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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

	)	
In the Matter of:	)	
	)	
EMPLOYEE ¹ ,	)	OEA Matter No.: 2401-0014-22R26
Employee	)	
	)	Date of Issuance: August 31, 2026
v.	)	
	)	
D.C. DEPARTMENT OF FORENSIC SCIENCES,	)	
Agency	)	MICHELLE R. HARRIS, ESQ.
	)	Senior Administrative Judge
	)	
Ryan E. Griffin, Esq., Employee Representative		
Amanda Kenner, Esq., Agency Representative		

INITIAL DECISION ON REMAND

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 RIF’d 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 in this matter on February 24, 2022, via Webex.² After several conferences, an Evidentiary Hearing was held on March 21, 2023. The parties submitted their respective closing arguments on June 2, 2023. Thereafter, I issued an Initial Decision (“ID”) on August 24, 2023, upholding Agency’s decision to RIF Employee.

Employee appealed the ID to the District of Columbia Superior Court and on December 16, 2025, the Court issued an Order and remanded the Case to OEA.³ Specifically, D.C. Superior Court Judge Oler remanded the matter to OEA “to determine (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,

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 is hereby DENIED. The facts of the cases do 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. Department of Forensic Sciences., No. 2024-CAB-000336 (December 16, 2025).

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.”

On December 30, 2025, I issued an Order requiring the parties to submit briefs addressing the issues identified by the D.C. Superior Court. Agency’s brief was due by or before January 30, 2026, and Employee’s Brief was due by or before February 27, 2026. Agency had the option to file a sur-reply brief by or before March 16, 2026. On January 15, 2026, the parties filed a Consent Motion to Extend the briefing deadline. On January 16, 2026, I issued an Order granting the Motion. Agency’s brief was now due by or before February 13, 2026, Employee’s brief was due by March 13, 2026, and Agency’s sur-reply brief was now due by or before March 27, 2026. The parties submitted their briefs in accordance with the prescribed deadline. I have determined that an Evidentiary Hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUES

(1) Whether Employee was placed on the ARPP list for priority reemployment by the RIF notice date of September 22, 2021; and (2) Whether Employee was given priority reconsideration for vacancies within the entirety of DFS during the period between the RIF Notice date and the date Employee was placed on the ARPP list; and (3) If there were any vacancies for which Employee was qualified, but not given priority consideration, OEA shall determine the appropriate remedy.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.⁴

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, 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. (Emphasis added).

⁴ OEA Rule § 699.1.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Summary of Agency's Position

Agency cites that it “acknowledges that the Employee was placed on the ARPP list on October 23, 2021, but that the only positions available within the entirety of DFS during the RIF notice period from September 22, 2021 and October 22, 2021, were Human Resource Specialist positions for which the Employee was not qualified, and thus no remedy is available.”⁵ Agency asserts that it “incorporates all facts and arguments made in its original brief filed on May 6, 2022.”⁶ Agency provides that Employee was separated from “her Career Service position at FEU on October 22, 2021 pursuant to the RIF.” Agency further avers that the Initial Decision upheld the RIF and Agency’s action, but the matter was remanded to OEA following the Superior Court’s decision that “the record does not support any conclusion that DFS met the deadline for placing Employee of the ARPP list, or that any delay in placing the Employee on the ARPP list after the RIF notice date was harmless error.”⁷ Agency avers that “Employee’s termination should be upheld because Employee did not qualify for any of the vacancies available during the RIF notice period, and thus any error by DFS to timely place Employee on the ARPP list was harmless.”

Agency contends that Employee was placed on the ARPP list on October 23, 2021, a delayed placement that “was harmless error because there were no vacancies at DFS between September 22, 2021, and October 22, 2021 that Employee was qualified to fill.”⁸ Agency cites that “6 DPM §2426.3 states that [a]n employee...who has reinstatement eligibility to the Career Service and who is separated from his or her competitive level shall be eligible for priority consideration, under the agency reemployment program and the displaced employee program, for positions for which [he or she is] qualified, at grades no higher than the grade last held under a Career Appointment...or at any lower grade acceptable to employee.” To this end, Agency avers that “Employee became entitled to priority reemployment consideration at DFS only for positions in which she was qualified when the RIF notice was issued on September 22, 2021.”⁹ Agency asserts that “OEA must determine whether there were vacancies for which [Employee] was entitled to priority consideration during the period of September 22, 2021, and October 22, 2021.” Agency cites that Employee “was previously employed by FEU as a Forensic Science Technician and thus would have potentially qualified to receive priority consideration for vacancies in other agency units that employ forensic scientists...[h]owever, the only vacant positions that existed at DFS between September 22, 2021, and October 22, 2021, were Level 13 Human Resource Specialist positions in the Human Resources Department.”¹⁰ Agency maintains that Employee “was not qualified to fill a Human Resource Specialist role, based on her CV and lack of experience in human resources.”¹¹

Agency further asserts that it “made the determination to eliminate the FEU and all positions and RIF 11 employees.” Agency avers that it “evaluated employees impacted by the RIF for other vacancies with the agency and found that no positions were suitable.”¹² Agency notes that “pursuant to rules and regulations regarding agency RIF, all employees were then added to the retention register.” Agency avers that “any delay in placing Employee on the ARPP list on behalf of the agency was harmless error, because Employee did not

⁵ Agency’s Brief in Response to the Office of Employee Appeals Order at Page 1 (February 12, 2026).

⁶ *Id.* at Page 2.

⁷ *Id.*

⁸ *Id.* at Pag 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

qualify for any vacancies at DFS between the RIF notice date and effective date.”¹³ Agency argues that “because Employee did not qualify for the positions, she was not entitled to receive priority reconsideration.” Agency asserts that “any procedural error in affording Employee priority consideration was harmless error because Employee was not qualified to fill the open positions.”¹⁴

Agency further argues that it was under “no obligation to give Employee priority reemployment consideration for positions between August 10, 2021, to September 21, 2021.”¹⁵ Agency avers that in accordance with “Section 8(d) of E-DP Instruction No. 8-69, 9-36, &36-11, [e]mployees who are issued a RIF letter are to be given priority consideration for all agency vacancies *that are open during the RIF notice period* (before separation.)” (Emphasis added in submission). Agency asserts that the “Superior Court subsequently ordered OEA to determine whether there were vacancies within DFS for which the [Employee] was entitled to priority consideration during the period of September 22, 201, and October 22, 2021.”¹⁶ Agency argues that “Employee now attempts to expand the scope of both the Opinion and OEA Order by contending that she was entitled to priority reemployment consideration from the moment that DFS Interim Director Crispino proposed the RIF to the Mayor’s Office.”¹⁷ Agency contends that “this is outside the scope of the issue on remand, but it is inconsistent with the arguments that Employee has made since filing her Petition for Appeal in November 2021...[i]t is also inconceivable that the agency would be able to give priority reemployment consideration prior to knowing whether or not the RIF was approved.”¹⁸ Agency notes that Employee attempts to expand the scope through her claim that DFS “hired two forensic scientist and a laboratory coordinator on September 13, 2021.” Agency also notes that Employee claims that it hired “at least four ore forensic scientist between September 27, 2021, and October 25, 2021.”¹⁹ Agency cites that Employee references the “Public Body Employee Information as of December 31, 2021, as posted on the DCHR website” to support her claim.²⁰ Agency avers that this list “does not reflect the job openings that existed at DFS during the RIF notice period -or even the time since August 10, 2021...[t]he document merely lists the date that a DFS employee officially started their position, having completed the necessary onboarding and background checks, which may take months to complete.”²¹

Agency also asserts that it has met the requirements regarding Employee’s claim that it has the burden to “demonstrate with reasonable certainty (e.g. through contemporaneous human resources records) that none of these vacancies were open during the pertinent period despite the fact that all of these new employees commenced their employment around this time.”²² Agency cites that in its Exhibit 2, “the date that each one of these positions was posted and open for application” was provided. Further, Agency asserts that this chart reflects that “the latest opening of a forensic scientist position was August 6, 2021, several days earlier than the earliest possible date that Employee contends should be considered.”²³ Agency avers that it provided the positions that were open during the RIF period. It further cites that a Declaration from DFS Human Resources Director Quiyana Hall, explains how each of the documents were created. Agency reiterates that “the only positions that were open at DFS over this period were for Human Resource Specialists.” Agency also asserts that “although it did not believe that it was under any legal obligation to

¹³ *Id.*

¹⁴ *Id.* at Page 4.

¹⁵ Agency’s Sur-Reply Brief at Page 1 (March 27, 2026).

¹⁶ *Id.* at Page 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at Pages 2-3, citing Exhibit 2.

give affected FEU employees priority reemployment consideration because the lesser competitive area no longer existed, [it] still conducted a review of all affected employees with agency openings.”²⁴

Agency argues that Employee’s new claim that “she was placed on the DFS ARPP list on November 15, 2021, as opposed to October 23, 2021,” is incorrect. Agency avers that the Superior Court’s Opinion cites that “[Employee’s] ARPP registration sheet indicates that her date of registration onto the ARPP list was October 23, 2021, more than one month after DFS issued the RIF notice.”²⁵ Agency asserts that Employee incorrectly relies upon the ARPP/DEP Registration Sheet and that the ARPP is “distinguished from the Displaced Employee Program (DEP), which is managed by DCHR, because ARPP is maintained by the terminating agency.” Agency cites that “Employee now contends that she was not placed on the DFS ARPP list until November 15, 2021, because DCHR Specialist Kelli Johnson did not sign her ARPP/DEP Registration Sheet until November 15, 2021.” Agency iterates that “this is not evidence that this is the date that the Employee was placed on DFS’ ARPP list, as the list is maintained by the Agency, not DCHR.”²⁶

Agency reiterates that Employee was not eligible for any vacancies so its delay in placing her on the ARPP constitutes harmless error. Agency asserts that “D.C. Mun Reg. 6-B §2405.7 provides that ‘to be harmful, an error shall be of such magnitude that in its absence the employee would not have been released from his or her competitive level.’” Agency disagrees with Employee’s contention that the delayed placement was not harmless “because DFS -meaning that DFS filled vacancies-two laboratory personnel and two forensic scientists during a period that precedes both the RIF approval date and RIF notice date.” Agency reiterates that “the forensic scientists listings that Employee identified from the Public Body of Information reflected the *start dates* of already hired applicants, whose positions were posted months earlier; not the dates for which those positions were open.” (Emphasis added in original). Agency maintains that the only vacancies available during the RIF period were for Human Resource specialists.²⁷ Agency also disagrees with Employee’s claim that it did not consider “transferable skills, resume, previous job history, educational background, certifications, or professional memberships.” Agency avers that pursuant to DFS RIF procedures applicable at that time, all DFS employees:

“Should update their CVs on a continual basis to reflect training events that occur and submit them...to their respective unit folder on the Public Quality Drive and immediate supervisor. At minimum, the employee shall annually update their CV and submit it to their respective unit folder on the Public Quality Drive and their immediate supervisor by January 15 of year. DOM14 at 2.”²⁸

Agency avers that Employee “maintained a detailed CV on the DFS Public Drive that summarized her education, training, and experience until the time of termination.” Agency further asserts that pursuant to “DFS policy, it was Employee’s responsibility to keep those record updated on the DFS Public Drive, updating her CV at least once annually.”²⁹ Agency maintains that Employee’s CV “does not included any human resource experience.”³⁰ Agency maintains that its delayed placement of Employee of the ARPP was harmless and disagrees with Employee’s contention that she “is entitled to make-whole relief because DFS’ procedural errors were not harmless” Agency asserts that D.C. Mun. Reg 6-B §2405.7 provides that: “The retroactive reinstatement of a person who was separated by a reduction in force under this chapter may only

²⁴ *Id.* at Page citing to Exhibit 3.

²⁵ *Id.* at Page 3.

²⁶ *Id.* at Page4.

²⁷ *Id.*

²⁸ *Id.* at Page 5.

²⁹ *Id.* at Page 5.

³⁰ *Id.*

be made on the basis of a finding of harmful error...To be harmful, an error shall be of such a magnitude that in its absence the employee would not have been released from his or her competitive level.”³¹

Agency avers that its actions complied with the applicable regulations. Agency maintains that because there were no vacancies for which Employee was suited, its delayed placement would not have otherwise prevented her separation from DFS. Agency asserts that Employee’s claim also “ignores the fact that Employee *was* afforded consideration for agency-wide vacancies, as DFS asserted that it reviewed each affected employee’s qualifications to open vacancies...” (Emphasis in original). Agency further argues that “Employee’s conclusion that she is entitled to make-whole relief assumes that priority consideration equates to automatic reemployment.”³² Agency notes that “employees on the ARPP and DEP registers must still compete with other public and internal qualified candidates; and are not guaranteed reemployment within an agency, no matter the occupational series and grade of the position.”³³ Agency maintains that the delayed placement on the ARPP list does not meet the threshold for a finding of harmful error, because “it does not establish that but-for Employee’s delayed placement on the ARPP list, she would have remained employed at DFS.” As such, Agency avers that its delayed placement was harmless error and “there is no further relief that DFS must provide under law.”³⁴

Summary of Employee’s Position

Employee asserts that Agency “now concedes that it failed to place [her] on the priority reemployment list.” Employee cites that “DFS cannot carry its burden of proving harmless error because it cannot show that no vacancies existed with DFS during the relevant period.”³⁵ Employee maintains that she was “harmed by the Agency’s failings, and appropriate make-whole relief is therefore warranted.”³⁶ Employee cites that in “2021, DFS lost its accreditation due to management failures and structural problems.” Further, Employee asserts that “on August 10, 2021, DFS Interim Director Crispino sent the Mayor’s Office a proposed reduction in force (RIF) order, proposing to eliminate [Employee’s] position and those of nine of her Firearms Exam Unit colleagues.”³⁷ Employee also notes that on “September 9, 2021, the D.C. Department of Human Resources (DCHR) approved DFS’s Proposed RIF Order...and on September 22, 2021, DFS issued [Employee’s] RIF notice. Employee avers that while this was happening, “Agency was continuously hiring – before, during, and after the RIF in 2021.”³⁸ Employee contends that “in the period when DFS submitted its RIF proposal and when it notified [her], the Agency filled at least four vacancies, including at least two forensic scientist positions.”³⁹ Employee argues that Agency continued to fill positions after she received notification that her position was being eliminated.⁴⁰ Employee cites that she was terminated effective October 22, 2021 and was not placed on the Agency Reemployment Priority Program (“ARPP”) list until after she was separated from service.⁴¹ Employee avers that the HR Specialist who filled out the form for the ARPP and DEP list completed it on November 15, 2021, while backdating it to October 23, 2021.⁴²

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at Page 6.

³⁵ Employee’s Brief at Page 1. (March 13, 2026).

³⁶ *Id.*

³⁷ *Id.* at Page 2.

³⁸ *Id.*

³⁹ *Id.* at Pages 2-3. Employee identifies the name of those employees in here brief. For the purposes of this decision, their names will only be identified with their first and last initials. Employee asserted that the two Forensic Scientists hired were A.G. and R.Z.

⁴⁰ *Id.* at Page 3. Employee avers that K.W. started on September 27, 2021, K.B and N.W. started on October 12, 2021, and T.W. and E.V. started on October 25, 2021.

⁴¹ *Id.* at Page 3.

⁴² *Id.*

Employee asserts that Agency has the burden to prove that it complied with all RIF procedures and “any other defenses or arguments it may raise.”⁴³ Employee further avers that “Agency’s burden of proof therefore applies with equal force to its assertion of ‘harmless error’, which requires an affirmative showing that there were ‘no vacancies’ at DFS through the RIF notice period.”⁴⁴ Employee cites that Agency “now asserts that she “was placed on the ARPP list on October 23, 2021.” Employee contends that this was “the day *after* [her] employment ended, and more than a month after she received her RIF notice on September 22, 2021.”⁴⁵ (Emphasis in original). Employee contends that “DFS’s list placement obligation arose even earlier (when DFS first determined in August 2021 that she was slated to be RIFed), and that DFS’s claims that she was placed on the list on October 23, 2021, are inaccurate (since the record shows that this did not actually occur until mid-November 2021).”⁴⁶ Employee argues that she was not given priority consideration for any vacancies because “the mechanism for receiving priority consideration is placement on the ARPP list, which DFS failed to do.”⁴⁷ Employee further avers that Agency “makes no claim that it actually provided [her] with priority consideration during this period, nor does it point to any record evidence that would support such a claim.”⁴⁸ Employee argues that DFS cannot claim harmless error because “the available evidence shows that vacancies did arise during the period [Employee] should have been receiving priority reconsideration.”⁴⁹

Employee contends that in order for Agency to meet a burden of proof for harmless error in this matter, “it would need to show that no vacancies existed at agency during the RIF notice period before Employee was placed on the list.”⁵⁰ Employee further argues that the date for consideration for vacancies is August 10, 2021, through November 15, 2021. Employee asserts that because of the DPM §2427.5, Agency’s obligations are “broader” in the context of the determination of when the RIF would impact the employee. To this end, Employee asserts that “DFS must have determined that [Employee] would be adversely affected by the reduction in force at the latest by August 10, 2021, when Interim Director Crispino transmitted his RIF authorization Memo proposing elimination of the FEU to the Mayor’s Office.”⁵¹ Employee avers that the Superior Court “has already correctly recognized that August 10, 2021, rather than September 22, 2021, is the appropriate start date for the priority consideration period.”⁵² Employee also asserts that “DFS’s contention regarding the lack of non-HR vacancies is directly contradicted by available evidence, while its contention about [Employee’s] supposed lack of HR qualifications is entirely unsupported.”⁵³ Employee asserts that between August 10, 2021, and November 15, 2021, Agency filled vacancies for Forensic Scientists, which was her position. Employee also provides that there is “publicly available hiring data showing that additional positions were filled during this time.”⁵⁴ Employee avers that “in total, the available evidence suggests that at least nine started in forensic science-related positions during the period [she] should have been receiving priority consideration.”⁵⁵

⁴³ *Id.* at Page 5.

⁴⁴ *Id.*

⁴⁵ *Id.* at Page 6

⁴⁶ *Id.*

⁴⁷ *Id.* citing to DPM §2427.5 Employee asserts that this provision provides that employees “shall be entered automatically on the reemployment priority list immediately after it has been determined that the employee is to be adversely affected by the reduction in force and not later than the issuance of the notice of the reduction in force.”

⁴⁸ *Id.* at Page 7.

⁴⁹ *Id.* at Page 8.

⁵⁰ *Id.*

⁵¹ *Id.* at Page 9.

⁵² *Id.* citing to *Marso Super. Ct. Decision*.

⁵³ *Id.* at Page 10.

⁵⁴ *Id.*

⁵⁵ *Id.* at Page 11.

Employee also argues that Agency “does not even acknowledge, much less address, any of this evidence...[i]nstead, it merely asserts that the ‘only vacant positions that existed at DFS between September 22, 2021, and October, 22, 2021, were level 13 Human Resource Specialist positions’”.⁵⁶ Employee cites that Agency only provides an “undated, unlabeled, and unsigned spreadsheet or chart attached to its brief, which purports to show that five Human Resources vacancies arose in October 2021.”⁵⁷ Employee further contends that “to the extent that Agency Attachment 2 can be considered “evidence” at all, it at most suggests that human resources vacancies arose during the pertinent period.”⁵⁸ Employee provides that this “carries absolutely no probative value on the relevant question of whether any other non-human resources vacancies arose during this time because there is nothing in either the administrative record or the attachment to even remotely suggest that the report/chart was generated/compiled in a manner that would enable it to speak to this question.”⁵⁹ Employee also avers that DFS’s claims that she was not qualified for HR positions to be “entirely speculative, since its fails to identify any evidence as to what qualifications were actually required.”⁶⁰ Employee asserts that Agency has not provided what the educational requirements were, or what HR experience was required for those positions. As such, Employee maintains that Agency’s harmless error argument must fail.

Employee avers that because Agency’s harmless error claim is insufficient, “the presumptive remedy for an unlawfully conducted RIF is make-whole relief including reinstatement and backpay.”⁶¹ Employee argues that if DFS “had complied with the law, [she] would have had, at minimum, the opportunity to be considered on a priority basis for the numerous forensic science-related vacancies that occurred.”⁶² Employee further contends that “given her excellent performance record, and because there is no evidence that she was unqualified for any of these positions, the priority consideration process, if properly followed, would have prioritized her placement above all of the outside candidates who were actually hired, allowing [Employee] to maintain her employment.”⁶³ Employee cites that the relief is straightforward and that “OEA has consistently recognized, the appropriate way to remedy a termination resulting from an improperly executed RIF is to reverse the termination, offer the employee reinstatement to their prior position or a comparable one, and aware fully backpay and back-benefits from the date of separation, less appropriate deductions for interim earnings.”⁶⁴ As such, Employee maintains that Agency committed harmful error in its delay to place her on the AARP list and that this failure is only remedied by make-whole relief and the reversal of the termination in this matter.

ANALYSIS⁶⁵

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).” On December 16, 2025, the D.C. Superior Court Judge remanded the matter to OEA “to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at Page 12.

⁵⁹ *Id.*

⁶⁰ *Id.* at Page 13.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at Page 14.

⁶⁵ 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”).

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, determine the appropriate remedy.”

1) Whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021.

Here, Agency has conceded, and both parties agree that DFS 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. Consequently, I find that Employee was not 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.

Because Agency asserted it did not place Employee on the ARPP list on September 22, 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. In consideration of this, I find that priority reconsideration for Employee for any vacancies that existed at DFS between September 22, 2021, and October 23, 2021, could not have reasonably occurred without Employee being on the ARPP list during that period. This noted, the undersigned finds that Employee’s contention that her placement on the ARPP list should have occurred by August 10, 2021, to be misguided. Here, the RIF notice was dated as of September 22, 2021. I find that until that timeframe, Agency had no obligation to place employees on the ARPP list, as the RIF may not have been otherwise approved or administered until the notice date. While Employee cites to DPM §2427.5, to support the contention that August 10, 2021, the date the RIF Authorization Memo was submitted to Mayor’s Office for approval should be considered as the beginning of the relevant RIF period. I find that the record does not support that date. Further, the Superior Court noted in its Remand to the OEA that the date timeframe was September 22, 2021, through October 23, 2021. As such, the undersigned finds that to be the applicable timeframe for consideration in this matter.

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.⁶⁶ Therefore, Agency’s lack of priority reemployment consideration for these vacancies was harmless error. Agency asserts that even though it did not place Employee on the ARPP list until October 23, 2021, DFS “still conducted a review of all affected employees with agency openings.”⁶⁷ 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.

⁶⁶ See. Agency’s Brief at Attachment 2. (February 13, 2026).

⁶⁷ Agency sur-reply at Page 3. (March 26, 2026).

Employee on the other hand asserted that based on publicly available hiring data, nine (9) forensic science related positions were available at Agency between August 10, 2021, through November 15, 2021. Employee asserts that because the ARPP/DEP list was not signed until November 15, 2021, then that timeframe should be considered. Agency provides a declaration from its Director of Human Resources, outlining the data available. Therein, it shows that the positions for which Employee references were vacancies that were filled in response to job postings that occurred prior to the RIF period.⁶⁸ A review of the record and the dates provided therein, corroborates the Agency's claims that these forensic scientist positions were not vacant during the relevant period of September 22, 2021, to October 23, 2021. Employee avers that Agency's attachments and exhibits do not support DFS's claims regarding the vacancies and cites that the evidence is probative to meet the Agency's burden of proof that its delay in placing Employee on the ARPP list was harmless error. Further, Employee argues that Agency's claim that Employee was not qualified for the HR vacancies was "speculative" as there is no evidence to suggest that it considered her experience and background, nor did Agency provide the requirements and requisite education for the HR specialist vacancies.

In consideration of the record, I find there were five (5) vacancies at Agency between the period of September 22, 2021, to October 22, 2021, and all those positions were Human Resource Specialist positions. Further, these vacancies were posted by DFS in a time period between October 7, 2021, and October 20, 2021. Agency avers that Employee "maintained a detailed CV on the DFS Public Drive that summarized her education, training, and experience until the time of termination." Agency further asserted that pursuant to "DFS policy, it was Employee's responsibility to keep those records updated on the DFS Public Drive, updating her CV at least once annually."⁶⁹ Agency maintains that Employee's CV "does not include any human resource experience."⁷⁰ As a result, it was determined that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period. Employee does not cite any human resource related experience. Wherefore, I conclude that while there were vacancies at Agency during the relevant period, they were HR related positions that Employee did not qualify for. I also 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.⁷¹ 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*,⁷² 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. Based upon the aforementioned facts in this matter, I find that a review of harmless error is warranted. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, the OEA Board has applied a two-prong analysis: (1) whether Agency's error caused substantial harm or prejudice to Employee's rights; and (2) whether such error significantly affected Agency's final decision to suspend Employee."⁷³ (Emphasis added). 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. Further, the delay in the placement would not have otherwise prevented Employee's separation from service because

⁶⁸ *Id.* at Exhibit 1 and 2.

⁶⁹ *Id.* at Page 5.

⁷⁰ *Id.*

⁷¹ 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."

⁷² OEA Matter No. 1601-0055-17, Opinion and Order on Petition for Review (April 19, 2019).

⁷³ *Id.*

there were no available vacancies at DFS for which she was qualified. Consequently, I find 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.

Additionally, the D.C. Superior Court in *Richard McCraw v. Department of Forensic Sciences*⁷⁴, held that:

“even assuming that Petitioner could identify a defect in the timing or mechanics of ARPP/DEP processing, Petitioner has not demonstrated harmful error. See 6-B DCMR § 2405.7. The priority-reemployment provisions intend to give displaced employees preferential consideration for vacancies, but the record supports OEA's finding that DFS had no vacancies appropriate for affected FEU employees at the time of the RIF. Without evidence of an available position that Petitioner would have obtained during the notice period, the Court cannot conclude that any asserted ARPP/DEP error was outcome-determinative. Further, Petitioner argues that DFS was prohibited from filling positions with new appointees when qualified persons were available on the reemployment priority list. See DPM § 2428.1. OEA found, and the record supports, that the relevant competitive area for purposes of this RIF was the FEU and that FEU positions were abolished. Petitioner has not identified a career service position within that competitive area that DFS filled in a manner prohibited by § 2428.1 during the relevant period. Accordingly, Petitioner has not demonstrated a legal violation warranting reversal or remand.”

In review of the totality of the record and in consideration of the Superior Court's finding in *McCraw v. Department of Forensic Sciences*, I find that Agency's delay in placing Employee on the ARPP list was 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. I further find that Agency's action of separating Employee from service in accordance with the instant 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/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

⁷⁴ No. 2024-CAB-000344 (April 17, 2026). It should be noted that Employee and the employee in *McCraw* were similarly situated. They both were subject to separation pursuant to the same RIF authorization. Additionally, the employee in *McCraw* and Employee held the same positions with Agency, this RIF occurred at the same time, and they were both in the same competitive area and competitive level.