

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

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
GEORGE DUNMORE, JR.,	)	
Employee	)	OEA Matter No. 2401-0141-10
	)	
v.	)	Date of Issuance: May 22, 2012
	)	
DISTRICT DEPARTMENT OF	)	
GENERAL SERVICES <sup>1</sup> ,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Hiawatha Burris, Esq., Employee Representative	)	
C. Vaughn Adams, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On November 5, 2009, George Dunmore, Jr. (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of General Services’ (“Agency” or “DGS”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was November 6, 2009. At the time his position was abolished, Employee’s official position of record within the Agency was a Supervisory Mail Assistant. Agency’s Answer to Employee’s petition for appeal was due December 10, 2009. Agency did not comply. On July 21, 2010, Employee submitted a letter (motion to vacate his RIF), along with several job descriptions and his pay stub, requesting that OEA immediately issue a decision in favor of Employee for Agency’s failure to submit a timely Answer.<sup>2</sup>

This matter was assigned to me on or around February 8, 2012. Subsequently on February 15, 2012, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a statement of good cause based on its failure to provide an Answer to Employee’s petition for appeal. Agency had until February 29, 2012, to respond. Agency

<sup>1</sup> Formerly referred to as Department of Real Estate Services (“DRES”).

<sup>2</sup> See letter from Employee dated July 21, 2010.

complied.<sup>3</sup> Thereafter, on March 5, 2012, I issued another Order scheduling a Status Conference for March 21, 2012, in order to assess the parties' arguments, and to determine whether an Evidentiary Hearing was necessary. The Status Conference was held as scheduled and after considering the parties' position as stated during this Status Conference, I then issued an Order on March 22, 2012, wherein, I required the parties to address whether the RIF was properly conducted in this matter. Agency complied. On April 17, 2012, Employee submitted a notice of Designation of Counsel, naming Attorney Hiawatha Burris, Esq, as his representative, along with a motion for continuance to prepare for hearing. Upon receipt of this motion, the undersigned Administrative Judge ("AJ"), spoke with Employee's attorney to advise him that no hearing has been scheduled in this matter. Thereafter, on April 18, 2012, Employee submitted a motion for extension of time to file his brief. This motion was granted in an Order dated April 20, 2012. Employee had until May 11, 2012, to submit his brief, along with any other supporting documents. Employee has complied. After considering the parties' arguments as presented in their briefs, I decided that an Evidentiary Hearing was not required. And since this matter could be decided based upon the documents of record, no additional proceedings were conducted. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

### FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. I find that in a RIF, I am guided primarily by D.C. Official Code § 1-624.08, which states in pertinent part that:

(a) *Notwithstanding any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).*

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a

---

<sup>3</sup> On March 19, 2012, Employee submitted a reply to Agency's response to the show cause Order. This Office received another copy of the reply on March 20, 2012.

management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) *Notwithstanding any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

(f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:

(1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of this chapter or § 2-1403.03; and

(2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.”<sup>4</sup> The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”<sup>5</sup>

However, the Court of Appeals took a different position. In *Washington Teachers' Union*, the District of Columbia Public Schools (“DCPS”) conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.”<sup>6</sup> The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the

---

<sup>4</sup> *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

<sup>5</sup> *Id.* at p. 5.

<sup>6</sup> *Id.* at 1132.

Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”<sup>7</sup> The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”<sup>8</sup>

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.<sup>9</sup> The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”<sup>10</sup> Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”<sup>11</sup>

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.<sup>12</sup> Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding’, suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That he did not receive written notice thirty (30) days prior to the effective date of their separation from service; and/or
2. That he was not afforded one round of lateral competition within their competitive level.

In instituting the instant RIF, Agency met the procedural requirements listed above, and Employee does not contest this. Furthermore, Chapter 24 of the D.C. Personnel Manual § 2410.4, 47 D.C. Reg. 2430 (2000), defines “competitive level” as:

All positions in the competitive area ... in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

---

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

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

<sup>9</sup> *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

<sup>10</sup> *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

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

<sup>12</sup> *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012.)

Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a “retention register” for each competitive level, and provides that the retention register “shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level.” Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the retention register. An employee’s standing is determined by his/her RIF service computation date (RIF-SCD), which is usually the date on which the employee began D.C. Government service.

### ***Employee’s Position***

- 1) Employee submits that “the termination was unfair, and handled very unprofessional” and as such, he requested that this Office investigate the unfair RIF and he “be reinstated with another agency.”<sup>13</sup>
- 2) Employee maintains that he was RIFed as a result of an unpleasant working relationship with his staff and not for budgetary reasons, noting that Agency has not provided any support for its budget claim.<sup>14</sup>
- 3) Employee further alleges that the RIF was conducted without representation; he was not provided with a list of other affected employees, the Organization chart, retention register, a summary of cost savings that resulted from the RIF, Order authorizing the RIF, list of all proposed positions to be RIFed, vacant positions or Agency’s current vacancies; and he never received a performance rating.<sup>15</sup>
- 4) Employee also requests that this Office immediately issue a decision in favor of Employee for Agency’s failure to submit a timely Answer, and that an Evidentiary Hearing or oral arguments of the RIF process and procedures should be held.<sup>16</sup>
- 5) Additionally, Employee notes that, Agency’s “rationale for Employee’s termination is farcical and pre-textual in nature and intent.”<sup>17</sup> Employee explains that Agency only came up with the RIF after he took appropriate corrective action against employees with whom he had direct supervisory authority and responsibility. He also highlights that upon notifying his supervisor of misconducts involving his subordinates, he was told by the supervisor to start looking for another job, since Agency did not like “whistleblowers.”<sup>18</sup>
- 6) Employee further states that Agency contradicted itself by submitting a response to “[f]ailure to timely response order” and at the same time alleges jurisdiction issues.<sup>19</sup>
- 7) Employee also alleges that after he was terminated, the work he performed was not discontinued, thus, supporting his claim that the RIF was a pretext and that the real

---

<sup>13</sup> Petition for Appeal (November 5, 2009).

<sup>14</sup> *Id.* See also, Employee’s response to Agency’s Brief (April 20, 2012).

<sup>15</sup> See letter from Employee dated July 21, 2010. (Agency provided Employee with a copy of the RIF authorization, and the retention register for all the employees affected by the RIF in its post Status Conference brief).

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

<sup>17</sup> Employee’s response to Agency’s brief (April 20, 2012).

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

<sup>19</sup> *Id.*

reason he was terminated was retaliation and preferential treatment toward younger employees.<sup>20</sup>

- 8) Employee notes that, Agency has failed to address his allegation of unfair labor practices, and to state a claim upon which relief can be granted. Therefore, this Office should find in the form of Summary Judgment in favor of Employee, or in the alternative, the matter be set for hearing.<sup>21</sup>

### ***Agency's Position***

- 1) Agency in its Show Cause Statement submits that, the Show Cause Order was its first notification about Employee's appeal with this Office, noting that Employee suffered no harm for its failure to submit an Answer.<sup>22</sup>
- 2) Agency maintains that this Office does not have jurisdiction because Employee on May 4, 2010, filed a claim with the Office of Human Rights ("OHR") alleging discrimination as the basis for his RIF. Agency explains that OHR gave fully consideration to the merits of Employee's claim and as such, the underlying factual and legal issues surrounding Employee's RIF have been fully litigated and a decision rendered. And as such, OEA should dismiss Employee's appeal as moot on grounds of res judicata and lack of jurisdiction.<sup>23</sup>
- 3) Agency further asserts that the RIF was due to an economic downturn which led to a mandate to reduce agency budget across the District in 2009, explaining that the RIF affected other agencies too.<sup>24</sup> The brief included the Order authorizing the October 2009 RIF (Tab 1), listing Employee's position as one of the positions within the Agency to be abolished pursuant to the RIF.
- 4) Agency also submits that it provided Employee with one round of lateral competition, explaining that, since Employee was the only person in his competitive level, he was not entitled to compete with any other person for purposes of the RIF.<sup>25</sup>
- 5) Agency states that it provided Employee with thirty (30) days written notice prior to the effective date of the RIF. Agency explains that Employee received the RIF Notice on October 5, 2009, and the effective date of the RIF was November 6, 2009.<sup>26</sup>

### ***Single Person Competitive Level***

Employee was the only Supervisory Mail Assistant and was in a single person competitive level. Agency explains that Employee was not entitled to one round of lateral competition since the entire single person competitive level within the competitive area was

---

<sup>20</sup> *Id.*

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

<sup>22</sup> Agency's Response to Show Cause (February 29, 2012).

<sup>23</sup> *Id.* at Exhibit 2. (Apart from his discrimination claim, Employee also alleges in his submissions to this Office that Agency violated the RIF procedures in the instant RIF. As such, the undersigned will address the merits of these allegations).

<sup>24</sup> Post Status Conference Brief (April 5, 2012).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

eliminated. This Office has consistently held that, when an employee holds the only position in his competitive level, D.C. Official Code § 1-624.08(e), which affords Employee one round of lateral competition, as well as the related RIF provisions of 5 DCMR 1503.3, are both inapplicable. An agency is therefore not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position.<sup>27</sup> According to the retention register produced by Agency, Employee was the sole Supervisory Mail Assistant at DGS.<sup>28</sup> Accordingly, I conclude that Employee was properly placed into a single-person competitive level and Agency was not required to rank or rate Employee according to the rules specified in D.C. Official Code § 1-624.08(e) pertaining to multiple-person competitive levels when it implemented the instant RIF.

### ***Notice Requirements***

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF. (emphasis added). Here, Employee received his RIF notice on October 5, 2009, and the RIF effective date was November 6, 2009. The notice states that Employee's position is being abolished as a result of a RIF. The Notice also provides Employee with information about his appeal rights. It is therefore undisputed that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

### ***Evidentiary Hearing***

Employee also requests that an Evidentiary Hearing be held in this matter. However, Employee does not offer any statutes, case law, or other regulations to refute Agency's position that its termination of Employee was due to a mandated RIF and that Agency complied with the applicable RIF regulations. While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record to corroborate that the RIF was conducted unfairly. Consequently, I have determined that there are no material facts in dispute and therefore a hearing is not warranted.

### ***Lack of Budget Crisis***

Employee alleges that Agency has not provided any support for its budget constraint claims. In *Anjuwan v. D.C. Department of Public Works*,<sup>29</sup> the D.C. Court of Appeals ruled that

---

<sup>27</sup> See *Lyles v. D.C. Dept of Mental Health*, OEA Matter No. 2401-0150-09 (March 16, 2010); *Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003); *Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003); and *Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001).

<sup>28</sup> See Agency's Post Status Conference brief, *supra*, at Tab 4.

<sup>29</sup> 729 A.2d 883 (December 11, 1998).

OEA lacked authority to determine whether an Agency's RIF was bona fide. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF..."<sup>30</sup> The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds...[or] management decisions about which position should be abolished in implementing the RIF."<sup>31</sup>

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge ("AJ") has any control.<sup>32</sup>

### ***Failure to Defend***

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), gives an AJ the discretion to dismiss an appeal if a party fails to prosecute or defend. A failure to prosecute or defend includes a failure to submit required documents after being provided with a deadline for such submission. Here, Employee argues that this matter should be dismissed for Agency's failure to provide an Answer. Agency's Answer to Employee's petition for appeal was due on December 10, 2009, but Agency only submitted its Answer after receiving a Show Cause Order from the undersigned. I disagree with Employee's contention. Courts have consistently held that, default judgment should be reserved for the most extreme circumstances and should only be used when lesser sanctions are not appropriate. Additionally, dismissal sanction "should be granted only upon showing of severe circumstances."<sup>33</sup> Severe circumstances include 1) whether the opposing party suffered any prejudice as a result of the failure of the opposing party to provide discovery; and 2) whether that failure was willful.<sup>34</sup>

Here, a review of the record in light of these two factors persuades me that this is not a case where severe circumstances existed. There is no indication that Employee was prejudiced by Agency's failure to provide a timely Answer, or that there was willfulness on the part of Agency. The case had not been assigned to an AJ, it was still waiting its turn, and Agency was unaware of Employee's appeal with this Office. Also, based on the record, Agency timely defended Employee's appeal against Agency at OHR. There is no evidence that Agency consciously disregarded its obligation to respond. Upon receipt of the Show Cause Order, Agency promptly submitted a response, attended the Status Conference scheduled for this matter, and submitted its post Status Conference brief. Consequently, despite Employee's argument that Agency's reason for failing to provide an Answer is not in line with the general rule in determining whether a party has good cause for not filing a required document, I find that, given

---

<sup>30</sup> *Id.* at 885.

<sup>31</sup> *Id.*

<sup>32</sup> *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

<sup>33</sup> *Hinkle v. Sam Blanken & Co.*, 507 A.2d 1046, 1049 (D.C. 1986); citing *Ungar Motors v. Abdemoulaie*, 463 A.2d 686, 688 (D.C. 1983).

<sup>34</sup> *Id.*

the totality of the circumstances, Agency's reason provides a reasonable explanation, and in the interest of justice, Employee's request for Summary Judgment is denied.

### ***Discrimination***

Employee further alleges that the RIF was farcical and pre-textual in nature. He explains that his termination was unfair because Agency failed to address its unfair labor practices which include retaliation and preferential treatment to younger employees. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful discrimination in employment...for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.<sup>35</sup> Additionally, District Personnel Manual ("DPM") § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Moreover, the Court in *Anjuwan v. D.C. Department of Public Works* held that OEA's authority over RIF matters is narrowly prescribed.<sup>36</sup> This Court explained that, OEA lacks the authority to determine broadly whether the RIF violated any law except whether "the Agency has incorrectly applied...the rules and regulations issued pursuant thereto." This court further explained that OEA's jurisdiction cannot exceed statutory authority and thereby, OEA's authority in RIF cases is to "determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs." *Citing Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*<sup>37</sup> stated that, OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation..."<sup>38</sup> In the instant case, Employee alleges that prior to his termination, he was told by his supervisor to start looking for another job since the Agency did not condone with whistleblowers. Employee further maintains that retaliation and preferential treatment to younger employees was the motive behind his termination. However, Employee has failed to provide any credible evidence to substantiate these assertions. Moreover, Employee has already filed a claim with OHR and this issue has been fully litigated and a decision rendered.<sup>39</sup> Considering as much, I find that Employee's claims fall outside the scope of OEA's jurisdiction.

### ***Grievances***

Employee also alleges that after he was terminated, the work he performed was not discontinued, thus, supporting his claim that the financial constraint reason behind the RIF was a pretext. Employee also maintains that, the rationale for his termination was farcical and pre-

---

<sup>35</sup> D.C. Code §§ 1-2501 *et seq.*

<sup>36</sup> 729 A.2d 883 (December 11, 1998).

<sup>37</sup> 730 A.2d 164 (May 27, 1999).

<sup>38</sup> *El-Amin; citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

<sup>39</sup> Agency's Response to Show Cause at Exhibit 2 (February 29, 2012).

textual in nature and intent. However, there is no supporting documentation in the record to support his argument. Moreover, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at an agency.<sup>40</sup> A complaint of this nature is a grievance, and does not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. This does not mean that Employee's objections regarding Agency's post-RIF activity cannot be entertained elsewhere; however, the merits of such claims will not be addressed in this case. This is not to say that Employee may not challenge these issues elsewhere; however, I am unable to address the merits of such claims.

### CONCLUSION

Based on the foregoing, I find that Employee's position was correctly abolished after he was properly placed in a single person competitive level and given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

### ORDER

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

FOR THE OFFICE:

---

MONICA DOHNJI, Esq.  
Administrative Judge

---

<sup>40</sup> *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).