Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
THOMAS R. FRAZIER	)	
Employee	)	
	)	OEA Matter No.: 2401-0058-08
v.	)	
	)	Date of Issuance: March 1, 2010
D.C. DEPARTMENT OF HUMAN	)	
RESOURCES	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Thomas Frazier ("Employee") was a Computer Specialist with the D.C. Department of Human Resources ("Agency"). He began his tenure with the District government in 1967 and continued to be employed until his position was abolished pursuant to a reduction-in-force ("RIF") on February 16, 2008. At the time of the RIF, Employee's position was in the Career Service and was assigned to job series DS-0334. Employee's position received this job series designation on December 5, 2000.

Employee timely filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He argued that Agency's RIF action should be reversed because, according to Employee, Agency had not followed the proper procedures to effectuate the RIF, Agency had not completed a desk audit of his position prior to implementing the RIF, and Agency had used the RIF action as a pretext for terminating him because of his age and health.

The Administrative Judge determined that D.C. Official Code § 1-624.08 was the starting point in this appeal. That section provides that when an employee's position has been abolished pursuant to a RIF, the employee may raise only the following two issues before this office: that the employee did not receive a written notice of at least 30 days prior to the effective date of the separation; and that the employee was not afforded one round of lateral competition within the competitive level. Employee did not raise either of those issues. Instead, the issues which Employee did raise were deemed irrelevant by the Administrative Judge. The Administrative Judge stated that "Employee has raised questions concerning the issue of 'pre-RIF conditions,' which are long established as being outside of the jurisdiction of this Office, and could have been raised as a grievance at the Agency level, prior to the effective date of Employee's RIF-related termination."[1] Because Employee "failed to proffer any evidence that would indicate that the RIF was improperly conducted,"[2] the Administrative Judge dismissed Employee's petition. Thus in an Initial Decision issued August 1, 2008, the Administrative Judge upheld Agency's action.

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1 *Initial Decision* at 7.
2 *Id*.

Thereafter, Employee filed a Petition for Review. Employee raises only one issue in his petition and that is that his employment was "terminated . . . without [being] afford[ed] . . . a round of lateral competition. . . ."[3]

D.C. Official Code § 1-624.08(d) provides the following:

> (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 entitle 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.

The term "competitive level" is defined in the personnel manual as follows:

> [A]ll positions in the competitive area. . . in the same pay system, grade or class, and series which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent in any one (1) position can perform successfully the duties and responsibilities of any position. . . .

As mentioned earlier, Employee was a Computer Specialist and his job series was that of DS-0334. According to the record, there was only one other employee within Employee's competitive level. The Administrative Order authorizing the RIF required that both positions within Employee's competitive level be abolished. Thus, Employee's position, as well as the other Computer Specialist position within Employee's competitive level, was abolished. Even though Employee was entitled to compete for retention, he was limited to competing with only those employees within his competitive level. Because both positions within Employee's competitive level were abolished, there was no one with whom Employee could compete.

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3 *Petition for Review* at 1.

While we are not unsympathetic to Employee's plight, we have no basis upon which to overturn the Initial Decision. Based on the foregoing we are compelled to uphold the Initial Decision and deny Employee's Petition for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

____
Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

____
Richard F. Johns

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Hilary Cairns

____
Clarence Labor, Jr.

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.