to the current RIF. Agency also argues that although Employee's experience reflects organization and coordination skills, Employee's experiences do not reflect specialization in human resources necessary to fill a grade CS-12 position. Agency asserts that Employee did not qualify to fill the vacancies available at Agency during the notice period and for this reason, Agency's failure to timely place Employee on the ARPP list constitutes harmless error. Agency asserts that the evidence does not establish that but-for Employee's delayed placement on the ARPP list, she would have remained employed by Agency. Agency argues that because Agency had no vacancies that Employee qualified for during the notice period, it is impossible for the effect of the delay to have the requisite magnitude to constitute harmful error, let alone retroactive reinstatement.¹³

Summary of Employee's Position

Employee argues that Agency failed to timely place her on the ARPP list and afford her priority consideration for vacancies as required under applicable rules. Citing to E-DPM Instruction No 8-69, 9-36 &

⁹ Agency's Reply to Response of Employee on Remand to OEA, April 15, 2025.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

36-11 § 7b, Employee argues that Agency was required to place employees affected by the RIF on the ARPP list immediately after it is determined that such employees will be affected by a RIF but not later than the issuance of the RIF.¹⁴ Employee asserts that the purpose of placing an employee on the ARPP list as soon as they are slated to be affected by a RIF but no later than the issuance of the formal RIF notice is so that such priority offers can occur prior to separation from employment.¹⁵

Employee asserts that Agency bears the burden of proof as to compliance with the RIF procedure, including the priority reemployment provisions.¹⁶ Employee cites that Agency has conceded that it did not place Employee on the ARPP list before September 22, 2021. Employee argues that to prove that Agency's delay to place her on the ARPP list was harmless error, Agency must show that no vacancies existed at the time of the notice period and before Employee was placed on the ARPP list.¹⁷ Employee asserts that Agency placed her on the ARPP list on November 15, 2021, nearly a month after her termination.¹⁸

Employee cites that Agency conceded that it did not provide her priority consideration for any vacancies that existed prior to her termination. Employee contends that there were numerous vacancies at Agency during the time she should have been on the ARPP list from August 10, 2021, to October 22, 2021. Employee asserts that Agency filled at least nine (9) positions during this period; to include at least six (6) Forensic Scientist positions and she did not receive priority consideration.¹⁹ Employee avers that she is entitled to 'make-whole' relief, to include reinstatement and back pay because Agency's failure to follow RIF procedures were anything but harmful. She cites that if Agency had followed the RIF procedures, she would have at least had the opportunity to be considered on a priority basis for the numerous vacancies at Agency.²⁰

Additionally, Employee avers that given her excellent performance and no evidence to prove she was unqualified for the available vacancies, such as the forensic scientist positions, she is certain she would have avoided termination and maintained her position. Employee submits that Agency cannot escape this conclusion through a harmless error defense because its factual contentions are unsupported and its errors were anything but harmless. She expounds that she was terminated through no fault of her own, and she was deprived of key job protections guaranteed to her by law. She highlights that the entire process was irredeemably flawed, and therefore, she should be reinstated with backpay.²¹

Employee also detailed the multiple steps involved in the priority consideration process. She explains that initially, there is a matching process for each open position based solely on occupational series and grade. Next, the agency is required to conduct a qualification analysis of each Employee on the ARPP list against the advertised selection criteria and refer eligible employees to the appropriate hiring authority. The hiring authority is required to give qualified employees on the ARPP list the right to first refusal before the agency makes offers to anyone not on the ARPP list.²² Employees argues that Agency's own publicly available hiring data shows that Agency hired six (6) Forensic Scientists during the relevant period and there is nothing in the record suggesting that she was unqualified for these positions.²³ Employee submits that

¹⁴ Brief of Employee on Remand to OEA (April 4, 2025). Employee filed a corrected version of her brief on April 17, 2025.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

Agency's assertion that she did not qualify for the human resources positions is completely devoid of any evidentiary support because Agency failed to provide any information on what skills and qualifications were required for the human resources positions or evidence that Employee lacked the requisite requirements. Employee cites that she may have qualified for the human resources positions because she has experience with personnel, and significant training in management, leadership, organizational structure, and organizational behavior.²⁴

ANALYSIS²⁵

The RIF Authorization Memo (Administrative Order No. DFS-2021-01) dated August 10, 2021, stated that the RIF was conducted for "a lack of work due to the loss of accreditation as required pursuant to D.C. Official Code § 5-1501(d)(1)."²⁶ On January 10, 2025, the D.C. Superior Court Judge remanded the matter to OEA "to (1) determine whether Employee was placed on the [Agency Reemployment Priority Program ("ARPP")] list for priority reemployment consideration by September 22, 2021; (2) determine whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list; and (3) if there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy."

1) Whether Employee was placed on the [Agency Reemployment Priority Program ("ARPP")] list for priority reemployment consideration by September 22, 2021.

Here, Agency has conceded that it did not place Employee on the ARPP list for priority reemployment consideration by September 22, 2021. Agency asserted that it placed Employee on the ARPP list on October 23, 2021, almost a month after the relevant September 22, 2021, date.

2) Whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list.

Because Agency asserted that it placed Employee on the ARPP list on October 23, 2021, I find that Employee was not given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and October 23, 2021, the date Employee was placed on the ARPP list. Accordingly, I conclude that it would be impossible to provide Employee with priority consideration for vacancies that existed at DFS between September 22, 2021, and October 23, 2021, without Employee being on the ARPP list during that period.

3) If there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy.

Here, Agency argued that it had only five (5) human resources vacancies during the relevant period of September 22, 2021, to October 23, 2021, all of which Employee did not qualify for. Therefore, Agency's

²⁴ *Id.*

²⁵ 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").

²⁶ See Employee's Prehearing Statement (February 16, 2022).

lack of priority reemployment consideration for these vacancies was harmless error. Agency contended that had Employee been afforded priority reemployment considerations for the human resources positions that were open at Agency during the RIF notice period, she would have been disqualified because of her lack of qualifications and experience. Agency reiterated that Employee is not entitled to reinstatement at Agency or reconsideration for a position in which she did not qualify, and that priority reemployment consideration does not equate to automatic reemployment. Therefore, Agency maintained that its failure to timely place Employee on the ARPP list was harmless error, because Employee did not qualify for any of the human resources vacancies, and as such, was not entitled to priority consideration.

Employee on the other hand asserted that based on publicly available hiring data, Agency filled nine (9) positions, and at least six (6) of those were forensic scientists positions that she qualified for. Employee further asserted that Agency has not provided any evidence in support of its assertion that she did not qualify for any of the five (5) human resources positions. Employee maintained that she had experience in personnel and training in management and organizational structure.

A review of Agency's Attachment 2, to its brief on remand – DFS vacancies 9.22- 10.22.21, highlights that there were five (5) vacancies at Agency between the period of September 22, 2021, to October 22, 2021. Pursuant to this document, these positions were all human resources specialist positions, and they were posted by Agency between October 7, 2021, and October 13, 2021. Agency further cited in its Sur-reply brief that the available human resources vacancies required specialization in human resources necessary to fill a grade CS-12.²⁷ Agency further argued that Employee's CV on file did not include any human resources experience from 2010 to when she was terminated by Agency pursuant to the current RIF. While Employee questioned the accuracy of the vacancy list provided by Agency in Agency's Attachment 2, I find that Employee has not provided any specific evidence to validate her doubts.

But for the publicly available hiring data which Employee submitted with her brief, Employee has not provided this Office with information pertaining to open positions that she qualified for during the relevant period. The publicly available hiring data does not display when the vacancies for the six (6) forensic scientist positions that Employee referenced were posted. It simply shows the new employees' start dates, that fall within the RIF notice period. The start dates listed in Employee's Exhibit A ranged from September 27, 2021, to October 12, 2021. It should also be noted that per Employee's Exhibit A, only two (2) employees had a start date during the period of September 22, 2021, to October 22, 2021. Furthermore, Employee's Exhibit A does not provide when the vacancies for these positions were posted by Agency, and the length of the hiring process. Accordingly, I find that Employee's Exhibit A is not the appropriate documentation to rely on in determining the vacancies at Agency during the relevant period. Absent any other credible evidence from the parties, the undersigned will rely on Agency's Attachment A, in deciding if there were any vacancies at DFS for which Employee was qualified, but not given priority consideration in order to determine the appropriate remedy.

The record shows that Employee was a Forensic Specialist at the time of the RIF. Agency asserted that Employee's CV on file did not include any human resources experience from 2010 to when she was terminated by Agency pursuant to the current RIF. But for Employee's assertion that she had experience in personnel and training in management and organizational structure which could be transferred to the human resources vacancies at DFS, Employee does not deny that her CV on file did not include any human resources experience from 2010 to when she was terminated by Agency pursuant to the current RIF. Consequently, I conclude that while there were vacancies at Agency during the relevant period, Employee

²⁷ It should be noted that Agency's Attachment 2, noted that the human resources positions were Grade 13 positions.

did not qualify for the vacancies. I find that because Employee did not qualify for these vacancies, she was not entitled to priority reemployment consideration and Agency's delay to place Employee on the ARPP list constitutes harmless error.²⁸ Accordingly, I find the facts in this matter warrant the invocation of a harmless error review

The OEA Board in *Kyle Quamina v. Department of Youth Rehabilitation Services*,²⁹ addressed this issue of harmless error. It noted that "... an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Thus, the facts in this matter warrant the invocation of a harmless error review. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, this Board will apply a two-prong analysis: whether Agency's error caused substantial harm or prejudice to Employee's rights *and* whether such error significantly affected Agency's final decision to suspend Employee."³⁰ In applying this two-prong analysis to the instant matter, the undersigned finds that Agency's failure to place Employee on the ARPP list during the relevant time did not cause substantial harm or prejudice to Employee. As previously noted, while there were vacancies at Agency during the relevant period, Employee did not qualify for the vacancies, therefore, she was not eligible for priority consideration. Further, the delay in placing Employee on the ARPP list during the relevant period did not affect Agency's decision to terminate Employee. Therefore, I conclude that Agency's delay in placing Employee on the ARPP list during the RIF notice period did not significantly affect Agency's decision to RIF Employee. Accordingly, in consideration of the above, I find that Agency's delay in placing Employee on the ARPP list is harmless error as this delay did not cause substantial harm or prejudice to Employee's rights and did not significantly affect Agency's final decision to RIF Employee. Wherefore, I also find that Agency's action of separating Employee from service in accordance with a RIF should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of separating Employee pursuant to a RIF is **UPHELD**.

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

²⁸ OEA Rule 631.3 provides that: "[n]otwithstanding any other provisions of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take action."

²⁹ OEA Matter No. 1601-0055-17, Opinion and Order on Petition for Review (April 19, 2019).

³⁰ *Id.*