

<sup>2</sup> 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.

Employee appealed the ID to the District of Columbia Superior Court and on October 20, 2025, this Court issued a Memorandum Opinion and Order granting Employee's Petition for Review in Part, and remanded the Case to OEA.<sup>3</sup> Specifically, 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 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." Accordingly, on November 3, 2025, I issued an Order requiring the parties to submit written briefs addressing the above-mentioned issues. Both parties submitted their respective briefs as required. Upon further review of the record, the undersigned issued an Order for Supplemental Documentation on March 17, 2026, requiring Agency to submit additional documentation. On March 30, 2026, Agency filed a Motion for Clarification of OEA's Order for Supplemental Documentation. On March 31, 2026, the undersigned issued an Order granting Agency's Motion for Clarification. Agency's brief was due by April 24, 2026, and Employee had the option to submit a sur-reply brief by May 15, 2026. Both parties have filed 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:

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<sup>3</sup> *Employee v. D.C. Office of Employee Appeals, et. al.*, No. 2024-CAB-337 (October 20, 2025).

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 LAW<sup>4</sup>

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 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 (“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).” 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. Employee 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 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, 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, [and] 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.<sup>5</sup> Agency avers that Employee became entitled for priority reemployment considerations at Agency for positions he 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 he was qualified for. Agency maintains that as a Forensic Science Technician in the Firearms Examination Unit (“FEU”), Employee would have potentially qualified to receive priority reemployment consideration for vacancies in other Agency units that employ Forensic Scientists. Nonetheless, Agency asserts that there were no vacancies at Agency for which Employee qualified between September 22, 2021, to October 22, 2021. Agency explains that the only positions available at DFS during the relevant period were for human resources specialists in the Human Resources Department. Agency cites that although individuals were hired during the relevant time period, no vacancies existed during this time for which Employee could be considered. As such, the delayed placement on the ARPP list was harmless error given the determination that

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<sup>4</sup> 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”).

<sup>5</sup> Agency’s Brief (December 8, 2025).

there were no vacancies for which Employee qualified and entitled to priority reemployment consideration during the RIF notice period.<sup>6</sup>

Additionally, Agency argues that Employee's placement on the ARPP list on October 23, 2021, is evidence that he was given priority reemployment 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.<sup>7</sup>

Agency also argues that because no vacancies existed across DFS that Employee was qualified to fill during the relevant period of September 22, 2021, to October 23, 2021, the delay to place Employee on the ARPP list was harmless. Agency contends that pursuant to Departmental Operations Manuals 14 ("DOM14"), it was Employee's responsibility to maintain a detailed CV on the DFS Public Drive that summarized his education, training and experience until the time of his termination. Agency avers that in reviewing Employee's resume, it did not denote any human resources experience as described in the Human Resources Specialists positions available during the relevant period. Therefore, Agency asserts that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period due to his lack of human resources management experience and specialization.<sup>8</sup> Regarding Employee's assertion that he applied for a Fusion Analyst position at Homeland Security and Emergency Management Agency ("HSEMA") and he was not hired for the position or provided a written justification; Agency contends that DFS only has control over its own agency and not over any other District or non-District agency.<sup>9</sup>

Agency further asserts that Employee was given priority reemployment consideration for any vacancies that arose before and immediately after he was terminated for which he was qualified, and he was found ineligible to fill such vacancies due to his lack of qualifications. Agency reiterates that when it represented that there were no vacancies, it implied that there were no vacancies for which Employee qualified. Agency concedes that it did not place Employee on the ARPP during the relevant period but explains that this was harmless error as there were no available vacancies during the relevant timeframe for which Employee was qualified. Agency cites that its delay in placing Employee on the ARPP list during the relevant timeframe did not cause substantial harm or prejudice to Employee's rights or affect Agency's decision to terminate Employee.<sup>10</sup>

Agency argues that only HR vacancies existed during the relevant timeframe, which Employee was not qualified to fill. Agency explains that the point of contention is not whether individuals were hired, but rather, whether vacancies existed for which Employee should have received priority consideration for during the relevant timeframe. Agency argues that the hiring data is not prove that vacancies existed during the relevant period. Agency asserts that Employee's argument "erroneously conflates filled positions with vacancies and fails to account for the windows between posting vacancies, conducting interviews, performing background checks and other preliminary steps that occur prior to hiring employees, underestimating how long the entire process can take between posting and filling a position." Agency asserts that Employee is not entitled to a make-whole relief as it has met its burden of proving harmless error and Employee has already

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Agency's Reply Brief in Response to Brief of Employee on Remand to OEA (January 21, 2026).

received all the relief that he could be entitled to and there's no further relief that Agency must provide or can provide by law.<sup>11</sup>

### **Summary of Employee's Position**

Employee argues that Agency has conceded that it did not place him on the ARPP during the relevant timeframe of September 22, 2021, to October 23, 2021. Employee avers that the only disputed question on remand was whether Employee was prejudiced by Agency's failure to place him on the ARPP list during the relevant timeframe or whether it was harmless error. Employee states that Agency cannot carry its burden of harmless error because it cannot prove that no vacancies existed within DFS during the relevant period. Employee asserts that publicly available hiring data and Agency's own admissions show that Agency continued to hire forensic scientists during the relevant period. Employee cites that he was well qualified for these positions, thus, an appropriate make-whole relief is warranted.<sup>12</sup>

Employee asserts that Agency placed him on the ARPP list on November 15, 2021, nearly a month after his termination.<sup>13</sup> Employee also cites that Agency conceded that it did not provide him priority consideration for any vacancies that existed prior to his termination. Employee contends that there were numerous vacancies at Agency during the time he should have been on the ARPP list from August 10, 2021, to November 15, 2021. Employee asserts that Agency filled positions during this period; to include at least six (6) Forensic Scientist positions and he did not receive priority consideration.<sup>14</sup> Employee avers that he is entitled to 'make-whole' relief, to include reinstatement and back pay because Agency's failure to follow RIF procedures were anything but harmful. Employee cites that if Agency had followed the RIF procedures, he would have at least had the opportunity to be considered on a priority basis for the numerous vacancies at Agency.<sup>15</sup>

Employee avers that because Agency now concedes that at least some vacancies did arise somewhere in DFS during the relevant period, Agency has failed to pass the harmless error test as articulated by the D.C. Superior Court and this alone should be sufficient to defeat Agency's harmless error defense. Employee asserts that he qualified for the forensic scientist positions that were available at Agency. Employee cites that had Agency complied with the law, he would have at the very minimum had the opportunity to be considered on a priority basis for the numerous vacancies that occurred. He notes that given his excellent performance record and the lack of evidence that he was not qualified for the vacancies, the priority consideration process would have prioritized his placement above all the outside candidates who were hired for the forensic scientist positions, allowing Employee to maintain his employment, which is what the RIF regulation was designed to do. Employee states that the entire process was irredeemably flawed and he was wrongfully terminated as a result. As such, Employee requests that this Office reverse his termination, reinstate him to his prior position of record or a comparable position, and award him full back pay and benefits.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Brief of Employee on Remand to OEA (January 9, 2026).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Employee asserts that Agency provided documentation stating that seven (7) forensic scientist positions were available at Agency from June 17, 2021, to August 6, 2021, however, Agency failed to indicate the dates for which the hiring decisions were made or offers extended for these positions. Employee contends that Agency's Exhibit 3 is insufficient to determine whether the identified forensic scientist vacancies remained unfilled into the RIF period. Employee cites that the 'Posting Closed' information in Agency's Exhibit 3 is an irrelevant data point as a vacancy continues to 'exist' or be 'available' until it is filled.<sup>17</sup>

Employee also asserts that Agency also produced a list of five (5) HR vacancies for the period of September 22, 2021, to October 23, 2021, but the record is not clear as to whether Agency's query only captured vacancies with a posting date falling within the search period or whether it captured vacancies that were posted prior to September 22, 2021, but remained opened beyond that date. Employee argues that Agency's supplemental documentation is insufficient to carry Agency's burden of proof as Agency's Exhibit 2 is insufficient to demonstrate that no previously opened vacancies extended into the RIF period.<sup>18</sup>

## **ANALYSIS**

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 October 20, 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 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, [and to] 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 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. Therefore, I conclude 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. Accordingly, I conclude that it would be impossible to provide

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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 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, he would have been disqualified because of his lack of qualifications and experience. Agency noted that Employee is not entitled to reinstatement at Agency or reconsideration for a position in which he 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 several positions, including at least six (6) forensic scientist positions that he qualified for. Employee further asserted that Agency's submitted documentation, specifically Agency's Exhibit 3, failed to indicate the dates for which the hiring decisions were made or offers extended for these forensic scientist positions. Pursuant to Agency's Exhibit 3 as attached to its Supplemental Brief submitted on April 21, 2026, there were seven (7) forensic scientist vacancies at Agency between the period of May 24, 2021, and August 6, 2021. While Agency does not dispute Employee's assertion that forensic scientist positions which he qualified for were filled during the relevant timeframe Agency argues that these positions were *not vacant* during the relevant timeframe, and that only HR vacancies existed during that timeframe, which Employee was not qualified to fill. (Emphasis added). Agency explains that the point of consideration is not whether individuals were hired, but rather, whether vacancies existed for which Employee should have received priority consideration for during the relevant timeframe. The record supports Agency's assertion that these forensic scientist positions were not vacant during the relevant period of September 22, 2021, to October 23, 2021, as provided by the D.C. Superior Court Judge.

Employee also argued that Agency's Exhibit 2 which details the list of five (5) HR vacancies for the period of September 22, 2021, to October 23, 2021, is not clear as to whether Agency's query only captured vacancies with a posting date falling within the search period or whether it captured vacancies that were posted prior to September 22, 2021, but remained opened beyond that date. Employee asserted that Agency's supplemental documentation is insufficient to carry Agency's burden of proof.

Based on a review of the record, there were five (5) vacancies at Agency between the period of September 22, 2021, to October 22, 2021. These positions were all human resources specialist positions, and they were posted by Agency between October 7, 2021, and October 13, 2021. Agency averred that in reviewing Employee's resume, it did not denote any human resources experience as described in the Human Resources Specialists positions available during the relevant period. Therefore, Agency concluded that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period due to his lack of human resources management experience and

specialization. Employee does not deny that his CV on file did not include any human resources experience. Consequently, I conclude that while there were vacancies at Agency during the relevant period, Employee did not qualify for the vacancies. I also find that because Employee did not qualify for these vacancies, he was not entitled to priority reemployment consideration and Agency's delay to place Employee on the ARPP list constitutes harmless error.<sup>19</sup> 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*,<sup>20</sup> 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."<sup>21</sup> 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, he 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.

Additionally, the D.C. Superior Court in *Richard McCraw v. Department of Forensic Sciences*<sup>22</sup>, 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

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<sup>19</sup> 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."

<sup>20</sup> OEA Matter No. 1601-0055-17, Opinion and Order on Petition for Review (April 19, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> No. 2024-CAB-000344 (D.C. Super. Ct. April 17, 2026). It should be noted that Employee and the employee in *McCraw* were similarly situated as they were both RIF'd pursuant to the same RIF authorization, at the same time, from the same Agency, same position and they were both within the same competitive area and competitive level.

prohibited by § 2428.1 during the relevant period. Accordingly, Petitioner has not demonstrated a legal violation warranting reversal or remand.”

Accordingly, in consideration of the above and the record as a whole, 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