SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

SAMPSON ADEBOYE
Vs.
DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS

C.A. No. 2018 CA 006767 P(MPA)

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.
No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Robert E. Morin

Case Assigned to: Judge NEAL E KRAVITZ
Date: September 26, 2018
Initial Conference: 9:00 am, Friday, December 28, 2018
Location: Courtroom 100
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at https://www:dccourts.gov/pa/. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code§ 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Sampson Adeboye
1616 Marion Street, NW
Apt. 137
Washington, D.C. 20001

Petitioner,

v.

DISTRICT OF COLUMBIA,
Office of Employee Appeals

Serve on: Sheila Barfield, Esq.
Executive Direct
Office of Employee Appeals
955 L'Enfant Plaza, Suite 2500
Washington, DC 20024

Respondent.

Civil Action No.:

Judge:

Dated: September 24, 2018

PETITION FOR REVIEW OF AGENCY DECISION

Notice is hereby given that Petitioner, Sampson Adeboye, appeals to the Superior Court of the District of Columbia the Initial Decision on Remand of Senior Administrative Judge (AJ) Joseph E. Lim of the District of Columbia Office of Employee Appeals (OEA), issued on August 21, 2018, when it was served by regular mail, and all rulings encompassed therein, in the matter of Sampson Adeboye v. D.C. Metropolitan Police Department, OEA Matter No. 2401-0024-12R18. Copies of the Administrative Judge's Initial Decision on Remand, as well as the Superior Court of the District of Columbia's Remand Order which remanded this matter to AJ Lim after he issued an Initial Decision which was upheld by OEA Board, are attached hereto as *Attachments 1 and 2* respectively.

A. Description of Decision and Order:

On August 21, 2018, AJ Lim issued an Initial Decision on Remand, upholding the District of Columbia Metropolitan Police Department's (MPD) 2011 removal of Petitioner through a Reduction in Force (RIF). Petitioner challenged his removal alleging that the RIF was not conducted in accordance with applicable rules, laws and regulations, specifically that MPD had failed to consider job sharing or reduced hours prior to conducting the RIF.[1] In his Decision on Remand, AJ Lim found that MPD did not consider job sharing or reduced hours, but upheld the RIF nonetheless. *Attachment 1*, at p. 4, 8.

Concise Statement of the Agency Proceedings and the Decisions as to Which Review is Sought and the Nature of the Relief Requested by Petitioner:

Petitioner, Mr. Sampson Adeboye, was an employee of MPD until he was removed from his position on October 14, 2011, as the result of a realignment and RIF. Petitioner timely filed a Petition for Appeal of his removal with OEA on November 10, 2011.

After Petitioner's case was assigned to AJ Lim, AJ Lim determined that the general RIF Statute, found in D.C. Code §1-624.02 and §1-624.04 applied to this RIF, not the Abolishment Act. D.C. Code §1-624.04 states an employee can appeal a RIF to the Office of Employee Appeals on the basis that, "he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules or regulations issued pursuant to this subchapter." *D.C. Code §1-624.04.*

Numerous briefs and filings were made throughout the Appeal process and an evidentiary hearing was held on July 7, 21015. Since the AJ determined that the broader RIF statute applied

[1] Numerous other arguments were raised during the appeal of this 2011 RIF, however, this is the only argument that was addressed in AJ Lim's August 21, 2018, Initial Decision on Remand.

to the RIF rather than the Abolishment Act, he was obligated to address any issues and arguments raised by Petitioner that Petitioner believed established that the Agency's RIF was not performed in accordance with applicable rules, laws and regulations.

On August 31, 2015, the AJ issued his Initial Decision and found that the Agency's RIF complied with all applicable rules, laws and regulations. Petitioner then filed a Petition for Review with OEA's Board on October 5, 2015 and on March 7, 2017, the Board issued its Opinion and Order on Petition for Review, denying the Petition for Review.

On April 7, 2017, Petitioner filed a Petition for Review with the Superior Court for the District of Columbia regarding the OEA's Decision upholding MPD's RIF of Petitioner. On February 18, 2018, Judge Florence Y. Pan issued an Order, granting the Petition for review and remanded the matter back to the OEA to determine whether or not the Agency considered job sharing and reduced hours, as required by D.C. Code 1-624.02(a). On August 21, 2018, AJ Lim issued an initial Decision on Remand, finding that the Agency failed to consider job sharing and reduced hours as required by D.C. Code 1-624.02(a), but upheld the RIF of Petitioner nonetheless.

Petitioner hereby files this Petition for Review regarding the AJ's Initial Decision on Remand in accordance with Superior Court Civil Procedure Rules, XV, Agency Review, Rule 1, asserting that the AJ's decision is contrary to law and not supported by substantial evidence. Therefore the AJ's Decisions should be reversed.

B. Address of Respondent, Agency or Official:

District of Columbia Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, D.C. 20024

C. Names and Addresses of All Other Parties to the Agency's Proceedings:

District of Columbia Metropolitan Police Department
300 Indiana Avenue, NW
Washington, D.C. 20001

D. Names and Addresses of Parties or Attorneys to be Served:

Sheila Bartfield, Esq.
Executive Director
Office of Employee Appeals
1100 Fourth Street, SW Suite 620 East
Washington, D.C. 20024

Peter Newsham
Chief of Police
District of Columbia Metropolitan Police Department
300 Indiana Avenue, NW
Washington, D.C. 20001

Karl Racine, Attorney General
c/o Andrea Comentale, Esq.
Section Chief—Personnel and Labor Relations
c/o Frank McDougald, Esq.
Assistant Attorney General
Personnel and Labor Relations Section
Office of the Attorney General
441 Fourth Street, NW
Room 1180N
Washington, D.C. 20001

E. Copy of The Agency's Decision or Order Sought to be Reviewed:

A copy of the Agency Decision and Order sought to be reviewed are attached to this Petition.

Dated: September 24, 2018

Respectfully submitted,

Robert J. Shore, Esq. (DC Bar No. 999552)
Assistant General Counsel
National Association of Government Employees
1020 N. Fairfax Street, Suite 200
Alexandria, VA 22314
Telephone: (703) 519-0300
Facsimile: (703) 519-0311
RShore@nage.org

Attorney for Petitioner

CERTIFICATE OF SERVICE

Although proof of service will be filed separately with the Court once this Petition is accepted, I hereby certify that a true and correct copy of the foregoing Petition for Review of Agency Decision will be served via certified mail, return receipt requested, on the following:

Sheila Barfield, Esq.
Executive Director
Office of Employee Appeals
955 L'Enfant Plaza, Suite 2500
Washington, DC 20024

Peter Newsham
Chief of Police
District of Columbia Metropolitan Police Department
300 Indiana Avenue, NW
Washington, D.C. 20001

Karl Racine, Attorney General
c/o Loren AliKham
Solicitor General
Office of the Attorney General for the District of Columbia
One Judiciary Square
441 Fourth Street, NW
Room 630 South
Washington, D.C. 20001

Date: September 24, 2017

Robert J. Shore, Esq. (DC Bar No. 999552)
Assistant General Counsel
National Association of Government Employees
1020 N. Fairfax Street, Suite 200
Alexandria, VA 22314
Telephone: (703) 519-0300
Facsimile: (703) 519-0311
RShore@nage.org

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
Samson Abeboye, Darryl Boone, Employees	OEA Matter No. 2401-0024-12R18 OEA Matter No. 2401-0019-12R18
v.	Date of Issuance: August 21, 2018
Metropolitan Police Department Agency	Joseph E. Lim, Esq. Senior Administrative Judge

Frank McDougald, Esq., Agency Representative
Robert Shore, Esq., Employee Representative

INITIAL DECISION ON REMAND

INTRODUCTION

On November 10, 2011, Samson Abeboye and Darryl Boone ("Employees") filed separate Petitions for Appeal from the Metropolitan Police Department's ("MPD" or "Agency") final decision to separate them from government service pursuant to a Reduction-in-Force ("RIF"). This matter was assigned to me on July 26, 2013. After several continuances requested by the parties, I conducted a hearing on July 7, 2015. On August 25, 2015, and September 15, 2015, I issued Initial Decisions ("ID") upholding the RIF.[1]

Employees appealed, and on March 7, 2017, the OEA Board upheld the IDs.[2] The decisions then were appealed to the D.C. Superior Court. On February 13, 2018, the D.C. Superior Court held that, while there was substantial evidence to support the grounds for upholding the validity of the RIF, the burden of proof on whether Agency considered job sharing and reduced hours rested with Agency, not Employees. Thus the D.C. Superior Court remanded the matter to the undersigned with instructions for further proceedings consistent with its

1 *Abedoye v. MPD*, OEA Matter No. 2401-0024-12 (August 25, 2015) and *Boone v. MPD*, OEA Matter No. 2401-0019-12 (September 15, 2015). In the interest of judicial efficiency and at the request of the parties, these two matters were consolidated for the remand.
2 *Abedoye v. MPD*, OEA Matter No. 2401-0024-12, *Opinion and Order on Petition for Review* (March 7, 2017) and *Boone v. MPD*, OEA Matter No. 2401-0019-12, *Opinion and Order on Petition for Review* (March 7, 2017).

opinion.[3] Specifically, the Court seeks a determination of whether Agency proved that it considered job sharing and reduced hours in carrying out its RIF action.

I held a status conference on March 16, 2018, and ordered the submission of information and briefs by close of business July 13, 2018. The record is closed.

JURISDICTION

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

ISSUES

1. Whether Agency met its burden of proof that it implemented D.C. RIF statute, D.C. Official Code §1-624.02(a)(4).

2. If not, then whether Agency's action separating Employees pursuant to a RIF should be upheld.

Position of The Parties

Agency argues that it has proven by a preponderance of the evidence that it considered job sharing and reduced hours before it implemented its RIF. Agency also argues that, even if it failed to do so, such was harmless error. Employees argue that this omission by Agency is fatal to the RIF and that they should be returned to work.

ADDITIONAL FINDINGS OF FACT, ANALYSIS AND CONCLUSION[4]

Whether Agency met its burden of proof regarding job sharing and reduced hours in carrying out its RIF action.

The RIF statute clearly provides that Agency should consider job sharing and reduced hours for employees that have been subjected to a RIF. Of specific relevance to this case are D.C. Official Code § 1-624.02, which tracks the Omnibus Personnel Reform Amendment Act (OPRAA) of 1998 § 101(x). This section reads in pertinent part as follows:

D.C. Official Code § 1-624.02. Procedures

(a) Reduction-in-force procedures shall apply to the Career and Educational

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3 *Abedoye v. MPD*, Case No. 2017 CA 2469 (D.C. Super. Ct. February 13, 2018) and *Boone v. MPD*, Case No. 2017 CA 2471 (March 13, 2018).

4 These findings of fact are in addition to the findings of fact listed in the August 25, 2015, Abedoye ID and September 15, 2015, Boone ID and are incorporated herein.

Services . . . and *shall* include:
(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
(2) One round of lateral competition limited to positions within the employee's competitive level;
(3) Priority reemployment consideration for employees separated;
(4) *Consideration of job sharing and reduced hours*; and
(5) Employee appeal rights. *See* D.C. Official Code § 1-624.04. [emphasis applied.]

Agency argues, however, that Chapter 24 of the District of Columbia Personnel Manual ("DPM" or "DCMR"), which sets forth the District of Columbia Personnel Regulations regarding RIFs, made the consideration of job sharing and reduced hours optional. *See* 6B DCMR § 2400 *et seq.* Specifically, 6B DCMR § 2403.2 states: "An agency *may*, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency. Examples of such actions are the following: (a) Job sharing and reduced working hours under section 2404 of this chapter[.]" [emphasis applied.]

I find that Agency is wrong in this regard, as the plain meaning of the statutory language is not ambiguous and the intent of the legislature is clear. Where there is a contradiction between a statute and a regulation that implements that statute, then the plain meaning of D.C. Official Code § 1-624.02 supersedes the contradicting language of 6B DCMR § 2403.2.[5]

Looking at the evidence presented at the hearing, the only testimonial evidence presented by Agency on its efforts regarding the consideration of job sharing and reduced hours is as follows:

Barry Gersten (Transcript p. 63)

Barry Gersten was the Chief Information Officer of the MPD's Office of Information Technology who sought to improve operational performance by replacing staff for personnel with higher technical capabilities.

Q: So you know if they were retained by MPD or outsourced to other organizations?

Gersten: It varies by position. Some were outsourced. Some were retained.

Q: So some of the employees could have been transferred to another area?

Gersten: I'm not sure how to answer that. I can't answer that.

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5 See *Expedia, Inc. v. District of Columbia*, 120 A.3d 623 (2015).

Diana Haynes Walton (Transcript p. 94-95)

Diana Haynes Walton is Agency's Director of Human Resources. She testified that Gersten discussed his plan to realign his IT staff and she then provided the advice and resources to properly implement the RIF in accordance with D.C. rules and regulations.

> Q: Are you aware of whether Mr. Gersten considered job sharing or reduced hours prior to conducting – or compressing the Realignment?
> .....
> Walton: I don't – I am not aware.

Agency claims that it met its burden of proof that it considered job sharing or reduced hours when Walton testified that she consulted with Lewis Norman on the appropriate way to implement the RIF and when Lewis Norman testified that Agency met the personnel guidelines in implementing the RIF.[6]

In other words, Agency wants us to believe that since it sought guidance in implementing its RIF, we should just assume that it followed every directive of the relevant statutes and regulations. However, when Agency's witnesses were directly asked regarding whether he or she considered job sharing or reduced hours, they replied they did not know. Thus, the evidence contradicts Agency's assertion.

I therefore, find that Agency failed to meet its burden of proof that it considered job sharing or reduced hours when it implemented its RIF.

Whether Agency's action separating Employees pursuant to a RIF should be upheld.

With respect to a RIF, 6-B DCMR § 2405.7 provides the following:

> The retroactive reinstatement of a person who was separated by a reduction in force under this chapter may only be made on the basis of a finding of a harmful error as determined by the personnel authority or the Office of Employee Appeals. 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.

Thus, for the error to be considered harmless, the evidence must show that even if Agency had considered job sharing and reduced hours, the affected employees would still have been subjected to a RIF.

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6 Agency's Brief in Response to Order dated April 30, 2018, p. 5-7.

Based on the testimonial evidence presented at the hearing, I find that it is undisputed that Agency's entire Office of the Chief Information Officer was revamped and realigned to better cope with its data information technology needs. All of the positions in that Office were abolished. Some of the staff were sent to other organizations while the rest were RIFed. Only after the RIF was implemented, were new positions created that would better serve Agency's needs as evidenced from the following:

Diana Haynes Walton (Transcript p. 75-76)

> Q: Okay. Now, I think you mentioned the reason for RIFs. What were the reasons for the RIFs in this particular situation?
>
> Walton: In this case it was shortage of work, and I don't recall the other, but basically it was a shortage of work.
>
> Q: Okay. Let me see if I can refresh your recollection. I am going to have this marked as [Exhibit] 2...okay. And so what were the reasons for the --
>
> Walton: The realignment itself, and shortage of work.

Diana Haynes Walton (Transcript p. 87)

> Walton: There were – the new positions – at the time that the RIF took place, there weren't any new positions. There were – what Mr. Gersten did – he had proposed some new positions, but the new positions didn't come to fruition until sometime after the RIF. So he made the proposal, we got permission to conduct the RIF, the RIF was conducted. Once the RIF was conducted and the positions became vacant, then they had the funding to do – to create new positions. So the new positions that Mr. Gersten created probably didn't come to fruition until December of 2011 or so.

Diana Haynes Walton (Transcript p. 106)

> Walton: ...But if you're abolishing the entire job series and everyone in the series, then it's not going to have an impact.

Diana Haynes Walton (Transcript p. 110-111, 113)

> Walton: ...they were abolishing all the positions and they made a decision that none of those positions were going to be part of the reorganization and realignment...
>
> Walton: ...the purpose of the realignment was to abolish the positions that were – to abolish certain positions so that you could use the funding from those positions

to hire higher level Information Technology Specialists.

The following uncontroverted evidence also shows that the people subjected to the RIF did not have the technical skillset or certifications for either the new positions created nor were there any of the old positions left that used their skillsets.

Barry Gersten (Transcript p. 44)

> Q: And Mr. Abedoye?
>
> Gersten: He was in the admin group…He did some basic tracking of the budgets, he handled invoicing for outside agency use of some of our technologies. We had a charge back program. And he handled some procurements.

Samson Abedoye, Employee (Transcript p. 187)

> Q: Okay. Now, when you were working for MPD, what was your position? What did you do?
>
> Abedoye: I worked on the IT budget…I am in charge of preparing the annual non-personnel services budget. The non-personnel services budget means it doesn't include employees' name or employees' salaries and – or their leave or anything. It just means bank, goods, and services, contracts.

Barry Gersten (Transcript p. 50-51)

> Q: Okay. Now, with respect to Mr. Gamble,[7] did he have the certifications that you believed were required to do the work of Microsoft?
>
> Gersten: He did not.
>
> Q: Okay. And likewise with Mr. Boone, did he have the certifications that you felt were necessary to perform the work of Microsoft?
>
> Gersten: I would say that neither of the certifications or the years of experience and background required to do the work. [sic].
>
> Q: Okay. They worked on mainframe. "They" being Mr. Gamble and Mr. Boone.
>
> Gersten: Mr. Boone worked on mainframe.

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7 Gamble is an employee who was also RIFed.

Q: He worked on mainframe. Okay. And, I guess, the mainframe had been outdated or eliminated?

Gersten: It had been retired. So it had been replaced with other new technologies.

...

Q: Okay. So at the time you arrived, what was Mr. Boone doing?

Gersten: He was providing support for some documentation on the old systems, kind of doing some housecleaning as we retire those and put them away.

Employees argue that Agency should have given the RIFed employees new training so that they could transition to the new positions created. However, the parties did not cite any law or regulation that obligates Agency to incur this additional cost. In addition, the following evidence reveals that even after some of these employees did undergo additional training, they still lacked the technical proficiency and required certifications for the new positions.

Barry Gersten (Transcript p. 52-53)

Administrative Judge: And did the Agency think about giving them the training so they could get the certifications?

Gersten: I think for many of the people impacted by the RIF, they actually did have to go through the training, but that they didn't retain or have the skills to do the work, though. [sic].

Administrative Judge: They went through the training, but they didn't pass the test.

Gersten: They didn't take the test. They went through some training in some of the areas that we were pursuing, but they did not use those skills or absorb or retain them. So the training was not effective for them to contribute to the footwork that we were trying to get done.

Barry Gersten (Transcript p. 59-60)

Q: You testified that the employees—or some of the employees were RIF'd because they lacked the skill set to perform Microsoft...How did you know they lacked the skill set to perform Microsoft?

Gersten: From interactions with them, requesting them to perform certain tasks and them being unable to do so.

...So the tests are at the initiative of the employee. They are not a directive. There

could be a requirement for them in some positions, but it's not a directive from me that they need to take the test.

Q: Did any of the contractors perform work that had been performed by employees who were RIF'd?

Gersten: No.

Diana Haynes Walton (Transcript p. 112-113)

Q: But there was nothing requiring the positions occupied by individuals to be abolished; correct? The 334 positions that were occupied by individuals, nothing required you to abolish them in 2011? Nothing changed, correct?

Walton: Well, what changed was Mr. Gersten did an assessment of his staff and determined he needed IT (Information Technology) specialists. And IT, if you look at the job series for Computer Specialists and the job series for IT Specialists, they're different jobs.

Thus, based on the evidence adduced at the hearing, I make the following additional findings of fact: The separated Employees were the only members of his or her competitive level; their former positions were abolished; and their technical skills and/or certifications did not meet the new job requirements. I also find that despite whatever additional training that Employees underwent, they still failed to exhibit the required technical proficiency or pass the certification required for positions created after the realignment. I also find that because Agency's computer related positions were to be abolished, there were no positions for Employees to job share nor were reduced hours an option.

Therefore, I find that even if Agency had considered job sharing and reduced hours for Employees, the RIF would still have occurred. Accordingly, I conclude that, based on these particular set of facts, Agency's failure to either consider job sharing and reduced hours, or more specifically, its failure to meet its burden of proof that it considered such, is harmless error. Thus, in accordance with 6-B DCMR § 2405.7, the RIF is upheld.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employees's positions through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge

NOTICE OF APPEALS RIGHTS

This is an Initial Decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a Petition for Review with the office. A Petition for Review must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the Initial Decision in the case.

All Petitions for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;

2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;

3. The finding of the presiding official are not based on substantial evidence; or

4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

All Petitions for Review should be supported by references to applicable laws or regulations and make specific reference to the record. The Petition for Review, containing a certificate of service, must be filed with Administrative Assistant, D.C. Office of Employee Appeals, 955 L'Enfant Plaza Suite 2500, Washington, D.C. 20024. Four (4) copies of the Petition for Review must be filed. Parties wishing to respond to a Petition for Review may file their response within thirty-five (35) calendar days, including holidays and weekends, after the filing of the Petition for Review.

Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.

NOTICE OF APPEALS RIGHTS

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2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;

3. The finding of the presiding official are not based on substantial evidence; or

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Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.

CERTIFICATE OF SERVICE

I certify that the attached **INITIAL DECISION** was sent by regular mail on this day to:

Samson Abeboye
1616 Marion Street, NW
137
Washington, DC 20001

Darryl Boone
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August 21, 2018
Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SAMSON ADEBOYE	:	Case Number: 2017 CA 2469 P(MPA)
v.	:	Judge: Florence Y. Pan
DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS	:	

ORDER

This matter comes before the Court upon consideration of Samson Adeboye's ("petitioner") Petition for Review of Agency Decision ("Pet."), filed on April 7, 2017. Petitioner requests review of an Opinion and Order on Petition for Review, issued by the District of Columbia Office of Employee Appeals Board ("the Board") on March 7, 2017. On August 28, 2017, petitioner submitted a brief in support of his petition ("Pet. Brief"). On October 2, 2017, the District of Columbia Metropolitan Police Department ("MPD"), as an intervenor, filed a brief in support of the Board's Decision. The Office of Employee Appeals ("OEA") has not filed a brief in response to the petition for review.

The Court has considered the pleadings, the relevant law, and the entire administrative record. The Court also held a hearing on the petition on February 9, 2018. For the following reasons, the Court grants the petition for review in part, and remands this case to the OEA for further proceedings on the narrow issue of whether MPD met its burden of demonstrating that it considered job sharing and reduced hours pursuant to D.C. Code § 1-624.02(a)(4).

PROCEDURAL HISTORY

The instant petition for review arose out of petitioner's separation from employment with the Office of the Chief Information Officer ("OCIO") at MPD pursuant to a Reduction in Force ("RIF"). *See generally* Pet. Petitioner was employed as a staff assistant with MPD for 17 years,

and was employed by the District of Columbia government for 19 years in total. *See* A.R. at 1. Pursuant to Title 6 of Chapter 24 of the District of Columbia Personnel Regulations, a RIF must be preceded by a realignment within that agency. *See, e.g.*, A.R. at 26. RIF procedures are either governed by D.C. Code §§ 1-624.02 and 04, or by § 1-624.08. *See* A.R. at 710. Sections 1-624.02 and 1-624.04 are generally applicable, while Section 1-624.08 (the Abolishment Act), only applies where the RIF is conducted for budgetary purposes. *See* A.R. at 748.

On August 24, 2011, Cathy L. Lanier, Chief of Police for MPD, submitted a memorandum to Allen Lew, City Administrator, "requesting authorization to realign programs and functions" within the OCIO, and to "abolish 14 positions in the OCIO" through a RIF. *See* A.R. at 26. Attached to the memorandum was Administrative Order-FA-2011-01, which included the 14 positions selected for abolishment pursuant to the RIF, including petitioner's staff assistant position, Series/Grade CS-301-9. *See* A.R. at 27. The Realignment Approval Form ("RAF"), which must be approved before a RIF can be implemented, was approved by Shawn Y. Stokes, the Director of the District of Columbia Department of Human Resources ("DCHR") on September 8, 2011, and the City Administrator concurred on September 13, 2011. *See* A.R. at 357. Petitioner challenges the authenticity of the signature of the City Administrator on the RAF. *See* Pet. Br. at 9-12. On September 14, 2011, the RIF was approved by Mr. Stokes. *See* A.R. at 31. That same day, petitioner received a letter from the Chief of Police, providing him with 30 days' notice that, due to a RIF in competitive area DS-0301-09-04-N, he would be separated from service, effective October 14, 2011. *See* A.R. at 7-8.

Initial Decision

On November 10, 2011, petitioner filed an appeal of his termination with OEA. *See* A.R. at 1. In his appeal, petitioner indicated that on September 14, 2011, he filed an "oral

grievance[,]" and that a decision regarding this grievance was issued on October 7, 2011. *See* A.R. at 1, 4. Petitioner further asserted that MPD "improperly performed a RIF and failed to engage in good faith practice in initiating the RIF. The RIF was not initiated for the purposes of the budget, realignment, or reorganization, under [6 DCMR § 2401], but solely to reclassify existing positions." *See* A.R. at 5. He also argued that "the Agency did not provide opportunities to fill other positions or training for reclassified positions[,]" and thus "failed to take steps to minimize adverse impacts on the employees or the Agency, as required under [6 DCMR § 2403]." *See id.* Further, he asserted that "competitive levels, retention standing and employee retention register were not properly defined under . . . [6 DCMR §§ 2408-2421]" and that MPD "failed to follow established past practices and procedures" by "fail[ing] to engage in Impact and Implementation (I & I) bargaining prior to the RIF," which is required by the Collective Bargaining Agreement. *See id.*

On August 2, 2013, the appeal was assigned to Administrative Law Judge Joseph E. Lim ("ALJ"). *See* A.R. at 714. On October 3, 2013, the ALJ ordered the parties "to brief the statutes applicable to this RIF." *See* A.R. at 710. On February 27, 2014, the ALJ determined that, because MPD did not cite a budgetary rationale for the RIF, the RIF is governed by D.C. Code §§ 1-624.02 and 1-624.04. *See* A.R. at 262. In the proceedings before the ALJ, MPD argued that (1) the RIF was conducted due to a shortage of work and realignment; (2) 6 DCMR § 2403 does not *require* MPD to minimize adverse impacts, but merely provides that an agency *may* do so; (3) MPD was not required to provide petitioner with opportunities to fill other positions or training for reclassified jobs; (4) petitioner was given proper notice; and (5) OEA lacks jurisdiction over interpretation of collective bargaining agreements. *See* A.R. at 348-350.

In response, petitioner argued that MPD improperly conducted the RIF because (1) MPD failed to follow realignment procedures, including obtaining the necessary approval to conduct the RIF; (2) the RIF was based on documents that contained harmful errors as to "the employees list of positions in the current organizational chart, staffing patterns and realignment crosswalk"; (3) MPD failed to provide petitioner with one round of lateral competition, to properly include or apply the priority reemployment list, to provide appropriate notice to petitioner, and to consider job sharing and reduced hours prior to conducting the RIF, as required by D.C. Code § 1-624.02; and (4) there was not a shortage of work and realignment of petitioner's position could have been accomplished without the RIF. *See* A.R. at 380-405.

On July 7, 2015, the parties appeared for a hearing before the ALJ, at which the ALJ heard testimony from nine witnesses. *See* A.R. at 710-714. On August 25, 2015, the ALJ issued his Initial Decision, addressing two issues: (1) "[w]hich D.C. RIF statute, D.C. Official Code § 1-624.08 (Abolishment Act) or D.C. Official Code § 1-624.02 and 1-624.04, applies where the Agency's stated rationale for its RIF is realignment and work shortage"; and (2) "[w]hether Agency's action separating Employee pursuant to a RIF was conducted in accordance with applicable law, rule or regulation." *See* A.R. at 710-711.

The ALJ upheld the RIF, holding that (1) the RIF was "conducted for non-budgetary reasons, and thus is governed by D.C. Official Code § 1-624.02 and 1-624.04 and not with the Abolishment Act"; and (2) the RIF was conducted in accordance with applicable laws, rules, or regulations. *See* A.R. at 715-721. With respect to the legality of the RIF, the ALJ determined that (1) City Administrator Lew's signature on the "RIF documents" is "timely and authentic", *see* A.R. at 719; (2) the information on petitioner's retention register is accurate and he was the sole occupant of the Staff Assistant position, grade 9; (3) petitioner failed to show that certain

information on his Personnel Standard Form 50 was inaccurate, which undercuts plaintiff's allegation that MPD failed to allow him one round of lateral competition within his competitive level, *see* A.R. at 719; (4) because petitioner was the only occupant of his competitive level, and the entire competitive level was abolished, the provisions of D.C. Code § 1-624.08(e) (requiring one round of lateral competition), and the related provisions of 5 DCMR § 1503.3, are "inapplicable, and the Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing [Mr. Adeboye's] position," *see* A.R. at 719-20; (5) petitioner received proper notice of separation from service; and (6) OEA lacks authority to review MPD's decision to retain or abolish particular positions during a RIF. *See* A.R. at 720-21.

The OEA Board Decision

On September 29, 2015, Mr. Adeboye petitioned the Board to review the ALJ's Initial Decision. *See* A.R. at 724. Petitioner argued that the Initial Decision did not adequately address his arguments that: (1) MPD did not receive the necessary approvals or concurrence for the RIF; (2) MPD relied on inaccurate documentation in seeking approval of the realignment and RIF; (3) MPD failed to timely place petitioner on priority reemployment as required by D.C. Code § 1-624.02(a)(3); and (4) MPD failed to consider job sharing or reduced hours as required by D.C. Code § 1-624.02(a)(4). *See* A.R. at 726-731.

Petitioner also argued that petitioner was placed in the incorrect competitive level, and that the RIF was based on documents that contained inaccurate information. *See* A.R. at 732-735. MPD argued that (1) the ALJ considered all claims raised by the facts; (2) petitioner's competitive level was correctly stated; and (3) the Initial Decision was based on substantial evidence. *See* A.R. 740-744.

On March 7, 2017, the Board issued its Opinion and Order on Petition for Review, denying the petition for review on the grounds that (1) "there is substantial evidence in the record to support a finding that [e]mployee was separated from service pursuant to the RIF in accordance with all applicable laws, rules, and regulations"; and (2) the Initial Decision addressed all the issues raised in petitioner's appeal. *See* A.R. at 747-759.

Specifically, the Board held that the ALJ sufficiently addressed petitioner's argument that MPD did not receive the necessary approvals for the RIF and that MPD utilized inaccurate and incomplete documents to support the institution of the RIF. *See* A.R. at 761-762. With regard to petitioner's job sharing argument, the Board found that petitioner "failed to present any documentary or testimonial evidence to support a finding that it did not consider these actions prior to conducting the RIF[,]" and that "it is within the Agency's discretion to consider job sharing or reduce hours[,]" citing 6 DCMR § 2404.1, which provides that "[a]n employee may be assigned to job sharing or reduced working hours" under certain conditions.[1] *See* A.R. at 753; 6 DCMR § 2401.1. The Board also noted that "the Office has no authority to review management considerations that underlay Agency's exercise of its discretion." *See* A.R. at 753. With regard to priority re-employment, the Board found that the record indicated that petitioner was placed on the priority re-employment list and that petitioner failed to present evidence that MPD violated this requirement. *See* A.R. at 754. The Board also held that petitioner was placed in the correct competitive level. *See* A.R. at 756-757.

[1] The Board also referenced 6 DCMR § 2403.2 , which provides that "[a]n agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency[,]" and that one example of such an action is job sharing and reduced working hours. *See* 6 DCMR § 2403.2.

The Petition for Review

Following the issuance of the Board's Decision, petitioner filed the instant petition for review. *See generally* Pet.; *see also* Pet. Br. Petitioner contends that the Board's Decision should be reversed and vacated because it is not supported by substantial evidence and is clearly erroneous as a matter of law. *See* Pet. Br. at 1. Petitioner argues that the following findings are not supported by substantial evidence: (1) the RAF was signed by the City Administrator prior to MPD conducting the RIF; (2) MPD received the required approval prior to conducting the RIF; and (3) the documentation used to support the RIF was accurate. *See* Pet. Br. at 9-18. Second, petitioner contends that the ALJ's conclusion that petitioner was required to present evidence that MPD did not consider job sharing and reduced hours is contrary to law, because MPD has the burden to prove that they considered job sharing and reduced hours before instituting the RIF. *See id.* 18-19.

The OEA did not file a brief in response to the petition for review. MPD, as an intervenor, filed a brief in support of the Board's Decision, arguing that (1) there is substantial evidence that the City Administrator's signature on the RAF was authentic; (2) substantial evidence shows that the RIF was approved by the Director of the Department of Human Resources; (3) petitioner fails to establish errors in the RIF documents or that MPD conducted the RIF improperly; and (4) the ALJ addressed petitioner's argument regarding job sharing, but determined that, as the ALJ, he did not have the authority to "review management considerations[,]" and, in any event, the consideration of job sharing is permissive, not mandatory.[2] *See* MPD Br. at 11-18.

[2] MPD attaches exhibits to its brief, which it references throughout, that are duplicative of documents in the Administrative Record. *See generally* MPD Br.

STANDARD OF REVIEW

When reviewing a decision from an administrative agency, there is a "presumption of correctness of the agency's decision" and the burden is placed on the petitioner to demonstrate agency error. *See Cooper v. District of Columbia Dep't of Emp't Servs.*, 588 A.2d 1172, 174 (D.C. 1991). The Court may not set aside an agency decision if it is "supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law." *See* Super. Ct. Civ. R. Agency Review 1(g). If substantial evidence supports the agency's findings, the Court must affirm the agency decision even though contrary evidence may also exist in the record. *See Ferreira v. District of Columbia Dep't of Emp't Servs.*, 667 A.2d 310, 312 (D.C. 1995). "The corollary of this proposition, however, is that we are not obliged to stand aside and affirm an administrative determination which reflects a misconception of the relevant law or a faulty application of the law." *See Zenian v. D.C. Office of Employee Appeals*, 598 A.2d 1161, 1166 (D.C. 1991).

ANALYSIS

1. Authenticity of the Realignment Approval Form

The decision below that the RAF authorizing the RIF in this case was authentic is supported by substantial evidence. *See* A.R. at 357. Before a RIF may be implemented, a realignment must be approved by the Director of DCHR, and the City Administrator must concur, through the signing of a RAF. *See* A.R. at 173. The RAF containing the City Administrator's signature was not initially produced, and petitioner therefore argued that, because this signature is required, the RIF was conducted without the proper authorization. *See* Pet. Br. at 9-12. The signed RAF was then produced by MPD late in the administrative proceeding, and plaintiff argued to the Board, and now argues to this Court, that the ALJ's

determination that the signature on this form is authentic is not supported by substantial evidence. *See id.*

Petitioner argues that the ALJ deemed City Administrator Allen Lew's signature on the RAF authentic without thoroughly addressing the arguments raised in his April 3, 2015, brief. *See id.* at 9-12. Specifically, petitioner contends that Mr. Lew's testimony does not establish that he signed the RAF on September 13, 2011, because Lew did not remember signing this particular document and initially stated the incorrect date. *See id.* at 10; A.R. at 464. Moreover, plaintiff argues that the production of the signed RAF late in the administrative proceeding "call[s] into question the veracity of the document." *See* Pet. Br. at 11. Petitioner further challenges the authenticity of the RAF with the testimony of Lewis Norman, a DCHR employee, who recalled "dropping off the realignment and RIF packages, but could not name anyone else who had actually seen the realignment package completed and signed by the City Administrator." *See id.*

Petitioner also argues that the ALJ in two other OEA proceedings regarding the same RIF (and thus involving the same documents, including the RAF challenged by petitioner) reversed the RIF because MPD did not produce a copy of the RAF signed by the City Administrator.[3] *See* Pet. Br. at 12. After the signed RAF was located, MPD appealed, but the ALJ upheld his decision, stating on remand in both cases that, "upon consideration of the testimony produced by Mr. Lew and Mr. Norman, and the newly-produced RAF, I am unpersuaded that the Agency has met its burden of proof in establishing the authenticity of the newly-produced RAF." *See* Pet. Br. at 13.

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[3] The cases are *Wanderline Benjamin Banks v. MPD*, OEA Matter No. 2401-0027-12 (October 28, 2014) and *Lynn Butler v. MPD*, OEA Matter 2401-0029-12 (October 28, 2012).

MPD does not dispute that the RAF signed by City Administrator Lew was not produced during discovery. *See* MPD Br. at 12. MPD also acknowledges the findings about the RAF that were made in other OEA proceedings. But MPD argues that those determinations should not affect this Court's review of the ALJ's finding in the instant case that the RAF document was authentic, as the ALJ's finding was "based on testimony and documents[.]" *See id.* at 13.

The determination that the RAF was authentic is supported by substantial evidence. First, City Administrator Lew testified that he signed the RAF on September 13, 2011. *See* A.R. at 461-462. Although Mr. Lew did not recall signing that particular RAF, he stated that he signs thousands of documents. *See* A.R. at 464. Second, although the signed RAF was not initially produced in discovery, it was later found, and the ALJ determined that it was authentic. *See* Pet. Br. at 9; A.R. at 133-34. On December 19, 2014, Mr. Norman, at the time a Human Resources Specialist in the Department of Human Resources, testified in a deposition that he found the signed RAF in October of 2014. *See* A.R. at 228. Further, Mr. Norman testified that he remembered being notified on September 13, 2011, that the City Administrator had signed the RAF. *See* A.R. at 222. At the hearing before the ALJ, Mr. Norman testified that "the RIF process was adhered to and the RIF documents were accurate." *See* A.R. at 713. Moreover, Mr. Norman testified that he remembered the signed package – including the RAF – being delivered to him, but that the RAF was subsequently misplaced during an office move. *See* A.R. at 629-630.

Although there may be evidence in the record supporting petitioner's argument that the RAF was not timely signed, or that the document was falsely signed after the RIF was reversed in the other administrative proceedings, substantial evidence supports the ALJ's finding of the RAF's authenticity in this case. The Court must accept those findings, "even though there may

also be substantial evidence in the record to support a contrary finding." *See Baumgartner v. Police & Firemen's Retirement & Relief Bd.*, 527 A.2d 313, 316 (D.C. 1987). Moreover, the decision of ALJ Cannon in two other administrative proceedings that the newly discovered RAF could not be authenticated does not undermine the ALJ's determinations in this case. The Court has no way of knowing what evidence was presented to ALJ Cannon in those other cases, and the fact that ALJ Cannon made an inconsistent determination in unrelated proceedings is of no moment. Petitioner's arguments about the RAF therefore provide no basis to reverse the determination of the Board.

2. Approval of the Reduction in Force

Petitioner next argues that the determination that MPD received the necessary approval for the RIF is not supported by substantial evidence. *See* Pet. Br. at 14. Specifically, petitioner contends that the Administrative Order requesting approval of the RIF was not signed by the City Administrator, as required. *See id.*; A.R. at 31. Petitioner asserts that "the OEA dismissed this argument, without addressing the fact that the RIF documents referenced by the [ALJ] in his Decision are separate from the RAF documents." *See* Pet. Br. at 15.

MPD argues that the RIF was approved by Shawn Stokes, the Director of DCHR, who "has been delegated the personnel authority of the Mayor Pursuant to Mayor's Order 2008-92, dated June 26, 2008, and that authority extended to approving RIFs." *See* MPD Br. at 15. MPD therefore asserts that only the Director of DCHR's signature was required. *See id.* Further, MPD points to the ALJ's conclusions, affirmed by the Board, that "the signatures on the RIF documents are authentic, timely, and properly procured in accordance with the RIF regulations[.]" *See id.* at 16.

Mayor's Order 2008-92 provides, in relevant part, that "[t]he Director, D.C. Department of Human Resources (DCHR), is delegated the authority vested in the Mayor to implement the CMPA and, with the concurrence of the City Administrator or the Mayor, to issue rules and regulations to implement the CMPA." *See* MPD. Br. Ex. 3. At the hearing before the ALJ, Diana Haynes-Walton, at that time the Director of Human Resources with MPD, testified that the Mayor's Order delegated the authority to approve Reductions in Force to the Director of DCHR. *See* A.R. at 544. In this case, the Administrative Order approving the RIF was signed by Mr. Stokes on September 14, 2011. *See* A.R. at 31. The RIF was therefore approved by the director of DCHR, as required by Mayor's Order 2008-92. The determination that the RIF was properly approved is not clearly erroneous, and the Court therefore declines to grant the petition for review on this ground.

3. Accuracy of Reduction in Force Supporting Documents

Petitioner also argues that the documentation used to conduct the RIF contained "false and inaccurate information." *See* Pet. Br. at 16. Specifically, petitioner asserts that the Organization Realignment Plan ("ORP") documents, including "the organizational chart, Staffing Pattern and Realignment Crosswalk," are inaccurate and that the ALJ and Board failed to adequately address the errors contained in these documents. *See id.* The particular problems petitioner raises with the documents are: (1) the current organizational chart, staffing pattern, and realignment crosswalk contained inaccurate series/grade identifiers, and thus three of the five "documents created to establish the need or rationale for the realignment were an inaccurate reflection of the Agency's actual composition"; and (2) the executive summary, created to support the RIF, indicates that only five employees subject to the RIF would lose their jobs, but in fact 12 were not placed in a D.C. government job. *See id.* at 17. Petitioner specifically notes

that "[i]n all three documents, it lists that there are three DS-334-12's who are employed by and affected by the realignment," but that this is inaccurate, because Darryl Boone, one of the three employees listed as a DS-334-12, "was not a DS-334-23, but rather was a DS-334-13." *See id.*

In response, MPD argues that, "[a]ssuming, without conceding, that [these] documents in the ORP misstated the grade level of Darryl Boone, [petitioner] has failed to show how the error affected *his* separation." *See* MPD Br. at 17. Further, MPD notes that "the [Administrative Order] that requested the RIF and was approved by Shawn Stokes correctly identified the grade level of Mr. Boone as DS-334-13." *See id.* With respect to the executive summary, MPD contends that petitioner "has failed to show that [MPD] was bound by the project estimates made in the Executive Summary." *See id.* Moreover, MPD argues that "the RIF documents, which included the RIF approval form and the signed RAF, were timely and properly procured[.]" *See id.*

Although the Board did not address this argument in detail, the ALJ determined that "[p]ursuant to the approval to conduct the RIF, and in accordance with applicable RIF regulations, competitive levels were identified and retention registers were developed." *See* A.R. at 715. The ALJ further determined that "[a]ll of the information contained in [petitioner's] retention register that was used to determine his retention standing were accurate." *See id.* Petitioner fails to demonstrate why an inaccuracy in another employee's grade level requires reversal of the decision below, where both the Board and the ALJ determined that the RIF documents were done in accordance with applicable regulations. Similarly, petitioner fails to demonstrate that MPD was bound by the information contained in the executive summary. The determination that the documents supporting the RIF were accurate (or that the inaccuracies did

not affect the outcome for petitioner) was based on substantial evidence. This argument therefore provides no basis for he Court to reverse the determination of the Board.

4. Job Sharing and Reduced Hours

Finally, petitioner argues that the RIF did not comply with D.C. Code § 1-624.02(a)(4), which provides: "[r]eduction-in-force procedures . . . shall include . . . (4) Consideration of job sharing and reduced hours[.]" *See* Pet. Br. at 18; D.C. Code § 1-624.02(a)(4). Petitioner asserts that MPD failed to establish that it considered job sharing or reduced hours when implementing the RIF. *See* Pet. Br. at 19.

The Board determined that "[w]hile Employee maintains that [MPD] was required to consider the options of job sharing and/or reduced hours, he failed to present any documentary or testimonial evidence to support a finding that it did not consider these actions prior to conducting the RIF." *See* A.R. at 753. Petitioner argues that this determination is contrary to law because it "plac[es] the burden on [p]etitioner to establish that the Agency did not consider job sharing. Yet the burden in a RIF action, once jurisdiction is established, is on the Agency to show it complied with the Statute." *See* Pet. Br. at 19. The Board noted that "the use of the word 'may' under [6 DCMR § 2401.1] indicates that it is within the Agency's discretion to consider job sharing or reduced hours."[4] *See* A.R. at 753. The Board also relied on 6 DCMR § 2403.2, which provides that "[a]n agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency[,]" and determined that such permissive actions could include job sharing and reduced working hours. *See* 6 DCMR § 2403.2.

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[4] 6 DCMR § 2404.1 provides that "[a]n employee may be assigned to job sharing or reduced working hours" under certain conditions. *See* 6 DCMR § 2404.1.

The Board's determination with respect to the consideration of job sharing and reduction of hours was clearly erroneous. Contrary to the Board's analysis, the burden of proof with respect to whether MPD considered job sharing and reduction of hours was on MPD, not on petitioner. *See* 6 DCMR § 628.2 ("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."). Under 6 DCMR § 628.2, it was MPD's burden to establish that the RIF complied with all applicable statutes and regulations, including § 1-624.02(a), which sets forth what must be included in a RIF procedure, and requires that the agency consider job sharing and reduction of hours. The Board erroneously affirmed the ALJ's decision on the ground that *petitioner* failed to present evidence that MPD had *not* considered job sharing or reduced hours, where, in fact, petitioner was not required to present such evidence. *See* A.R. at 753.

Moreover, the Board's determination that MPD was not required to consider job sharing and reduced hours was incorrect. A plain reading of D.C. Code § 1-624.02(a) demonstrates that, while an agency is not required to implement job sharing or reduced hours, an agency *must* consider such measures in implementing a RIF. *See* D.C. Code § 1-624.02(a). The two regulations referenced by the Board do not contradict the language of § 1-624.02(a). The first discusses the circumstances under which an employee may be assigned to job sharing or reduced working hours. *See* 6 DCMR § 2404.01. The second regulation provides that, *prior* to planning a reduction in force, an agency may take certain actions; it does not address the subject matter of § 1-624.02(a), which sets forth the procedures for a reduction in force. *Compare* 6 DCMR § 2403.2 *with* D.C. Code § 1-624.02(a).

Nor may the Board's determination be upheld based on the assertion of the ALJ "that [the OEA] does not have the authority to determine whether an agency's RIF was bona fide[,]" citing

Anjuwan v. D.C. Dep't of Pub. Works, 729 A.2d 883 (D.C. 1998). The Court of Appeals held in *Anjuwan* that the OEA does not have "authority to determine broadly whether the RIF violates any law. The OEA's authority is narrowly prescribed. An employee subject to a RIF may file an appeal with the OEA if the 'agency has incorrectly applied the provisions of *this subchapter* or the rules and regulations issued pursuant thereto.'" *See Anjuwan*, 729 A.2d at 885 (emphasis in original) (internal citations omitted). Petitioner's challenge to the RIF procedures in this case falls within OEA's jurisdiction because it is based on MPD's alleged failure to follow the requirements of D.C. Code § 1-624.02.

In sum, the Board erred in its consideration of petitioner's claim that MPD had failed to consider job sharing and reduced hours in implementing the RIF. The Board incorrectly placed the burden of proof on this issue on petitioner, in contravention of 6 DCMR § 628.2; and failed to recognize that MPD was required to consider job sharing and reduced hours, under D.C. Code § 1-624.02(a).

Accordingly, it is this 13th day of February, 2018, hereby

ORDERED that the petition for review is **GRANTED**; and it is further

ORDERED that the case is remanded to the OEA for further proceedings consistent with this opinion.

SO ORDERED.

Florence Pan

Judge Florence Y. Pan
Superior Court of the District of Columbia

Copies to:

Robert Shore, Esq.
Counsel for Petitioner

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SAMSON ADEBOYE,

Petitioner

v.

DISTRICT OF COLUMBIA
OFFICE OF EMPLOYEE APPEALS,

Respondent.

Case No. 2018 CA 006767 P(MPA)

Judge Florence Y. Pan

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CERTIFICATE OF FILING

I hereby certify that this is the true and correct official case file in the matter of *Samson Adeboye v. Metropolitan Police Department,* OEA Matter No. 2401-0024-12R18. The record consists of two volumes containing fifty-one (51) tabs.

Wynter Clarke
Wynter Clarke
Paralegal Specialist

LASHEKA BROWN BASSEY NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES 6/14/2021

District of Columbia: SS
Subscribed and Sworn to before me
this 4th day of December, 2018

Lasheka Brown Bassey
Lasheka Brown Bassey, Notary Public, D.C.
My commission expires June 14, 2021

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RICKEY ROBINSON, 7717 Greenleaf Road Landover, MD 20785, *Petitioner,*	)	
v.	)	Misc. No.
DISTRICT OF COLUMBIA **OFFICE OF EMPLOYEE APPEALS,** 955 L'Enfant Plaza, SW Suite 2550 Washington, DC 20024, *Respondent.*	)	(OEA Matter No. 1601-0045-17)

PETITION FOR REVIEW OF AGENCY DECISION

Employee-Petitioner Rickey Robinson, *pro se,* files this petition for review of the Initial Decision of the D.C. Office of Employee Appeals, dated September 24, 2018, in the matter of *Rickey Robinson v. Department of Forensic Services*, OEA Matter No. 1601-0045-17, Administrative Judge Michelle R. Harris presiding, and all rulings encompassed therein. A copy of the Initial Decision is attached to this petition. Petitioner seeks to have the Initial Decision reversed, with a decision in his favor, or a remand of the matter for hearing.

The interested parties are:

Agency:
DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS
955 L'Enfant Plaza, SW Suite 2550
Washington, DC 20024
Lashka Brown Bassey, Esq.
General Counsel
955 L'Enfant Plaza, SW Suite 2550
Washington, DC 20024

Employee:
RICKEY ROBINSON
7717 Greenleaf Road
Landover, MD 20785

Employing Agency:
Department of Forensic Services
c/o Nada Paisant, Assistant Attorney General
Personnel and Labor Relations Section
Office of the Attorney General
441 4th Street NW, Suite 1180N
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Office of the Attorney General:
Karl A. Racine
c/o Nada Paisant, Assistant Attorney General
Personnel and Labor Relations Section
Office of the Attorney General
441 4th Street NW, Suite 1180N
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Dated: October 29, 2018

Respectfully submitted,

RICKEY ROBINSON
7717 Greenleaf Road
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202-704-3173
Rickrob4255@gmail.com
Petitioner Pro Se

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
RICKEY ROBINSON, Employee	OEA Matter No. 1601-0045-17
v.	
D.C. DEPARTMENT OF FORENSIC SCIENCES, Agency	Date of Issuance: September 24, 2018 Michelle R. Harris, Esq. Administrative Judge

Raymond C. Fay, Esq., Employee Representative
Nada Paisant, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 8, 2017, Rickey Robinson ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Forensic Sciences' ("Agency" or "DFS") decision to terminate him from his position as a A/C Equipment Mechanic/ Lab Support Repairer[1], effective April 8, 2017. Agency filed its Answer and Motion to Dismiss Employee's Petition for Appeal on July 22, 2017. Following an unsuccessful attempt at mediation, this matter was assigned to the undersigned Administrative Judge ("AJ") on August 21, 2017.

On August 23, 2017, I issued an Order convening a Prehearing Conference in this matter for September 26, 2017. Both parties appeared for the scheduled Prehearing Conference in this matter.[2] Following the Prehearing Conference, I issued an Order on September 27, 2017, requiring both parties to submit written briefs based on issues discussed during the conference. Agency's brief was due on or before October 31, 2017, and Employee's Brief was due on or before November 30, 2017. On October 26, 2017, Agency filed a Consent Motion to Extend the Briefing Schedule. On October 27, 2017, I issued an Order grating the motion. Agency's brief was now due on or before November

[1] Employee cited in his Petition for Appeal that his position was a "lab support repairer," however all of his SF-50s reflect A/C Equipment Mechanic.
[2] Employee did not appear for any of the scheduled Prehearing Conferences, but was represented by his attorney at all proceedings.

15, 2017, and Employee's brief was due on or before December 15, 2017. On November 3, 2017, Agency filed another Consent Motion to Extend the Briefing Schedule, I granted this motion on November 6, 2017, and required that Agency's Brief be filed on or before December 8, 2017, and Employee's brief was due on or before January 8, 2018. Both parties submitted their briefs within this deadline. Following a review of the briefs submitted; I issued an Order on February 1, 2018, scheduling a Status/Prehearing Conference for February 20, 2018. On February 15, 2018, Employee, by and through his counsel, submitted a Consent Motion to Continue the Status/Prehearing Conference. On February 16, 2018, I issued an Order granting Employee's Motion and rescheduling the Status/Prehearing Conference for March 14, 2018. Both parties appeared at the Status/Prehearing Conference. During that conference, the undersigned determined that both parties should submit supplemental briefs with regard to issues that were discussed during the conference. As a result, I issued an Order requiring Agency to submit its supplemental brief on or before April 6, 2018, and Employee to submit his brief on or before April 27, 2018. On April 26, 2018, Employee filed a Consent Motion for an extension of time to file his brief until May 4, 2018. On May 1, 2018, I issued an Order granting this request. All briefs have been submitted pursuant to the prescribed deadline. I have determined that an Evidentiary Hearing in this matter 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 Agency had cause to take adverse action against Employee; and
2. If so, whether termination was the appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

Agency's Position

Agency avers that it followed all appropriate procedures with regard to administration of the instant adverse action. Agency cites that Employee has been with Agency since 2008, first hired at

the Department of Health ("DOH") as an A/C Equipment Mechanic.[3] In October 2012, Employee was reassigned from DOH to Agency in the same position as an A/C Equipment Mechanic. Agency further notes that on July 21, 2016, Employee was formally notified that his position was safety-sensitive pursuant to the District's new Suitability regulations.[4] Agency asserts that on January 27, 2017, Kimary Harmon ("Harmon"), a direct supervisor of Employee, "observed Employee's behavior as being potentially under the influence of an intoxicant."[5] Agency cites that the manager noted that Employee was slurring his speech and had difficulty communicating. Agency notes that Harmon engaged another manager, Carla Butler, who agreed with Harmon's assessment of Employee. Employee was told to remain at his desk, but left and later informed the management that he was ill. Agency asserts that on February 3, 2017, following several attempts to follow up with Employee with regard to the January 27, 2017 incident, Employee had a meeting with Dr. Anthony Tran ("Dr. Tran"), Public Health Laboratory Director, and Dr. Jenifer Smith ("Dr. Smith"), Director.[6] During this meeting, Agency asserts that Employee told Drs. Tran and Smith that the incident on January 27, 2017, was due to his "prescribed medications interacting together and that he was suffering from the loss of someone close to him." Agency asserts that both directors told Employee to seek the assistance of INOVA's Employee Assistance Program ("EAP") and to call out sick if he was unable to function at work.[7] Agency argues that Employee never indicated that he had substance abuse problems with prescription or illicit drugs.[8]

On March 1, 2017, Employee was observed again by Harmon who noted that he seemed to potentially be under the influence of an intoxicant. Agency states that Harmon indicated that Employee's eyes were "half-opened" and his speech was slurred. Harmon again enlisted Carla Butler who agreed that Employee appeared to be under the influence. Agency cites that when Employee was notified that he was going to be subject to drug and alcohol testing, he became upset and demanded to speak with his union. Employee spoke with Mr. Carroll Ward, President of the American Federation of Government Employees (AFGE) Local 2978. Following this conversation, Agency indicated that Employee submitted to the drug test administered by District of Columbia Human Resources ("DCHR"). Agency asserts that on March 6, 2017, the drug screening revealed Employee tested positive for heroin.[9]

Following this result, in a letter dated March 6, 2017, DCHR proposed to separate Employee from his safety-sensitive position for testing positive for a controlled substance. Agency avers that on April 6, 2017, a hearing officer determined that Agency had met its burden of proof. Agency notes that on the same day, Jonjelyn Gamble, Steward for AFGE Local 2978 submitted a response to DCHR's proposal to terminate Employee.[10] On April 7, 2017, DCHR sent Employee a formal notice of Separation indicating that he would be terminated effective, April 8, 2017.

Agency argues that it had cause to terminate Employee and followed all applicable regulations and procedures. Agency argues that Employee's enrollment in EAP has no bearing on his positive drug test and that he was terminated appropriately given his safety-sensitive designation. Further, Agency asserts that Employee did not provide notice of his substance abuse problem, but

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[3] Agency's Brief at Page 2 (December 8, 2017).
[4] *Id.*
[5] Agency's Brief at Page 4 (December 8, 2017).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.* at Page 5.
[10] *Id.*

even if he did, it is irrelevant given the circumstances. Agency avers that Employee was classified in a safety sensitive position as of July 2016, and pursuant to that agreement, had 30 days from the time in which that appointment was made to give notice of any substance abuse problem. Agency argues that Employee did not give notice during that 30-day window, and that he was made aware that his position was subject to random and reasonable suspicion drug testing. Additionally, Agency argues that Employee's disclosure to Drs. Tran and Smith on February 3, 2017, did not constitute any notice with regard to substance abuse issues.

Agency asserts that the Chapter 4 Suitability regulations subject Employee to reasonable suspicion drug testing, and subsequent separation if found to be under the influence of a controlled substance. As a result, Agency argues that it had cause to separate Employee from service, and that it did so in accordance with all applicable laws, rules and regulations.

Employee's Position

Employee argues that his termination from his position as a "laboratory support repairer" was illegal.[11] Employee cites that during his tenure with Agency, he suffered from chronic back pain from on the job injuries. Employee asserts that he was on prescription medicine for the pain, including morphine.[12] In late 2016, Employee suffered the loss of a very close friend and began to use "non-prescribed opiate drugs in similar chemical structure to the morphine to tolerate the back pain."[13] Employee avers that in early 2017, he met with Drs. Tran and Smith to notify the Agency of his personal issues, including drug issues. Employee indicates that he did so to be in compliance with his interpretation of the Drug free Workplace Policy. Employee cites that Drs. Tran and Smith advised him to enroll in EAP and to use administrative leave to participate in the program. Employee avers that on February 28, 2017, he notified his direct supervisor, Kimary Harmon, that he needed to use administrative leave to attend EAP, but did not disclose the reasons for his enrollment in EAP. Employee argues that the next day he was subject to a "pretextual drug screening based on Ms. Harmon's claim that she had reasonable suspicion for administering the test."[14]

Employee avers that his subsequent termination was done improperly because the Agency misapplied and misinterpreted its drug policy. Employee asserts that he complied with the Drug Free Workplace Policy (Mayor's Order 90-27, January 31, 1990), but Agency failed to do so. Further, Employee avers that he notified Agency of his drug problem and that his enrollment in the EAP precluded him from being terminated for a positive drug test. Employee also argues that his position was not "safety-sensitive" at the time of his termination. Employee cites that his position does not fall into the description of safety sensitive positions pursuant to DPM § 409.2(a).[15] Employee also argues that Agency's application of DPM Chapter 4 – Suitability was erroneous in that, the suitability program requires that all "enhanced screening be performed in accordance with the collective bargaining agreement."[16] Employee avers that since he is a part of AFGE Local 2798, his CBA cites in Article 13 Section 4, that "no disciplinary action shall be taken against any employee solely for alcoholism, drug dependency or emotional disturbance unless the Employer has met its obligations under D.C. Code 1-621.7(3) (1981 ed.)."[17] Employee argues that pursuant to his CBA,

[11] Employee's Brief at Page 1 (January 10, 2018).
[12] *Id.*
[13] *Id.*
[14] *Id.* at Page 2.
[15] *Id.* at Page 5.
[16] Employee's Supplemental Brief at Page 2. (May 4, 2018).
[17] *Id.* at Page 3.

that when he accepted the director's referral to EAP on February 3, 2017, he should have been given a reasonable time to improve work performance.[18] Further, Employee avers that the reasonable suspicion policy was not appropriately followed because Kimary Harmon was not trained to make a reasonable suspicion assessment at the time she observed and later reported Employee. Employee also asserts that the behavior that was witnessed by Ms. Harmon was not unlike behavior she saw on other occasions during Employee's tenure with Agency.[19] Employee argues that on January 27, 2017, Ms. Harmon was not yet trained to make a reasonable suspicion assessment. Employee avers that Agency's safety sensitive policies are vague and its application of the Chapter 4 Suitability guidelines was improper. As a result, Employee argues that his termination was not appropriate and should be reversed.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee was employed by Agency as an A/C Equipment Mechanic[20] on October 1, 2012.[21] In a Notice of Separation dated April 6, 2017, Employee received a final notice of Agency's decision to terminate him from his position, citing that on "March 1, 2017, Employee submitted a urine sample. This sample tested positive for the presence of 6-monoacetylmorphine (heroin) and morphine. (**Positive drug test result**, 6B DCMR §§ 428.1 (a) and 1603.3(i))."[22] The effective date of the termination was April 8, 2017.

ANALYSIS

Whether Agency had cause for adverse action

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *(Emphasis added).*

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[18] *Id.*
[19] *Id.* at Page 4.
[20] It should be noted that Employee set forth in his Petition for Appeal that he was terminated from his position as a Laboratory Support Repairer, even though that was not his job title. Employee cites that he was an "air condition technician who did maintenance and repair on cooling and heating systems." (*See* Employee's Petition for Appeal.) In its Answer to Employee's Petition, Agency cites that Employee's SF-50 documents him as an A/C Equipment Mechanic, and all of Employee's SF-50, including the one at the time of termination, reflects his position as A/C Equipment Mechanic. (*See* Agency's Brief at Exhibit 1). However, Agency cites in its Answer that PeopleSoft indicates both designations of Laboratory Support Repairer and A/C Equipment Mechanic for Employee.
[21] Agency's Answer to Employee's Petition for Appeal (July 2, 2017).
[22] Employee's Petition for Appeal at Final Notice (May 8, 2017).

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1603.2 provides that disciplinary actions may only be taken for cause. Employee's termination was levied pursuant to 6B DCMR §428.1 and DPM 1603.3(i).

In the instant matter, on March 1, 2017, Employee was observed by his supervisor, Kimary Harmon ("Harmon"), who believed that he was potentially under the influence of an intoxicant.[23] Prior to this incident, Employee was previously observed by Harmon on January 27, 2017, to possibly be under the influence. Employee left work on sick leave before he was tested at that time. On February 3, 2017, Employee met with the directors at Agency. Employee informed the directors of a personal loss and issues with prescription medication. At that meeting, the directors indicated that Employee should seek EAP services and use sick leave when needed.

During the March 1, 2017 observation of Employee, Harmon notified another supervisor, Carla Butler ("Butler"), who agreed with Harmon's assessment. As a result, they informed Employee that he would be subject to a reasonable suspicion drug test. Initially, Employee refused and requested to speak to his union. Following a conversation with his union, Employee agreed to be tested. The test was administered by DCHR. On March 6, 2017, the test results indicated that Employee had tested positive for heroin. As a result, Employee was terminated pursuant to a final notice dated April 7, 2017. His termination was effective April 8, 2017. Agency avers that it followed all appropriate protocol. Agency cites that Employee was in a safety sensitive position and was subject to random and reasonable suspicion drug tests. Further, Agency asserts that it properly followed the suitability guidelines set forth in 6B DCMR §§428.1(a) and 431.1, in its administration of this disciplinary action. Agency asserts that Employee did not provide Agency notice of his substance abuse issues in the February 3, 2017 meeting with the directors, but avers that even if Employee had, that it would be irrelevant given the policies set forth in Chapter 4, and with regard to the safety sensitive classification of Employee's position.

Employee argues that Agency did not appropriately administer the instant adverse action, and that Agency improperly applied Chapter 4. Employee cites that he because he provided notice to Agency on February 3, 2017, that he should not have been tested on March 1, 2017, because he had enrolled in EAP. Employee avers that Agency failed to follow the requirements of the CBA in accordance with the application of the D.C. Code. Employee asserts that he should have been given the opportunity to improve work performance and that Agency failed to follow the Drug Free Workplace Policy (January 1990).

The undersigned disagrees with Employee. Employee was employed by agency as A/C Equipment, and as of July 21, 2016, was notified that this position was designated as safety sensitive. This designation was pursuant to the 6B DCMR §400 - Suitability policies and Employee signed the acknowledgement form on July 21, 2016. Employee's position of record on all of the SF-50s indicated that he was classified as an A/C Equipment Mechanic and this position was specifically designated as safety sensitive pursuant to the Chapter 4 Suitability instructions with regard to positions that are subject to enhanced suitability screening.[24] Employee's position of record required him to do repairs on equipment within the laboratory and other duties that if performed under the

[23] It should be noted that on January 27, 2017, Employee was observed, by the same supervisor, to be under the influence of an intoxicant. Employee was directed to stay at his desk in order to be tested for drugs and alcohol. Employee left work that day, indicating that he was sick, and as a result was not tested for drug or alcohol at that time.
[24] *See.* Employee's Supplemental Brief at Exhibit 1 (May 4, 2018). *See also.* Agency's Brief at Exhibit 2 (December 8, 2017).

influence, could cause physical harm to him and others. As a result, I find that Employee was duly notified that his position was safety-sensitive, and that he was made aware that this designation subjected him to reasonable suspicion drug screening if warranted.

In the instant adverse action, on March 1, 2017, Employee was observed by his direct supervisor trained in reasonable suspicion, Kimary Harmon, to be potentially under the influence. Harmon enlisted another supervisor, who was also trained in reasonable suspicion, Carla Butler, who agreed with Harmon that Employee was potentially under the influence. Pursuant to the reasonable suspicion guidelines set forth in Chapter 4 Suitability protocols, Employee was told that he would need to be tested. He initially refused and requested to speak to his union. Following the opportunity to confer with his union president, Employee submitted to the testing conducted by DCHR. On March 6, 2017, the test results came back positive for heroin. Because Employee occupied a safety-sensitive position, he was notified that he would be subject to termination. In the final notice dated April 6, 2017, Employee was notified that he would be separated from service effective April 8, 2017. Employee argues that Harmon was not trained in reasonable suspicion at the time she observed him; however Employee references a previous incident from January 27, 2017, wherein he avers that Harmon was not trained.[25] Employee does not indicate that Harmon was untrained on March 1, 2017. Based on the evidence in the record, I find that Harmon was trained in reasonable suspicion as of February 2017, and that Agency acted in accordance with those guidelines.[26] I also find that the incident on January 27, 2017, is irrelevant given that Employee was not subject to drug screening at that time.

Employee also avers that this drug test was pretextual in nature because he had enrolled in EAP after disclosing a substance abuse problem to Dr. Tran and Dr. Smith during a meeting on February 3, 2017. Both Drs. Tran and Smith indicate that Employee never disclosed a substance abuse problem; rather he relayed information with regard to the loss of a close friend and interactions with his prescription medication. The undersigned disagrees with Employee's assertion. 6B DCMR § 2050.8, provides that an employee's participation in an EAP *"shall not preclude the taking of a disciplinary action under Chapter 16 of these regulations, if applicable or any other appropriate administrative action, in situations where such action is deemed appropriate..."* Further, the undersigned finds the notice to be of no relevance in this matter given Employee's classification as safety-sensitive. Pursuant to the 6B DCMR §426.4, when Employee acknowledged his new designation as safety-sensitive on July 21, 2016, he had a 30-day time frame in which to disclose any substance abuse issues and not be subject to possible disciplinary action and be permitted to undergo treatment. Because this matter occurred on March 1, 2017, I find that Employee was outside of the time frame for this to be applicable. Further, Employee admits that he used "non-prescribed opiate drugs in order to cope with the back pain."[27] Employee also admits that he tested positive for illicit drugs, but felt like he should not have been tested.

Employee also avers that the "spirit" of the Drug Free Work Policy (1990) and the Collective Bargaining Agreement (CBA) through his union were violated by Agency. The undersigned disagrees. The provision of the CBA, Article 13, Section 4 provides that no "disciplinary actions

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[25] Employee's Supplemental Brief at Page 4 (May 4, 2018).
[26] *See.* Agency's Brief at Exhibit 3 - Deposition of Kimary Harmon (December 8, 2017). It should be noted that on page 55 of the deposition, Employee's counsel cites in his questioning that Harmon completed training in February 2017. Wherefore, the undersigned signs that Kimary Harmon was trained in reasonable suspicion as of the March 1, 2017. Further, I find that the January 27, 2017 observance referenced by Employee is irrelevant for the purposes of this matter, because Employee was never screened for drug use at that time.
[27] Employee's Brief at Declaration of Employee (January 10, 2018).

shall be taken against any employee solely for alcoholism, drug dependency or emotional disturbances unless the Employer has met its obligations under D.C. Code §1-621.7(3) (1981.ed). Here, I find that Agency acted accordingly with the protocols prescribed in 6B DCMR § 428.1 and §431 and implemented by the District government in 2015. As a result, because Employee was in a safety-sensitive position, he was subject to reasonable suspicion drug testing and possible separation if a test was positive. Wherefore, I find that Agency acted in accordance with the D.C. Code provisions and as a result did not violate the provisions of the CBA.

Additionally, I find that the Drug Free Workplace Policy encourages District employees to seek counseling and rehabilitation if they have an issue with drug use, but it does not say that an employee is precluded from being separated from service following a positive drug test.[28] Accordingly, I find that this policy does not apply in these circumstances, given Employee's safety-sensitive classification, and that he was subject to the guidelines promulgated in the Suitability guidelines set forth in 6B DCMR §§ 428.1 and 431. Further, 6B DCMR § 2050.8, provides that an employee's participation in an EAP *"shall not preclude the taking of a disciplinary action under Chapter 16 of these regulations, if applicable or any other appropriate administrative action, in situations where such action is deemed appropriate..."* Accordingly, I find that Agency followed the procedures set forth in 6B DCMR § 428.1 and §431, and has adequately proven that there was proper cause for adverse action against Employee.

Whether the Penalty was Appropriate

Based on the aforementioned findings, I find that Agency's action was taken for cause, and as such, Agency can rely on those charges in its assessment of disciplinary actions against Employee. In determining the appropriateness of an agency's penalty, OEA has relied on *Stokes v. District of Columbia*, 502 A.2d. 1006 (D.C. 1985).[29] According to the Court in *Stokes*, OEA must determine whether the penalty was in the range allowed by law, regulation and any applicable Table of Penalties as prescribed in the DPM; whether the penalty is based on a consideration of relevant factors and whether there is a clear error of judgment by agency. Further, "the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office."[30] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."[31]

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[28] Employee's Brief at Exhibit 1 Drug Free Workplace Policy 1990 (January 10, 2018).
[29] *Shairrmaine Chittams v. D.C. Department of Motor Vehicles*, OEA Matter No. 1601-0385-10 (March 22, 2013). *See also Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).
[30] *See Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department*, OEA Matter no. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[31] *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

Here, Employee was subject to removal pursuant 6B DCMR §428.1(b), which deems an employee unsuitable for a having positive drug test. Further, DPM § 1603.3(i) provides in the Table of Penalties that the penalty for a first offense for illegal drug use ranges from a suspension of 15 days to removal. Accordingly, I find that Agency properly exercised its discretion, and its chosen penalty of removal is reasonable under the circumstances, and not a clear error of judgment. As a result, I conclude that Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee from service is **UPHELD**.

FOR THE OFFICE:

Michelle R. Harris, Esq.
Administrative Judge

NOTICE OF APPEALS RIGHTS

This is an Initial Decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a Petition for Review with the office. A Petition for Review must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the Initial Decision in the case.

All Petitions for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;

2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;

3. The finding of the presiding official are not based on substantial evidence; or

4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

All Petitions for Review should be supported by references to applicable laws or regulations and make specific reference to the record. The Petition for Review, containing a certificate of service, must be filed with Administrative Assistant, D.C. Office of Employee Appeals, 955 L'Enfant Plaza Suite 2500, Washington, D.C. 20024. Four (4) copies of the Petition for Review must be filed. Parties wishing to respond to a Petition for Review may file their response within thirty-five (35) calendar days, including holidays and weekends, after the filing of the Petition for Review.

Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.

CERTIFICATE OF SERVICE

I certify that the attached **INITIAL DECISION** was sent by regular mail on this day to:

Rickey Robinson
7717 Greenleaf Road
Hyattsville, MD 20785

Raymond C. Fay, Esq.
Jessica T. Ornsby, Esq.
Fay Law Group
1250 Connecticut Ave., NW
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Nada Paisant, Esq.
441 4th St, NW
Suite 1180N
Washington, DC 20001

Katrina Hill
Clerk

September 24, 2018
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, I caused a copy of the foregoing PETITION FOR REVIEW OF AGENCY DECISION to be served via first-class mail, postage prepaid upon:

Office of the Attorney General and Department of Forensic Services
c/o Nada Paisant
Assistant Attorney General
Personnel and Labor Relations Section
Office of the Attorney General
441 4th Street NW, Suite 1180N
Washington, DC 20001

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS
955 L'Enfant Plaza, SW Suite 2550
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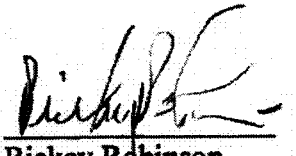

Rickey Robinson

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS

REPLY TO:
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RICKEY ROBINSON, Petitioner v. DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS, Respondent.	Case No. 2018 CA 007598 P(MPA) Judge Kelly A. Higashi

MOTION TO SEAL RECORD

Superior Court Rule 5-III(a)(1) provides that "[a]bsent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order." Moreover, pursuant to Superior Court Civil Rule 5(e)(2), a party wishing to file a document containing the unredacted personal identifiers may submit a motion to file an unredacted document under seal.

In accordance with Agency Rule 1(e), Respondent D.C. Office of Employee Appeals is required to file with the Clerk the entire agency record, including all original papers comprising that record. The original record contains documents that were submitted by the Department of Forensic Services and Rickey Robinson which include medical documents, a partial social security number, and date of birth for Mr. Robinson. In an effort to maintain the record in its original form and to protect the privacy of those involved, we humbly request that you grant our motion to seal the record to prevent it from being viewed by the public via the court's electronic

filing system. Petitioner and Counsel for Intervenor Department of Forensic Services do not object to this motion.

Respectfully submitted,

Lasheka Brown Bassey

Lasheka Brown Bassey
D.C. Bar # 489370
General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024
202.727.0738
Lasheka.Brown@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 2018, the forgoing Respondent District of Columbia Office of Employee Appeals' Motion to Seal Record was served via the Court's electronic filing system, CaseFileXpress.com to the following:

Nada Paisant
Counsel for Intervenor

I also hereby certify that on this 28th day of November, 2018, the forgoing Respondent District of Columbia Office of Employee Appeals' Motion to Seal Record was served via first class mail, postage prepaid to:

Rickey Robinson
7717 Greenleaf Road
Landover, MD 20785

Lasheka Brown Bassey

Lasheka Brown Bassey
D.C. Bar # 489370
General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024
202.727.0738
Lasheka.Brown@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS

REPLY TO:
955 L'Enfant Plaza, S.W.
Suite 2500
Washington, DC 20024
(202)727-0004
FAX (202)727-5631

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RICKEY ROBINSON,

Petitioner,

v.

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS,

Respondent.

Case No. 2018 CA 007598 P(MPA)

Judge Kelly A. Higashi

CERTIFICATE OF FILING

I hereby certify that this is the true and correct official case file in the matter of *Rickey Robinson v. Department of Forensic Sciences,* OEA Matter No. 1601-0045-17. The record consists of one volume containing forty-two (42) tabs.

Wynter Clarke

Wynter Clarke
Paralegal Specialist

LASHEKA BROWN BASSEY NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES 6/14/2021

District of Columbia: SS
Subscribed and Sworn to before me
this 17th day of December, 2018

Lasheka Brown Bassey

Lasheka Brown Bassey, Notary Public, D.C.
My commission expires June 14, 2021

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION—CIVIL ACTIONS BRANCH

RICKEY ROBINSON,	*	
	*	
Petitioner,	*	Civil Case No. 2018 CA 007598 P(MPA)
	*	Civil II, Calendar I
v.	*	Judge Kelly A. Higashi
	*	
DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE OF APPEALS, *et al.*,	*	
	*	
	*	
Respondent.		

ORDER

This matter is before the Court on Respondent's Motion to Seal Record, filed November 28, 2018. Respondent requests the court to seal the agency record because it includes documents that contain Petitioner's personal information. Respondent's motion states that Petitioner and Counsel for Intervener Department of Forensic Services do not object to the motion. Upon consideration of the motion, the consent of all parties, and the record herein, and it appearing to the Court that good cause exists to grant the motion, it is this **13th** day of **December, 2018,** hereby

ORDERED, that Respondent's Motion to Seal Record is, **GRANTED**; and it is further

ORDERED, that Respondent D.C. Office of Employee Appeals' agency record may be filed under seal with this Court.

Kelly A. Higashi
Associate Judge
(Signed in Chambers)

COPIES TO:

Lasheka Brown
Nada Paisant
Andrea Comentale
Served via CaseFileXpress

Rickey Robinson
7717 Greenleaf Road
Hyattsville, MD 20785
Served via Mail

1601-0072-16

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

JOANNE TAYLOR-COTTEN
Vs.
DISTRICT OF COLUMBIA et al

C.A. No. 2018 CA 001462 P(MPA)

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.
No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Robert E. Morin

Case Assigned to: Judge ANTHONY C EPSTEIN
Date: November 20, 2018
Initial Conference: 9:30 am, Friday, August 03, 2018
Location: Courtroom 200
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at https://www:dccourts.gov/pa/. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code§ 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Jeanne Taylor-Lawson
Petitioner(s)

v.

D.C. Public Schools
Respondent(s)

RECEIVED
MAR 02 2018
Superior Court of the District of Columbia
Office of the Clerk

NPA NO. 18-0001402

PETITION FOR REVIEW OF AGENCY DECISION

1. Notice is hereby given that Jeanne Taylor-Lawson appeals to the Superior Court of the District of Columbia from the order of Office of Employee Appeals (agency or official's name) issued on the 2 day of March, 2018. A copy of that order or decision is attached to this petition.

Description of Judgment or Order: Opinion and Order
Dismissing Case Without Prejudice

A concise statement of the Agency proceedings and the decision as to which review is sought and the nature of the relief requested by petitioner:

Petitioner Appeals the Decision to Dismiss Case

B. Address of Respondent, Agency or Official:

Office of Employee Appeals 1100 4th Street SW Suite E-300 Washington DC 20024

C. Names and addresses of all other parties in the Agency's proceeding:

District of Columbia Public Schools
1200 1st Street NE
Washington DC

D. Names and addresses of parties or attorneys to be served:

1. [illegible] Public Schools
2. [illegible]
3. [illegible]
4. [illegible]

E. A copy of the Agency's decision or Order sought to be reviewed is attached.

Print name of petitioner's attorney

Address:

Bar No.

District of Columbia Superior Court Review of Agency orders Pursuant to D.C. code 1981, Title 1 Chapter 6

In the matter of:

OEA Matter No. 1601-0072-16

Date of Issuance: January 30, 2017

Plaintiff

Joanne Taylor-Cotten

Employee

Joseph E.Lim, Esq

Senior Administrative Judge

Vs Defendants

District of Columbia Government

Agency

Mayor Muriel Bowser

District of Columbia Public Schools

Dr. Yetunde Reeves Former Principal of Ballou High School

Ms. DeSepe De Vargas Former Principal of Duke Ellington School of the Arts

District of Columbia Government Carl Turpin Esq. Opposing Attorney for District

Part 1

Now comes Plaintiff, respectfully submitting statement of facts, asking the Court to consider all briefs submitted and witnesses submitted.

Mrs. Joanne Taylor- Cotten, employee was employed with the Agency, as Counselor, Teacher, since April 18, 1994. Ms. Taylor-Cotten was reinstated on September 15, 2014 and Placed on Step 13 after being RIF on October 2009 due to a mistake on Competitive level Document, after five years with no back pay and years of service were not reinstated. Ms. Taylor-Cotten was reinstated with to an excess position after 15 years of service to an excess position review OEA matter 2401-0099-10 the contract was broken on October 1, 2009 when Mrs. Taylor Cotton was to have been placed on Step 16 on October 1, 2009 and never received step. On October 2, 2009 Mrs. Taylor Cotton was rifted.

There was a break in service of five years and Carl Turpin Esq. Opposing Attorney for DCPS who was in charge of my reinstatement to a permanent position stated to me that the years of service would be reinstated. I was to be made whole a permanent employee and it never happened upon reinstatement on September 15, 2014 reinstated as an excess employee not on the school budget.

Part 2

This case appears to exhibit similarities that were preserved in Levitt v District of Columbia office of employee appeals 869 A, 2d 364 (D.C. 2005) the agency made changes when there were permanent positions available. DC code 1-624.8 Teacher Reinstatement Act of 2010 and 1-615.5 et sew(2001) ED 2006 and DC official code 1-617 08 92006) the provisions of the collective bargaining agreement procedure. Reinstatement of a former employer having full status in the District service as specified in 816.

Under the bargaining agreement with The Washington Teachers Union Excessed staff is due to a budget shortfall except in a RIF. Ms. Taylor-Cotten was a permanent employee in 2009 as a School Counselor.

There for upon reinstatement which caused Mrs. Taylor-Cotten reinstatement to two schools late in the year IMPACT stared in the beginning of School year and adjustments to score denied. To be as an excess staff and where no staff development took place the key process in The IMPACT process, not considered during review in OEA with Ms. DeSepe DeVargas, Principal of Duke Ellington School of the Arts IMPACT is unwarranted. Staff Development is the key component in the IMPACT evaluation.

The IMPACT form submitted by Principal of Ballou High School Dr. Reeves was left Black on method of contact the instrument used in the final Evaluation request document of the Public information Act.

Principal from Ballou high School emailed Mrs. Taylor Cotton Stated she forgot to Schedule final IMPACT evaluation. THE IMPACT was to be deemed invalid.

Ms. Taylor-Cotton disagreed with statement from the former Principal of Duke Ellington School of the Arts IMPACT Evaluation.

Both Principal were terminated from their position for violation of District of Columbia Policy.

Ms. Taylor Cotton has suffered with employment loss and credit history destroyed and has not found full time employment as a Counselor due to the mistakes on Impact Form.

Ms. Taylor-Cotton was to be reinstated a permanent employee DC code 1-624.08. Teacher Reinstatement Act of 2010 and 1-615.5 ET sew (2001) Ed 2006

Dc official code 1-617 08 (2006) the provisions of the collective bargaining agreement procedure Reinstatement of a former employee having full status in the District service as specified in 816.

There was no final IMPACT conference with Dr.Yetunde Reeves, Principal. Administrator Cycle three (exhibit one) evaluation Current Assessment verifies that no meeting took place, and attempts made for an assessment to be valid without a conference an evaluator must make two attempts. The date's states that an attempt was made by email 6-11-2015 but does not indicate method of first attempt. The Exact dates were given on both attempts and email sent was stated Principal Reeves, forgot to schedule a conference. **There for the Assessment is not valid. In** an email from Principal Reeves, she stated she forgot to schedule the appointment. (Submitted). The Chancellors appeal was retaliation from Kaya Henderson from previous precedent cases with D.C. Superior Court and OEA concerning reinstatement.

The IMPACT Score 2.42 at Ballou High School, during Cycle one of the IMPACT score was due to my reinstatement after four weeks into the school year. There was no telephone or cell Phone or private office for Mrs. Taylor Cotten. The Four budgeted Counselors had private offices cell phones and office phones whose scores were effective. I was the only Counselor evaluated by Principal Reeves her first year as Principal and the calculation was incorrect. Reading the evaluations Ms. Taylor Cotten score should have been highly effective.

For four months there was no telephone or private office at Ballou High School, until we reached the new building In January 2015. The score went up to a 2.85 with a telephone and private no cell phone like the other four Counselors. The score would be highly effective with the equal supplies as the budgeted Counselors to contact parents and hold private meeting Ethics code and privacy Act and confidentially for students. The private office needed the privacy concerning The Privacy Act of 1974, provides safeguard against invasion of personal privacy. Ms. Taylor-Cotton, emailed my concern to Principal Reeves, many times there was no space but an open classroom without a telephone. Washington Teachers Union Contract requires School Counselors to have an office and telephone.

In rebuttal to opposing Counsel brief D.C. code 1-617-18 the employee is not negotiating the evaluating process or instrument for collective bargaining purposes. The IMPACT or instrument for evaluating has mistaken my ability and performance as a High School Counselor with the District of Columbia Government Ms. Taylor-Cotton, a High School Counselor for eight years with highly Effective until reinstatement concerning OEA matter 2401-0099-10

Ms. Taylor Cotten has identified Community Resources, for Ballou High School, Sasha Bruce Network, where she meant with students who needed Parenting Classes, Scheduled confirmed with Sasha Bruce records requested from Ballou High School. Contacted Executive Director, Paul Penniman, Resources to Inspire Students and Educators, for tutoring classes in the Rising Academy. The tutoring classes are in effect today at Ballou High School. Ms. Taylor Cotten was confined to the basement of the building with repeater students and adjudicated youth who were supervised during the lunch time to build relationships with students and contact parents.

Ms. Taylor-Cotten has worked With Mr. Green from Ballou High School, to identify students for credit recovery at Ballou High School. Ms. Taylor Cotten has meant the goal of 60% meeting with students and families.

Request records of Letter of Understanding, showing proof of student's direct contact with signatures, of students and Ms. Joanne Taylor-Cotton, Records turned over to Dr. Stephanie Stubblefield , School Counselor Ballou High School. Dr. Stephanie Stubblefield is a witness turned in to OEA.

Duke Ellington School of the Arts request Letter of Understanding, signatures of ninth grade students,

Case records turned over to Tedra Williams, and Swanna Reeves, School Counselor.

The burden of proof Ms. Taylor-Cotton, held excellent evaluations and was Counselor of The year before the reinstatement concerning her RIF 2009.

After reinstatement Mrs. Taylor-Cotten, worked as excess at Ballou high School and Duke Ellington School of the Arts. Received low evaluations and was terminated after 2nd year.

At Duke Ellington School of the Arts the Principal, Ms. De Sepe De Vargas, new Principal was very upset because she hired two other Counselors and Mrs. Taylor-Cotten arrived with no notice from personnel

Sara Goldband, former Director of Personnel. Mrs. De Vargas, very upset concerning the budget, and stated "how did you get here" Ms. DeVargas did not welcome Ms. Taylor Cotton upon arrival at Duke Ellington School of The Arts and refused Ms. Taylor-Cotton to attend the first day of staff development for Counselors. She stated "you report to the School and will not attend Staff Development".

Ms. DeVargas, discussed matter with Assistant Superintendent Mr. Shay to have Mrs. Taylor-Cotten transferred. Ms. DeVargas stated that Mr. Shay said since the last Principal Father John Payne, expired at his desk in 2014 from Duke Ellington School of the Arts, another Counselor was needed for the students. Ms. Taylor Cotten provided grief Counseling as stated in IMPACT remarks. Ms. DeVargas telephoned Ms. Taylor-Cotten to return to work on the last day of school December 2015, after she completed her work day, to work on assignments when staff had left the building. Ms. Taylor-Cotton returned and completed assignment was afraid for her life and made a report to The Attorney General concerning budget of Duke Ellington School of the Arts.

Principal, Ms. De Vargas, gave Mrs. Taylor-Cotten, task that were not Counselors ET 15 job description, Substitute teaching, and every day as a Library Media Specialist. Under the Washington Teacher contract ET 15 can work in other positions with extra duty pay under The Washington Teachers Union Contract, at a rate of 34.00 per hour. I submitted the time sheet to Mr. Nielson, Comptroller at Duke Ellington School of The Arts and he stated that Ms. De Vargas, Principal from Duke Ellington School of the Arts, refused to sign the time sheet because I was Excess not on school budget.

Ms. De Vargas, states in her comments on evaluation that Ms. Taylor -Cotten covers the Media Center during lunch. There was no Media Library Specialist on staff at Duke Ellington during the 2015-2016 school years. The only high school in DC Public Schools without a Library Media Specialist.

Ms. Taylor-Cotten has a degree in Communications and Internship in radio and television with ABC affiliate including eight years' experience working in a library Media Center.

The other two Counselors at Duke Ellington School of The Arts, Ms. Tedra Williams and Ms. Swanna Reavis, Witnesses did not have these duties of Substitute Teaching and Library Media Specialist.

Ms. Taylor-Cotten had no private office at Duke Ellington School of the Arts, no private telephone or cell phone. The District of Columbia Public Schools provides cells phone to all High School Counselors. The CSC scores were low but the remarks clearly state that Ms. Taylor- Cotten performed a remarkable job under the circumstances of not having a telephone or private office.

Excellent time and attendance is a fact is a fact for Ms. Taylor-Cotten. I am asking the OEA to read all evaluating remarks and you can clearly understand my augment concern the scores and how was the score calculated.

No private office, no telephone or cell phone like other Counselors in the school and this lowered Mrs. Cotten IMPACT score when it concerned contacting parents for conferences.

Mrs. Taylor-Cotten knew the names of students and the students showed there appreciation by signing my log book and helping them with career and academic, personal concerns.

Ms. Taylor-Cotton attended all Parent Conferences on DCPS schedule, clearly states that Ms. Taylor Cotton has excellent time and attendance, verification and fact, sign in sheets on those dates.

Ms. Stone the Administrative Manager can witness this. Ms. Taylor-Cotten wanted to schedule Parents Conferences to discuss letter of Understanding and email sent by Ms. DE Vargas, asked Ms. Taylor Cotten to stop all correspondence with Parents.

Evaluation Exhibit one Ms. DeVargas states that Ms. Taylor-Cotten consistently communicates with students families and effectively engages in the development and implementation of the Counseling program. 90% Responsive Counseling.

The letter of Understanding is the transcript. Ms. De Vargas Principal did not want the parents to sign transcripts. This is the correct way. The Counseling team sent a worksheet to parents. This is incorrect. I explained the letter of Understanding to all students and completed all Naviance assignments on time. Verified by the Naviance Program and submitted documentation. Ms. Taylor-Cotten was observed by Maretia Carter, former Director of Counseling, from Central Office. Ms. Taylor Cotton was observed by the Former Coordinator of Counseling, Ms. Tearez Farmer, in 2015-2016, Central and received highly effective. Second Round Ms. Farmer Coordinator of Counseling, Central Office Ms. Taylor-Cotten received Highly Effective on completing all Counseling task.

Ms. Taylor-Complained to Union Official, Washington Teachers Union, and Union wrote letter. The Washington Union Contract States, under Counselors that Counselor will have a private office and telephone and should receive extra duty pay when covering classes.

Mrs. DE Vargas Principal very angry from letter from Washington Teachers Union and of Mrs. Taylor-Cotten submitting building request of fixing ceiling due to collapse. Parking lot fixers and rodents in Cafeteria which had to shut down for weeks.

The Principal gave me a low evaluation due to discrimination, budget shortfall, and non-Counselors duties.

There were complaints filed and according to DC Code Sec 2-1401.01 et seq. Employer may not discharge or discipline employees for filing a complaint.

There was no PIP Performance Improvement Plan 1410-10 under Comprehensive Merit personnel Act of 1978 (CMPA effective march 3, 1979

1410.6 failures on the part of the Supervisor or his absence of that individual to review the issue of a written decision within the specified time period will result in the employee having meant the PIP requirements performance

(DC. Law 2-139) D.C. official Code 1-608.0192006.

It is unwarranted Students test scores were top five in the District. Graduation rate of students 98%. At Duke Ellington School of The Arts.

Evidence showed she reached out to Sara Goldband, Director of personnel DCPS for a budgeted position, Carl Turpin Esq, Attorney DCPS to oversee reinstatement to a permanent position there were permanent positions available according to the Excess sign in sheet submitted fact.

Upon meeting Mrs. De Vargas she refused Ms. Taylor-Cotten in attending City Wide Counselors, staff development with other School Counselors, and weekly, Staff development with teachers no follow up meeting held after first Impact Score developing. I requested evidence.

Joanne Taylor-Cotten is requesting an Evidence hearing with witnesses submitted.

Joanne Taylor-Cotten relief of back pay, removal of last two evaluations.

Reinstatement of a permanent full time Counselor Et 15 on the budget.

Reinstatement of Five years of service with monies put into retirement account.

Attorney's fees,

Comes now Plaintiff Joanne Taylor-Cotten asking the Court to acknowledge information

Submitted failed to follow appropriate procedures as DC. Code 624.08 concerning

Discrimination and wrongful termination on IMPACT Evaluation and Reinstatement concerning a precedent case Breach of Contract agreement. This Evaluation and termination will destroy Ms. Taylor- Cotten future career as a School Counselor.

Transferring of Mrs. Taylor- Cotten to excess positions of Counselor ET 15 and the retaliation concerning reinstatement to the position of Counselor ET 15 and School budget concerns.

Reinstating Mrs. Taylor- Cotten to an Excessing position on September 15, 2014.

Ballou High School Principal Dr. Reeves could not provide cell phone or Telephone because Ms. Taylor-Cotten was reinstated as Excess not on school budget.

Emails sent from the Manager of Finance Ms. Cadet, from Ballou High School stated that late reinstatement caused a budget shortfall so a cell phone could not be issued, while all other ET 15 Counselors was provided a cell phone.

The Principal Ms. DeVargas stated to other Counselors Ms. Swanna Reavis, witness Ms. Taylor-Cotten was excess and therefore not to introduce her as the Counselor to Parents, she was there as excess not on budget of school.

While an employee with Duke Ellington School of the Arts, Ms. Taylor-Cotten was observed outside of her certification as Professional School Counselor.

Area as Library Media Specialist and Substitute Teacher which no extra duty pay received,

As stated in the Washington Teachers Union contract.

The employee Ms. Joanne Taylor-Cotten is Professional School Counselor as reflected by her Official Notification of Personnel Action form (SF-50)

Ms.Taylor--Cotten was evaluated under the improper IMPACT guidelines and Ms. DE Vargas, failed to meet its burden of proof in showing that it adhered to the IMPACT process with low scores and rating.

Mrs. Taylor-Cotten was evaluated in two groups in the incorrect Group of Library Media Specialist and Counselor the Agency failed to follow the evaluation process as required by Section 15.4 of the CBA between DCPS and WTU.

Ms.Taylor-Cotten was terminated on August 5, 2016 and the 30 day notice was

Not given. Fact Mrs. Taylor Cotten received Notice by certified mail on July 9, 2016 submitted certified

Notice date.

Exhibit one

IMPACT Assessment

Exhibit 2

Chancellor's appeal

Certificate of Service

I certify that the attached request for Continuance including brief was sent by email on this day June 4, 2018 to:

Judge Joseph E. Lim, Esq.

Office of Employee Appeals

District of Columbia Government

1100 4th Street SW #620, Washington DC 20024

Nicole Dillard Esq.

Office of General Counsel

DCPS

1200 First Street, Ne.

10th Floor

Washington D.C.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS
1200 First Street, NE | 10th Fl., IMPACT
Washington, DC 20002

June 27, 2016

Joanne Taylor-Cotten
12405 GABLE LN
FORT WASHINGT, MD 20744-5245

Re: Notice of Minimally Effective IMPACT Rating and Termination EID: 45670

Dear Joanne Taylor-Cotten,

This letter serves as notification that you have received a final IMPACT rating of Minimally Effective for the 2015-2016 school year. IMPACT is the District of Columbia Public Schools' (DCPS) Effectiveness Assessment System for School-Based Personnel. IMPACT policy states that an employee whose final IMPACT rating declines between two consecutive years from Developing to Minimally Effective is subject to separation.

Since your final IMPACT rating for the 2014-2015 school year was Developing and your final IMPACT rating for the 2015-2016 school year is Minimally Effective, pursuant to IMPACT policy your employment with DCPS will be terminated effective August 5, 2016.

You may elect to appeal this termination in one of the following ways, not both:

1. You may file an appeal with the D.C. Office of Employee Appeals (OEA). Your appeal must be filed within thirty (30) calendar days of the effective date of your termination. You must submit your appeal directly to OEA, 1100 4th Street, SW (East Building) Suite 620E, Washington, DC 20024; telephone (202) 727-0004. Copies of the OEA Rules and the appeal forms are attached to this letter. In addition, this information is available at http://oea.dc.gov/service/file-employee-appeal.

<u>or,</u>

2. You may be able to file a grievance regarding DCPS's compliance with the evaluation process pursuant to Articles 6 and 15 of the Collective Bargaining Agreement between DCPS and the Washington Teachers' Union. Your grievance must be submitted within fourteen (14) school days of the effective date of your termination. You or your union representative must submit your grievance in writing to DCPS Labor Management and Employee Relations, 1200 First Street, NE, 10th Floor, Washington, DC 20002.

In addition to either of these two options, you may file a Chancellor's Appeal pursuant to Title 5-E, §§ 1306.8 - 1306.13 of the District of Columbia Municipal Regulations. Your appeal must be filed within thirty (30) calendar days of your receipt of the contested evaluation, but no later than August 5, 2016. Chancellor's Appeals must be filed with DCPS via your IMPACT dashboard. You can access your IMPACT dashboard at http://impactdcps.dc.gov. Your login information is your dc.gov email address and password.

#[redacted]

Filing a Chancellor's Appeal does not modify, change, or affect the requirement that any appeal to OEA be filed within thirty (30) calendar days of the effective date of your termination, or the requirement to file a grievance within fourteen (14) school days of your receipt of this notice.

Your health benefits coverage will continue through August 5, 2016, followed by a 31-day temporary extension of coverage at no cost to you. If you are interested in continuing your health benefits or your life insurance coverage, please read the enclosed document that provides additional information regarding Temporary Continuation of Coverage (TCC) insurance. Questions regarding TCC insurance, retirement eligibility, or other benefits should be directed to HR Answers at (202) 442-4090 or dcps.hranswers@dc.gov.

Sincerely,

Crystal Jefferson

Crystal Jefferson

Interim Chief, Office of Talent and Culture

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF RISK MANAGEMENT

Jed Ross
Chief Risk Officer

November 30, 2016

Joanne Taylor-Cotten
12405 Gable Lane
Fort Washington, MD 20744

Date & Time of Loss: **08/05/2016**
Our Claim Number: **1601319-000**
Location of Loss: **Duke Ellington School of the Arts, 2501 11th St NW, Washington, DC 20001**
Description of Loss: **Discrimination**

Dear Mrs. Joanne Taylor-Cotten:

This will acknowledge receipt of your correspondence notifying our office of a claim against the District of Columbia. This claim has been assigned to Claims Specialist Lashonda Wright, who can be reached at 202-724-6576 or lashonda.wright@dc.gov for investigating and processing. The assigned Claim Number [redacted]

An inquiry will be submitted to the involved agency seeking any/all information that they have regarding this incident. The involved agency will be given a minimum of thirty (30) days to respond to our request. Please wait at least forty-five (45) days after receipt of this letter before reaching out to the assigned Claim Specialist for a status of your claim.

If you have not already done so, please send the following information to expedite the claims process:

- Your client's complete index information
- Photographs of the incident scene, damaged property, and/or injuries
- Any and all medical records and bills if claiming injury
- Police Reports and/or any and all documents which may bear on the validity or amount of this claim (proof of expenses, invoice, estimates, receipts, etc.)

This letter does not waive the District of Columbia's right to timely and complete notice within six months of the incident as required by D.C. Code Section 12-309.

Very truly yours,

DCORM Tort Liability Division

"WARNING: It is a crime to provide false or misleading information to the District of Columbia Government, or to any department or agency thereof, regarding any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent. Such an act is subject to imprisonment of not more than one year and a fine of not more than $100,000 for each violation".

Mrs. Joanne Taylor-Cotten M.Ed. LC
12405 Gable Lane
Fort Washington MD 20744
301-2032577

November 14, 2016

VIA US MAIL

Honorable Muriel Bowser
Mayor of the District of Columbia
Office of Risk Management
ATTN: Claims
441 4th Street N.W., Suite 800 South
Washington, D.C. 20001
Re: D.C. Code 12-309 Notice on behalf of Joanne Taylor-Cotton

Dear Mayor Bowser:

Pursuant to District of Columbia Code 12-309, Ms. Joanne Taylor-Cotten herby gives notice of claims Against the District of Columbia Government.

Ms. Taylor-Cotten is an African –American female who was employed as a School Counselor for the District of Columbia Public Schools. On August 5, 2016, Ms. Taylor-Cotten was removed from her position as a result of a Minimum Effective score on The IMPACT evaluation.
Ms. Taylor Cotten was reinstated as a result of a mistake on the Competitive level Document as a result Of a RIFT in 2009. On September 15, 2014 upon reinstatement her Five years of service were not restored. As a result there was retaliation and discrimination placing her in a Temporary position to help move Ballou High School to a new building with New Principal Dr. Yutende Reeve, Ms. Taylor –Cotten was not given an office or private telephone as were given to the other Counselors at the school. The result was a Developing Score on IMPACT. Ms. Taylor- Cotten was then placed at Duke Ellington School of the Arts, to help with the transition to a new building. There was a new principal Ms. DeSepe De Vargas, who discriminated, against Ms. Taylor-Cotten, by not giving her an office or private telephone as Written in the Washington Teachers Union Contract, under Counselors. Ms. Cotten was given duties as Media Library Specialist, during Lunch hours because there was not a Media Library on staff 2015-2016 and substitute Teaching. As a result this lowered the score of the IMPACT and caused Mrs. Taylor Cotten to be removed. Ms. Taylor Cotten has worked for The District of Columbia Public Schools with twenty years of service, excellent evaluations and Counselor of The Year.
While the investigation into this matter is ongoing, please be advised that Ms. Taylor- Cotten, is seeking Civil claims, including negligent supervision and wrongful termination and discrimination. Any such will seek compensatory damages and reasonable attorney's fees.

Please do not hesitate to contact me with any further questions.

Respectfully,

Mrs. Joanne Taylor-Cotten M. Ed LC

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Joanne Taylor-Cotten**
12405 Gable Lane
Ft Washington, MD 20744

From: **Washington Field Office**
131 M Street, N.E.
Suite 4NW02F
Washington, DC 20507

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
570-2016-01738	**Alan W. Anderson, Deputy Director**	**(202) 419-0756**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

FOR

Mindy E. Weinstein,
Acting Director

JUL 13 2016
(Date Mailed)

Enclosures(s)

cc:

DISTRICT OF COLUMBIA SCHOOLS
Duke Ellington School Of Arts
2501 11th Street, N.W.
Washington, DC 20001

Washington Teachers' Union

June 3, 2015

Electronic Delivery
Erin K. Pitts
Director, Labor Management & Employee Relations
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

Dear Ms. Pitts:

The Washington Teachers' Union hereby invokes this Step 2 grievance in accordance with Article 6 of the grievance and arbitration procedures as outlined in the Collective Bargaining Agreement dated October 1, 2007-September 30, 2012 and continuing in effect through the 2013-2014 school year (and on a continuing basis until a successor Agreement has been negotiated); between the Washington Teachers' Union and the District of Columbia Public Schools. This grievance is filed on behalf of Joanne Taylor-Cotten who is assigned to Ballou HS.

The grievance pertains to the unjust excessing of Ms. Cotten from Ballou HS, effective at the close of the 2014/2015 school year. Additionally, Ms. Cotten was recently restored to DCPS as the result of an OEA decision that has not been fully complied with.

The Washington Teachers' Union files this grievance under Article 4 and such other pertinent contract articles, policies, rules, and regulations. It is requested that the position to which Ms. Cotten is currently assigned be restored for the upcoming 2015/2016 school year. In other words, Ms. Cotten and the Washington Teachers' Union request that she be made whole.

Please contact me at cmoore@wtulocal6.net to arrange a mutually agreeable date and time for the grievance hearing.

Sincerely,

Charles R. Moore
Field Services

cc:
Joanne Taylor-Cotten
Elizabeth Davis

WTU Contract ET 15

2. The Board further agrees to provide logistical support (boxes, storage and transporting of educational materials) for the transferring teacher to the new building assignment.

3. Involuntary transfers shall not be made for reasons of disciplinary action.

4. In cases where transfers are necessary as a result of excessing teachers from buildings, preference shall be given to the teacher with the most building seniority, provided the teachers are equally certified. Where building seniority can not be determined by the official records of the Office of Human Resources, preference shall be given to the teacher with the most system-wide seniority.

5. A teacher who is involuntarily transferred shall carry forward his/her building seniority. The provisions of Section 5 shall apply to:

   (a) A teacher who accepts an involuntary transfer when a reduction in the teaching staff of their current building is required.

   (b) A teacher who is granted a transfer because of the inability to adapt to the open space environment.

   (c) A resident special subject teacher whose reassignment conforms to the provisions of Definitions P.3.

   (d) A teacher who elects to leave a school in accordance with Article XXIV 11d.

C. Excessing

In cases where transfers are necessary as a result of excessing, teachers will be notified of their excess status by their supervisors prior to the last day of school for teachers.

1. Excessed teachers shall be notified of their new assignment by the Office of Human Resources by July 31.

2. Excessed teachers shall be given the option of returning to their former assignments if a vacancy occurs in the area of certification from which they were excessed by the end of the equalization process in the following school year.

3. When two or more teachers have the same certification and identical building seniority, the teacher with the least amount of system-wide seniority shall be excessed.

4. When two or more teachers have the same certification, same building seniority, and the same system-wide seniority, the teacher with an annual evaluation of "Exceeds Expectations" in the school year immediately

Back to Dashboard

Appeal to the Chancellor

Pursuant to 5-E DCMR 1306, any District of Columbia Public Schools (DCPS) employee who receives a performance rating of "below average" or "unsatisfactory" may file an appeal with the Chancellor of DCPS. Only employees whose final IMPACT rating is Ineffective, Minimally Effective or Developing may file an appeal to the Chancellor. Appeals submitted from employees with a final IMPACT rating of Effective or Highly Effective will not be reviewed. All appeals will be reviewed by the Chancellor or her designee(s). DCPS will provide a written response to all appeals.Please ensure your mailing address is updated in PeopleSoft as the last known address will be used to mail your decision letter at the end of the calendar year.

Status:

NAME:	Taylor-Cotten, Joanne
SCHOOL:	Ballou HS
SCHOOL YEAR:	2014-2015
GROUP:	Group 10
FINAL SCORE:	265
FINAL RATING:	Developing
CONSEQUENCES:	Step Hold

Please explain what in your evaluation you are appealing and why your appeal should be granted.

In response to my IMPACT score of Developing, I am submitting an appeal to the Chancellor. My concern is the process of a timely meeting for my final IMPACT Score. The Principal Dr.Reeves did not schedule me for a final IMPACT meeting and sent an email stating she forgot. The first cycle was not adjusted due to my start date September 15, 2015. In addition I was not given a telephone or private office to Counsel the students for four months until we arrived in the New Ballou on January 2, 2015. I was not included in Counselors meeting with other Counselors with the Principal. My populations was repeater students, who were 80% Special Education located in the basement of the building away from the main population of other students. I have evidence of signatures from every student concerning the letter of Understanding a log book and parent book including a plan book, parent log. Attended all meeting on a timely manner, worked with attendance and testing Given to me excellent recommendations from the Assistant Principals, Mr. Cureton, Mr.Walker and Ms. Straughter. There was no Student Support team until I brought this up to the Principal Dr. Reeves in January 2015 and I started implementing The Student Support Team the process. In addition CSC I worked with Sasha Bruce, to provide programs for students and tutoring program for students. I provided parents with a lunch a to discuss students progress and provide information for College Readiness. My record shows I am highly effective throughout my career and the process was followed. Thank you for your attention in this matter and have a good day. Sincerely, Joanne Taylor-Cotten M.Ed

For most appeals, only the information you provided will be presented to state your concerns to the Impartial Review Board. In the event the Impartial Review Board requires additional information to make an informed recommendation to the Chancellor, the IMPACT team will reach out to you using your dc.gov email address.

Back to Dashboard

Appeal to the Chancellor

Pursuant to 5-E DCMR 1306, any District of Columbia Public Schools (DCPS) employee who receives a performance rating of "below average" or "unsatisfactory" may file an appeal with the Chancellor of DCPS. Only employees whose final IMPACT rating is Ineffective, Minimally Effective or Developing may file an appeal to the Chancellor. Appeals submitted from employees with a final IMPACT rating of Effective or Highly Effective will not be reviewed. All appeals will be reviewed by the Chancellor or her designee(s). DCPS will provide a written response to all appeals.Please ensure your mailing address is updated in PeopleSoft as the last known address will be used to mail your decision letter at the end of the calendar year.

Status:

NAME:	Taylor-Cotten, Joanne
SCHOOL:	Ellington School of the Arts
SCHOOL YEAR:	2015-2016
GROUP:	Group 10
FINAL SCORE:	244
FINAL RATING:	Minimally Effective
CONSEQUENCES:	Separation

Please explain what in your evaluation you are appealing and why your appeal should be granted.

Please accept my appeal to final IPACT score of 244. On June 9,2016 arrive to work Duke Ellington Schools of The Arts, opened DCPS email stating from my Principal Ms. de-Vargas, to attend final Evaluation. No twenty four hour notice given. Asked for Notice and denied attended Final Evaluation meeting 9:00 am-11:00 am Answered all questions and presented Data and usage of Naviance-Program. Presented data on testing PSAT Scores and SRI Given in March 2016 sent by EMail from Dr. Patterson. Sent email request for data to Dr. Patterson in February 2016. The Letter of Understanding is the transcript and signed by Students and parents. Ms. DeVargas,the Principal called the Letter of Understanding, a worksheet sent to parents. Principal DeVargas, sent email to me to stop all correspondence by USA mail with parents. Principal DeVargas, did not understand the process of the Letter of Understanding. The 9th grade students 95% have signed under my direction and explanation to them. I have built relationships with students during classroom lessons on the Naviance Program, Letter Of Understanding, and Testing including Media coverage every day during the lunch hour. Learned the names of Students during all interactions. Plan book presented with dates and objectives. Students signatures presented with documented concerns. Attended all Faculty meetings and Meetings with Teachers and Speacial Education Coordinator. Worked with Attendance Counselor and RTI team. Attended Saturday Tutoring and Admission Recruitment. Worked with Dean of Students Ms. Hollis concerning RTI and Counseling Student. Meant deadline on ACGR data correctly. Denied training with Ingenuity. Fill in as a Substitute Teacher. Completed all Scheduling assignment on Program ASPEN The Curriculum American School Counseling Association was presented to 9th grade students. 95% Promotion Rate. Please except this Appeal documentation presented.

For most appeals, only the information you provided will be presented to state your concerns to the Impartial Review Board. In the event the Impartial Review Board requires additional information to make an informed recommendation to the Chancellor, the IMPACT team will reach out to you using your dc.gov email address.

Final 2014–15 IMPACT Report

prepared for:

Joanne Taylor-Cotten
Ballou HS
IMPACT Group 10
FINAL RATING Developing

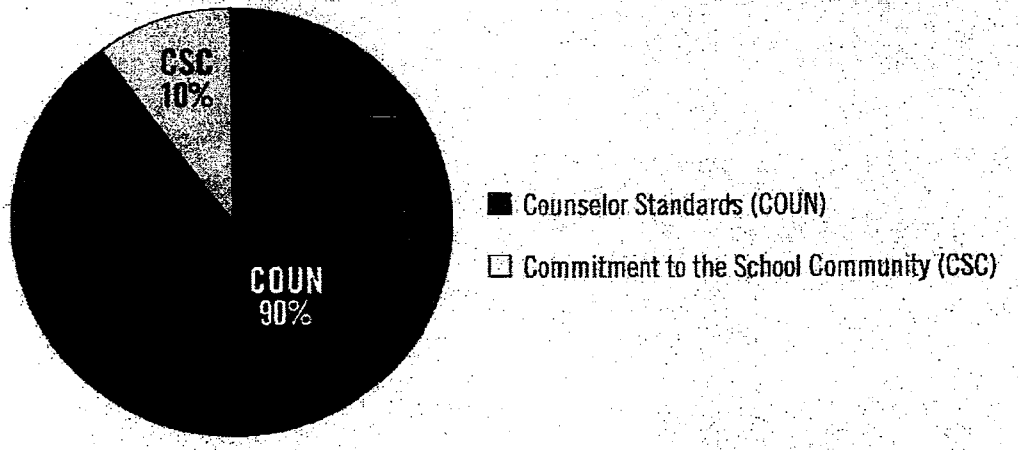
What is the purpose of this report?

This report summarizes all of your IMPACT information, including your final IMPACT score and rating.

What are the components of my evaluation?

- **Counselor Standards (COUN)** — These standards define excellence for counselors in DCPS.
- **Commitment to the School Community (CSC)** — This is a measure of the extent to which you support and collaborate with your school community.
- **Core Professionalism (CP)** — This is a measure of four basic professional requirements for all school-based personnel. This component is scored differently from the others, which is why it is not represented in the pie chart.

IMPACT COMPONENTS FOR GROUP 10



Final 2014–15 IMPACT Report

Joanne Taylor-Cotten
Ballou HS

COUNSELOR STANDARDS (COUN)	CYCLE ENDS 2/5	CYCLE ENDS 6/11	OVERALL *(Average of Cycles)*	WEIGHT	WEIGHTED SCORE
COUN SCORE *(Average of COUN 1 to COUN 7)*	2.9	3.0	2.9	40	116
COUN 1: Data-Driven Program	2.0	3.0			
COUN 2: Individual Student Planning	2.0	2.0			
COUN 3: Guidance Curriculum	3.0	3.0			
COUN 4: Responsive Counseling	2.0	3.0			
COUN 5: Student and Family Relationships	2.0	3.0			
COUN 6: Collaboration	3.0	3.0			
COUN 7: Scheduling (for High School Counselors Only)	3.0	3.0			

COMMITMENT TO THE SCHOOL COMMUNITY (CSC)	CYCLE ENDS 2/5	CYCLE ENDS 6/10	OVERALL *(Average of Cycles)*	WEIGHT	WEIGHTED SCORE
CSC SCORE *(Average of CSC 1 to CSC 3)*	2.7	3.0	2.8	40	112
CSC 1: Support of the Local School Initiatives	3.0	3.0			
CSC 2: Support of Special Education and ELL Programs	2.0	3.0			
CSC 3: High Expectations	2.0	3.0			

SUBTOTAL	**264**
CORE PROFESSIONALISM (2/5): MEETS STANDARD	**0**
CORE PROFESSIONALISM (6/10): MEETS STANDARD	**0**
FINAL IMPACT SCORE	**264**
FINAL IMPACT RATING	**Highly Effective**

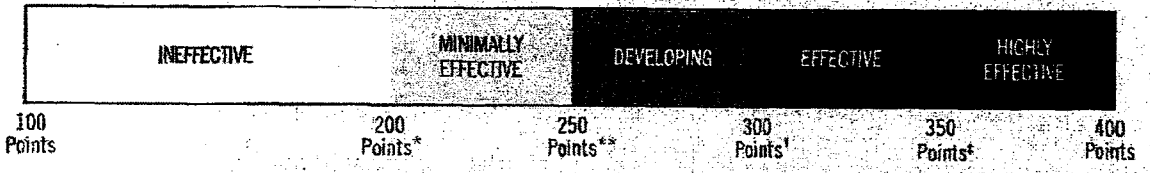
Note: Some scores have been rounded or truncated for presentation purposes. As a result, some calculations may appear to be slightly different than their actual values. Your final 2014–15 IMPACT score is calculated based on your exact scores and then rounded to the nearest whole number. For more information about your data, please log into the IMPACT system at http://impactdcps.dc.gov.

Final 2014–15 IMPACT Report

Joanne Taylor-Cotten
Ballou HS

OVERALL IMPACT SCALE

Your score:
265 Points



100 Points | 200 Points* | 250 Points** | 300 Points† | 350 Points‡ | 400 Points

** A score of exactly 200 would be classified as Minimally Effective.*
*** A score of exactly 250 would be classified as Developing.*
† A score of exactly 300 would be classified as Effective.
‡ A score of exactly 350 would be classified as Highly Effective.

What does the arrow on the scale above represent?

The arrow shows your final IMPACT score (265) and rating (Developing).

What do these ratings mean?

Highly Effective—This rating signifies outstanding performance. Members of the Washington Teachers' Union (WTU) and Council of School Officers (CSO) who earn this rating will be eligible for additional compensation under their respective contracts.

Effective — This rating signifies solid performance. Individuals who earn this rating will progress normally on their pay scales.

Developing — This rating signifies performance that is below expectations. Individuals who receive this rating are encouraged to take advantage of the professional development opportunities provided by DCPS. Such individuals will be held at their current salary step until they earn a rating of Effective or higher. Individuals who are unable to move beyond the Developing level for three consecutive years will be subject to separation from the school system.

Minimally Effective — This rating signifies performance that is significantly below expectations. DCPS will encourage principals and instructional coaches to prioritize these teachers for professional development. Such individuals will be held at their current salary step until they earn a rating of Effective or higher. Individuals who are unable to move beyond the Minimally Effective level for two consecutive years will be subject to separation from the school system.

Ineffective — This rating signifies unacceptable performance. Individuals who receive this rating will be subject to separation from the school system.

What should I do if I have questions or if I feel my final report is inaccurate?

Please contact the IMPACT Team at 202-719-6553 or impactdcps@dc.gov.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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Current Assessment

NAME:	Taylor-Cotten, Joanne
SCHOOL:	Ballou HS
SCHOOL YEAR:	2014-2015
GROUP:	Group 10
CYCLE:	Administrator Cycle 3
ASSESSOR:	Yetunde Reeves

Date of Observation and Conference

Date of Conference No Conference

Attempts made for conference

In order for an assessment to be valid without a conference, an evaluator must make two attempts.

	Date:	Indicate method of attempt
First attempt	06-11-2015	Other
Second attempt	06-11-2015	Email

COUN - Score: 2.86

STANDARD	RATING	COMMENTS
COUN 1 - Data-Driven Program Click here to see rubric	Level 3	Ms. Taylor-Cotton has monitored grades and is skilled in generating reports.
COUN 2 - Individual Student Planning Click here to see rubric	Level 2	Ms.Taylor-Cotten has worked to support with planning. The promotion rate for the Rising Academy is still a challenge area for Ballou. A next step for Ms. Taylor would be to share the plans and progress in a more systematic way.
COUN 3 - Guidance Curriculum Click here to see rubric	Level 3	Ms. Taylor-Cotten has a wealth of resources and there was not significant evidence of how Ms. Taylor-Cotten supported all students with her curriculum. A next step would be to ensure that all students are serviced by creating a schedule of classroom observations, as well as tracking individual student conferences with action items.
COUN 4 - Responsive Counseling Click here to see rubric	Level 3	Ms. Taylor-Cotten has been willing to support students in any way that she can. Ms Taylor-Cotten was asked to support counseling students to alternative placement and supporting parent outreach.
COUN 5 - Student and Family Relationships Click here to see rubric	Level 3	While Ms. Taylor-Cotten is familiar with many students in the building, more evidence is needed around how Ms. Taylor-Cotten works with families.
COUN 6 - Collaboration Click here to see rubric	Level 3	Ms. Taylor-Cotten collaborates with the Rising Academy staff and they have organized various supports for students.
COUN 7 - Scheduling (For High School Counselors Only) Click here to see rubric	Level 3	Ms. Taylor-Cotten supported scheduling for SY16 and while there were some errors in scheduling, Ms. Taylor-Cotten demonstrated an effort to support this undertaking.

Additional Comments (Optional)

Download your "Additional Comments":

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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Commitment to the School Community and Core Professionalism

NAME:	Taylor-Cotten, Joanne
SCHOOL:	Ballou HS
SCHOOL YEAR:	2014-2015
GROUP:	Group 10
CYCLE:	3

Commitment to the School Community (CSC) Score : 3.00

STANDARD	RATING	COMMENTS
CSC 1 Support of the Local School Initiatives Click here to see guidance	Level 3	Participated in all instructional meetings with 10th grade team, Has documentation of reports pulled to support teachers.
CSC 2 Support of the Special Education and English Language Learner Programs Click here to see guidance	Level 3	504's, 10 SST meetings for repeater students, IEP Meetings
CSC 3 High Expectations Click here to see guidance	Level 3	SST. Testing team . Attendance, Honor Roll committees

Core Professionalism (CP) Score : No Change

STANDARD	RATING	COMMENTS	
CP 1 Attendance Click here to see guidance	Meets Standard	Date of First Unexcused Absence Ms. Taylor-Cotten has outstanding attendance.	Date of Second Unexcused Absence
CP 2 On-Time Arrival Click here to see guidance	Meets Standard	Date of First Unexcused Late Arrival Ms. Taylor-Cotten is prompt in her attendance.	Date of Second Unexcused Late Arrival
CP 3 Policies and Procedures Click here to see guidance	Meets Standard	All policies and procedures are adhered to.	
CP 4 Respect Click here to see guidance	Meets Standard	Respect is demonstrated at all times.	

Additional Comments (Optional)

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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Current Assessment

NAME:	Taylor-Cotten, Joanne
SCHOOL:	Ellington School of the Arts
SCHOOL YEAR:	2015-2016
GROUP:	Group 10
CYCLE:	Administrator Cycle 3
ASSESSOR:	Desepe K. (SHS) DeVargas

Date of Observation and Conference

Date of Conference: 06-09-2016

Evidence

Add Evidence Show/Hide evidence

COUN - Score: 2.28

STANDARD	RATING	COMMENTS
COUN 1 - Data-Driven Program Click here to see rubric	Level 2	a. ACGR monitored and supported 9th grade students b. Monitored SSP (student support plans) during 9th grade team level meetings. c. Monitored probation list data. d. Ms. Cotten stated that she used data to help support student's needs as it relates to tardiness, truancies, and tutoring. Ms. Cotten has worked with attendance counselor to address issues surrounding tardiness and truancy as identified by RTI data. She and the attendance counselor have met with 9th RTI students and develop plans to meet their needs. Additionally, Ms. Cotton also has met with classroom teachers to discuss SSP and tutoring/other needed supports for the students on her 9th grade ACGR list. Lastly, Ms. Cotton has collaborated with the director of student affairs to academically support students that have been identified by probation list data. Ms. Cotten should focus more attention to outcomes and utilization of data. SRI/PSAT data could be utilized for course selection, student placement, and/or demographics.
COUN 2 - Individual Student Planning Click here to see rubric	Level 2	a. Identified student community service needs through LOU. b. Directed students to Naviance to aid in the self-monitoring process for community service.
COUN 3 - Guidance Curriculum Click here to see rubric	Level 2	a. PSAT registration (group session) b. Develop plans for 9th grade student's base on community service.
COUN 4 - Responsive Counseling Click here to see rubric	Level 2	a. Met with 9th grade group for "career builders" b. Resume builder in Naviance. c. Meeting with individual students.
COUN 5 - Student and Family Relationships Click here to see rubric	Level 2	a. Reached out to student and families to communicate community service opportunities.
COUN 6 - Collaboration Click here to see rubric	Level 3	a. Collaborate with Director of Student affairs for students on ACGR b. Collaborate with classroom teachers for classroom guidance lessons c. Support Specialized Instruction Coordinator in organizing documents
COUN 7 - Scheduling (For High School Counselors Only) Click here to see rubric	Level 2	a. Provided support for the student course selection process

COUN 6 - Collaboration Click here to see rubric	Level 3	Ms. Taylor-Cotten supports school staff in the planning and execution of the counseling program, meeting student needs and maintaining meaningful relationships with external support agencies. She is a member of the following school-based committees - Attendance, testing/ assessment, RTI, Specialized instruction support.
COUN 7 - Scheduling (For High School Counselors Only) Click here to see rubric	Level 3	Ms. Taylor-Cotten fulfills all assigned duties related to course scheduling in a timely manner. She actively works to support the scheduling team by inputting data, meeting with students if required, collaborating with the Dean of Students and core counseling team. She completed the organization of schedules by arts departments as well as organizing schedules that were incomplete or missing courses.

Additional Comments (Optional)

Download your "Additional Comments":

[redacted]

STANDARD	RATING	COMMENTS
		*Ms. Cotten should focus more attention to outcomes and utilization of data. SRI/PSAT data could be utilized for course selection, student placement, and/or demographics.
COUN 2 - Individual Student Planning Click here to see rubric	Level 2	a. Identified student community service needs through LOU. b. Directed students to Naviance to aid in the self-monitoring process for community service.
COUN 3 - Guidance Curriculum Click here to see rubric	Level 3	a. PSAT registration (group session) b. Develop plans for 9th grade student's base on community service.
COUN 4 - Responsive Counseling Click here to see rubric	Level 2	a. Met with 9th grade group for "career builders". b. Resume builder in Naviance. c. Meeting with individual students
COUN 5 - Student and Family Relationships Click here to see rubric	Level 2	a. Reached out to student and families to communicate community service opportunities.
COUN 6 –Collaboration Click here to see rubric	Level 3	a. Collaborate with Director of Student affairs for students on ACGR b. Collaborate with classroom teachers for classroom guidance lessons c. Support Specialized Instruction Coordinator in organizing documents
COUN 7 - Scheduling (For High School Counselors Only) Click here to see rubric	Level 2	a. Provided support for the student course selection process

Additional Comments (Optional)

Download your "Additional Comments": PDF

[redacted]

STANDARD	RATING	COMMENTS
		is also a contributor to the weekly Counseling Corner section in the school's newsletter. The information shared was designed to help parents understand graduation requirements and provide guidance for community service.
COUN 6 - Collaboration Click here to see rubric	Level 3	Ms. Taylor-Cotten supports school staff in the planning and execution of the counseling program, meeting student needs and maintaining meaningful relationships with external support agencies. She is a member of the following school-based committees - Attendance, testing/ assessment, RTI, Specialized Instruction support.
COUN 7 - Scheduling (For High School Counselors Only) Click here to see rubric	Level 3	Ms. Taylor-Cotten fulfills all assigned duties related to course scheduling in a timely manner. She actively works to support the scheduling team by inputting data, meeting with students if required, collaborating with the Dean of Students and core counseling team. She completed the organization of schedules by arts departments as well as organizing schedules that were incomplete or missing courses.

Additional Comments (Optional)

Download your "Additional Comments": PDF

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Interact

- View Appeal to the Chancellor
- Chancellor's Appeal Flyer
- Notice of Separation
- Final Report (Available Summer 2016)

Resources & Tools

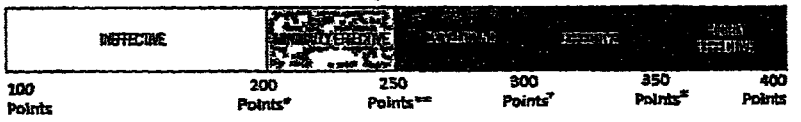
- IMPACT Guidebook
- Contact Us
- Logout

Prior Year Assessments

- 14-15 Assessments
- 13-14 Assessments
- 12-13 Assessments
- 11-12 Assessments
- 10-11 Assessments
- 09-10 Assessments

Taylor-Cotten, Joanne
Ellington School of the Arts
Group 10 - Counselors

Final Score: 244
Final Rating: Minimally Effective



*A score of exactly 200 would be classified as Minimally Effective.
**A score of exactly 250 would be classified as Developing.
†A score of exactly 300 would be classified as Effective.
‡A score of exactly 350 would be classified as Highly Effective.

Component	Scoring Cycle	Score	Component Score	Weight	Weighted Score
COUN	Administrator Cycle 1	2.57	2.42	90%	218
	Administrator Cycle 3	2.28			
CSC	Administrator Cycle 1	2.00	2.50	10%	25
	Administrator Cycle 3	3.00			
CP	Administrator Cycle 1	No Change	No Change	N/A	No Change
	Administrator Cycle 3	No Change			
Final Score					244

Note: Some scores have been rounded or truncated for presentation purposes. As a result, some calculations may appear slightly different than their actual values. Your Final IMPACT Score is calculated using your exact scores and then rounded to the nearest whole number.

1 Mail Calendar People Tasks Taylor-Cotten, Joanne (DCPS)

new mail

search Mail and People

Favorites

Taylor-Cotten, Joanne (DCPS)

- Inbox
- Drafts
- Sent Items
- Deleted Items 8
- Junk E-Mail
- Notes

INBOX CONVERSATIONS BY DATE

all unread to me flagged

Savoy, Tamiko (DCPS)
Coverage for Friday, June 12, 2015 9:45a
Good Morning Staff, Coverage is as follows: Ford (Ro...

Reeves, Yetunde (DCPS); Microso
Taylor-Cotten Check in 9:06a
Good morning, The Impact deadline was yesterday! I...

Jones, Caren (DCPS)
A technology gift 8:20a
Hello Knights, I am a firm believer that if you are not...

Jones, Caren (DCPS)
Intervention, Precision Reading and Acceleratin 8:13a
This is fantastic webinar. http://home.edweb.net/inte...

Petersen, Monique (DCPS)
TAS Documents 5:34a
Good morning Teachers, I have attached the TAS spr...

YESTERDAY

Chisholm, Latisha (DCPS)
Liz Davis @ Ballou 6/11/2015 Thu 4:44p
Staff, Liz Davis, President of the Washington Teacher...

Scott, Lillian (DCPS)
Consequence List Thu 4:17p
Good Evening Staff, Attach you will find the consequ...

PARCC
PARCC Updates - Reaching an Educational Mile Thu 3:45p
Having trouble viewing this email? Click here <http:/...

Farmer, Therese (DCPS)
Scholarship and College Updates for High Schc Thu 3:20p
[cid:image001.gif@01D0A3A1.13558BE0] Scholarship...

Reeves, Yetunde (DCPS)
Meeting Thu 2:32p
Hi Ms. Taylor, I apologize. I thought I calendared our...

Washington-Davis, Tia (DCPS)
Gentle Reminder - Request for Flash Drives Thu 12:46p
Good afternoon Knights! This is a gentle reminder co...

Green, Kevin D. (DCPS)
Ballou Youth Leaders in Action (BYLA) End of Yr Thu 12:12p
Ooops! Forgot to provide the names. The students a...

Reeves, Yetunde (DCPS)
IMPACT- Taylor Cotten Thu 11:44a
No preview is available.

Reeves, Yetunde (DCPS)
You are Invited! Upcoming REL Event: Culturally Thu 11:39a
Dr. Yetunde Reeves Principal, Ballou High School ...

DCPS Careers
DCPS Hiring Fair at Dunbar SHS - This Saturday Thu 11:33a
If you're having trouble viewing this email, you may...

Jackson, Melissa L. (DCPS)
MEN'S DAY KUDOS (NEWSPAPER) Thu 11:15a
Hello Ballou Family, The Washington Informer did a...

Savoy, Tamiko (DCPS)
Coverage for Thursday, June 11, 2015 Thu 10:13a
Good Morning Staff, Coverage is as follows: Valentin...

Nadir, Regina (DCPS)
Re: Consequence List June 11, 2015, Team Men Thu 7:54a

Meeting.

REPLY REPLY ALL FORWARD

Reeves, Yetunde (DCPS) mark as unread
Thu 6/11/2015 2:32 PM

To: Taylor-Cotten, Joanne (DCPS);

Action Items | Get more apps

Hi Ms. Taylor,
I apologize. I thought I calendared our IMPACT meeting for today but didn't. I sent you a calendar request for 2:30 pm and earlier in the week sent you a request to meet to share any artifacts you wanted me to consider. Did you receive my invites?

I can also speak by phone tonight. I need to close the evaluations out today and so I wanted to meet or talk.

Thank you!

Dr. Yetunde Reeves
Principal, Ballou High School

[redacted]

This is a letter below concerning my reinstatement
To DCPS there were budgets position available.
Check the vacancies 9/2014.

I was placed in excess position.

Thank you for your attention

Mrs. Joanne Taylor-Cotton M.Ed
Professional School Counselor

Sent from my iPhone

Begin forwarded message:

From: Mary Collins <mcollins@wtulocal6.net>
Date: November 3, 2014 at 4:58:57 PM EST
To: "Goldband, Sara (DCPS)" <sara.goldband@dc.gov>
Cc: "joannetaylori@aol.com" <joannetaylori@aol.com>, elizabeth davis <elizabeth.davis704@gmail.com>, Dorothy Egbufor <degbufor@wtulocal6.net>, "Pitts, Erin (DCPS)" <erin.pitts@dc.gov>
Subject: RE: Placement of a Counselor

Thanks for the prompt feedback.

Mary Collins, WTU Field Representative
Office: 202 517-0737
Cell: 202 330-3663

From: Goldband, Sara (DCPS) [mailto:sara.goldband@dc.gov]
Sent: Monday, November 03, 2014 4:52 PM
To: Mary Collins
Cc: joannetaylori@aol.com; elizabeth davis; Dorothy Egbufor; Pitts, Erin (DCPS)
Subject: RE: Placement of a Counselor

Hello Ms. Collins,

Unfortunately, there were and are currently no counselor vacancies in the system, so our options were limited. I will continue to look for a budgeted position, and will be sure to follow up if/when we do have such a vacancy.

Best,
Sara

Sara Goldband
Director, Strategic Staffing
Human Resources

Office of Human Capital
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002
T 202.535.2716
F 202.442.5315
E Sara.Goldband@dc.gov
W http://dcps.dc.gov

Save the date for EdFEST, DC's citywide education fair, on Saturday, November 22 from 11:00am to 3:00pm at the DC Armory. Explore more than 150 DCPS & public charter school options (PK3-12) for your child, and learn about My School DC – the city's common lottery. Admission is free.

From: Mary Collins [mailto:mcollins@wtulocal6.net]
Sent: Monday, November 03, 2014 3:42 PM
To: Goldband, Sara (DCPS)
Cc: Mary Collins; joannetaylori@aol.com; elizabeth davis; Dorothy Egbufor
Subject: Placement of a Counselor

Hi Sara,

Joanne Taylor-Cotton, who was RIFfed in 2009 and reinstated, has been placed at Ballou SHS in an unbudgeted position as a counselor. She has 15 years of service in DCPS and should be placed in a permanent budget position. Please assist the principal and Ms. Taylor-Cotton in resolving this issue.

Mary Collins, WTU Field Representative
Office: 202 517-0737
Cell: 202 330-3663

[redacted]

Mrs. Joanne Taylor-Cotten

From: Turpin, Carl (DCPS)
Sent: Wednesday, May 25, 2016 3:07 PM
To: Taylor-Cotten, Joanne (DCPS)
Cc: gmoore@wtulocal6.net
Subject: Re: Your Case > Joanne Taylor-Cotten

You were excess from Dunbar and assigned to Hudson (I think that was the name of the school). Your excess letter stated that you would be provided with one year of placement. Unfortunately, you were terminated prior to the school year ended. Thus, you were returned to work as an excess employee. We attempted to find a permanent position but was unsuccessful. But you are responsible for finding permanent employment.

– Carl K. Turpin
Supervisory Attorney
Office of the General Counsel
District of Columbia Public Schools
1200 First Street, NE, 10th Floor
Washington, DC 20002
202-727-8642
202-421-5419 (c)
Carl.Turpin@dc.gov

not excess when left clerk WTU contract on excess

From: "Taylor-Cotten, Joanne (DCPS)" <joanne.taylor-cotten@dc.gov>
Date: Wednesday, May 25, 2016 at 1:57 PM
To: ServUS OCTQ <carl.turpin@dc.gov>
Cc: "gmoore@wtulocal6.net" <gmoore@wtulocal6.net>
Subject: RE: Your Case >Joanne Taylor-Cotten

Turpin

Certificate of Service

I certify that the attached request for Continuance including brief was sent by email on this day [Petition for Review & Reply Decision]

June 4, 2018 to:

Judge Joseph E. Lim, Esq.

Office of Employee Appeals

District of Columbia Government

1100 4th Street SW #620, Washington DC 20024

Nicole Dillard Esq.

Office of General Counsel

DCPS

1200 First Street, Ne.

10th Floor

Washington D.C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS

REPLY TO:
955 L'Enfant Plaza, S.W.
Suite 2500
Washington, DC 20024
(202)727-0004
FAX (202)727-5631

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JOANNE TAYLOR-COTTON,
Petitioner

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS, et. al
Respondents.

Case No. 2018 CA 001462 P(MPA)

Judge Anthony C. Epstein

MOTION TO SEAL RECORD

Superior Court Rule 5-III(a)(1) provides that "[a]bsent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order." Moreover, pursuant to Superior Court Civil Rule 5(e)(2), a party wishing to file a document containing the unredacted personal identifiers may submit a motion to file an unredacted document under seal.

In accordance with Agency Rule 1(e), Respondent D.C. Office of Employee Appeals is required to file with the Clerk the entire agency record, including all original papers comprising that record. The original record contains documents that were submitted by the District of Columbia Public Schools and Joanne Taylor-Cotten which include Ms. Taylor-Cottens's date of birth and social security number. In an effort to maintain the record in its original form and to protect the privacy of those involved, we humbly request that you grant our motion to seal the

record to prevent it from being viewed by the public via the court's electronic filing system. Petitioner and Counsel for District of Columbia Public Schools do not object to this motion.

Respectfully submitted,

Lasheka Brown Bassey

Lasheka Brown Bassey
D.C. Bar # 489370
General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024
202.727.0738
Lasheka.Brown@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2018, the forgoing Respondent District of Columbia Office of Employee Appeals' Motion to Seal Record was served via the Court's electronic filing system, CaseFileXpress.com to the following:

Andrea Comentale
Charles Frye
Counsels for Department of General Services

Stephanie Rones
Counsel for Petitioner

Lasheka Brown Bassey

Lasheka Brown Bassey
D.C. Bar # 489370
General Counsel
D.C. Office of Employee Appeals
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024
202.727.0738
Lasheka.Brown@dc.gov

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JOANNE TAYLOR-COTTEN	:	
	:	
v.	:	Case No. 2018 CA 001462 P(MPA)
	:	
DISTRICT OF COLUMBIA, *et al.*	:	

ORDER

The Court grants two unopposed motions: (1) petitioner Joanne Taylor-Cotton's motion to extend her time to file her opening brief, and (2) the motion to seal of the D.C. Office of Employee Appeals ("OEA").

On March 2, 2018, Ms. Taylor-Cotten, then representing herself, filed her petition for review under the Merit Personnel Act. At the scheduling hearing on August 3 where an attorney appeared on Ms. Taylor-Cotten's behalf, the Court set a briefing schedule: Ms. Taylor-Cotten's opening brief was to be filed by November 16; respondent District of Columbia was to respond by December 21; and Ms. Taylor-Cotten could file a reply by January 18, 2019. On December 10, Ms. Taylor-Cotten moved to extend the time for her opening brief because the clerk did not issue an initial order when she filed the case, and therefore OEA did not prepare and send the copy of the administrative record she needs to write her brief ("Motion"). On December 24, OEA moved with the consent of both parties to seal the record in order to protect Ms. Taylor-Cotten's personal information. The Court grants this motion for good cause shown.

The District has not filed an opposition to Ms. Taylor-Cotten's motion within the time permitted by Rule 12-I(e), and the Court treats the motion as conceded. Although Ms. Taylor-Cotten does not explain why her attorney waited until now to raise this issue, she has established a prima facie entitlement to relief. *See District of Columbia v. Davis*, 811 A.2d 800, 803-04 (D.C. 2002). The clerk issued an initial order on November 20, and Ms. Taylor-Cotten states

that she expects that OEA will prepare and send the record to the Court and the parties within 60 days. *See* Motion at ¶¶ 5-7. She plans to file her brief within 30 days after receiving the record. *See id.* at ¶ 10.

For these reasons, the Court orders that:

1. Ms. Taylor-Cotten's motion to extend the schedule is granted.

2. The schedule is amended as follows:

Petitioner's opening brief	February 22, 2019
Respondent's opposition	March 29, 2019
Petitioner's reply	April 26, 2019

3. OEA's motion to seal is granted.

4. OEA may file the administrative record under seal.

Anthony C Epstein

Anthony C. Epstein
Judge

Date: January 2, 2019

Copies to:

Stephanie K. Rones
Counsel for Plaintiff

Lakesha Brown Bassey
Counsel for Defendant

SWIFT & SWIFT, ATTORNEYS AT LAW, P.L.L.C.®

2121 Eisenhower Avenue, Suite 200
Alexandria, Virginia 22314-4688
Telephone: (703) 418-0000
Facsimile: (703) 535-8205
E-Mail: steve@swift.law.pro
Website: swift.law.pro

Stephen Christopher Swift
Admitted to the Bar in the
District of Columbia, Virginia,
Maryland, Michigan & Hawaii

Charity C. Emeronye Swift
Admitted to the Bar in the
District of Columbia and New York

11 October 2018

Office of Employee Appeals
Suite 2500
955 L'Enfant Plaza, SW
Washington, DC 20024-6144

Dear Counsel for the Office of Employee Appeals:

Please note that the Scheduling Conference in *Robert Willis, Jr. v. D.C. Public Schools and D.C. Office of Employee Appeals*, Case No. 2018 CA 2456 P(MPA) in the Superior Court of the District of Columbia, has been continued until Friday, January 11, 2019 at 10:00 a.m. before Judge Michael L. Rankin in Courtroom 517.

Sincerely,

Stephen C. Swift

Stephen Christopher Swift
Counsel for Robert Willis, Jr.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

ROBERT WILLIS JR
Vs.
D.C. PUBLIC SCHOOLS

C.A. No. 2018 CA 002456 P(MPA)

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.
No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Robert E. Morin

Case Assigned to: Judge MICHAEL L RANKIN
Date: April 12, 2018
Initial Conference: 10:30 am, Friday, July 13, 2018
Location: Courtroom 517
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at https://www:dccourts.gov/pa/. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code§ 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET 18-0002456

Robert Willis, Jr. Case Number:

vs Date: 12 April 2018

D.C. Public Schools ☐ One of the defendants is being sued in their official capacity.

Name: (Please Print) Stephen Christopher Swift	Relationship to Lawsuit
Firm Name: Swift & Swift, Attorneys at Law, PLLC	☒ Attorney for Plaintiff
Telephone No.: (703)418-0000 Six digit Unified Bar No.: 428459	☐ Self (Pro Se)
	☐ Other:

TYPE OF CASE: ☒ Non-Jury ☐ 6 Person Jury ☒ 12 Person Jury

Demand: $ Other: Reinstatement

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: Judge: Calendar #:

Case No.: Judge: Calendar#:

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

☐ 01 Breach of Contract
☐ 02 Breach of Warranty
☐ 06 Negotiable Instrument
☐ 07 Personal Property
☐ 13 Employment Discrimination
☐ 15 Special Education Fees

COLLECTION CASES

☐ 14 Under $25,000 Pltf. Grants Consent
☐ 17 OVER $25,000 Pltf. Grants Consent
☐ 27 Insurance/Subrogation Over $25,000 Pltf. Grants Consent
☐ 07 Insurance/Subrogation Under $25,000 Pltf. Grants Consent
☐ 28 Motion to Confirm Arbitration Award (Collection Cases Only)
☐ 16 Under $25,000 Consent Denied
☐ 18 OVER $25,000 Consent Denied
☐ 26 Insurance/Subrogation Over $25,000 Consent Denied
☐ 34 Insurance/Subrogation Under $25,000 Consent Denied

B. PROPERTY TORTS

☐ 01 Automobile
☐ 02 Conversion
☐ 07 Shoplifting, D.C. Code § 27-102 (a)
☐ 03 Destruction of Private Property
☐ 04 Property Damage
☐ 05 Trespass

C. PERSONAL TORTS

☐ 01 Abuse of Process
☐ 02 Alienation of Affection
☐ 03 Assault and Battery
☐ 04 Automobile- Personal Injury
☐ 05 Deceit (Misrepresentation)
☐ 06 False Accusation
☐ 07 False Arrest
☐ 08 Fraud
☐ 10 Invasion of Privacy
☐ 11 Libel and Slander
☐ 12 Malicious Interference
☐ 13 Malicious Prosecution
☐ 14 Malpractice Legal
☐ 15 Malpractice Medical (Including Wrongful Death)
☐ 16 Negligence- (Not Automobile, Not Malpractice)
☐ 17 Personal Injury- (Not Automobile, Not Malpractice)
☐ 18 Wrongful Death (Not Malpractice)
☐ 19 Wrongful Eviction
☐ 20 Friendly Suit
☐ 21 Asbestos
☐ 22 Toxic/Mass Torts
☐ 23 Tobacco
☐ 24 Lead Paint

SEE REVERSE SIDE AND CHECK HERE IF USED

CV-496/June 2015

Information Sheet, Continued

C. OTHERS

- ☐ 01 Accounting
- ☐ 02 Att. Before Judgment
- ☐ 05 Ejectment
- ☐ 09 Special Writ/Warrants (DC Code § 11-941)
- ☐ 10 Traffic Adjudication
- ☐ 11 Writ of Replevin
- ☐ 12 Enforce Mechanics Lien
- ☐ 16 Declaratory Judgment
- ☒ 17 Merit Personnel Act (OEA) (D.C. Code Title 1, Chapter 6)
- ☐ 18 Product Liability
- ☐ 24 Application to Confirm, Modify, Vacate Arbitration Award (DC Code § 16-4401)
- ☐ 29 Merit Personnel Act (OHR)
- ☐ 31 Housing Code Regulations
- ☐ 32 Qui Tam
- ☐ 33 Whistleblower

II.

- ☐ 03 Change of Name
- ☐ 06 Foreign Judgment/Domestic
- ☐ 08 Foreign Judgment/International
- ☐ 13 Correction of Birth Certificate
- ☐ 14 Correction of Marriage Certificate
- ☐ 15 Libel of Information
- ☒ 19 Enter Administrative Order as Judgment [D.C. Code § 2-1802.03 (h) or 32-151 9 (a)]
- ☐ 20 Master Meter (D.C. Code § 42-3301, et seq.)
- ☐ 21 Petition for Subpoena [Rule 28-I (b)]
- ☐ 22 Release Mechanics Lien
- ☐ 23 Rule 27(a)(1) (Perpetuate Testimony)
- ☐ 24 Petition for Structured Settlement
- ☐ 25 Petition for Liquidation
- ☐ 26 Petition for Civil Asset Forfeiture (Vehicle)
- ☐ 27 Petition for Civil Asset Forfeiture (Currency)
- ☐ 28 Petition for Civil Asset Forfeiture (Other)

D. REAL PROPERTY

- ☐ 09 Real Property-Real Estate
- ☐ 12 Specific Performance
- ☐ 04 Condemnation (Eminent Domain)
- ☐ 10 Mortgage Foreclosure/Judicial Sale
- ☐ 11 Petition for Civil Asset Forfeiture (RP)
- ☐ 08 Quiet Title
- ☐ 25 Liens: Tax / Water Consent Granted
- ☐ 30 Liens: Tax / Water Consent Denied
- ☐ 31 Tax Lien Bid Off Certificate Consent Granted

Stephen C. Smith

Attorney's Signature

12 April 2018

Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

ROBERT WILLIS, JR.[1] 10900 Flintlock Lane Fort Washington MD 20744-4168
Petitioner,

v.

MPA NO. 18-0002456

D.C. PUBLIC SCHOOLS,
Respondent. c/o Carl Turpin, Esq. Assistant Attorney General, Office of General Counsel, 1200 First Street, NE, 10th Floor Washington, DC 20002-7954

PETITION FOR REVIEW OF AGENCY DECISION

A. **Notice is hereby given that Robert Willis, Jr., Employee ("Mr. Willis") appeals to the Superior Court of the District of Columbia from the Second Initial Decision on Remand of the Office of Employee Appeals, issued on the thirteenth day of March, 2018. A copy of that Decision is attached to this Petition.**

Description of Judgment or Order: Mr. Willis' removal was upheld.

A concise statement of the Agency proceedings and the decision as to which review is sought and the nature of the relief requested by Petitioner: Mr. Willis filed a Petition for Appeal with the Office of Employee Appeals ("OEA") of his removal by the D.C. Public Schools from his position as a high school biology teacher. The Senior Administrative Judge upheld Mr. Willis' removal. He then filed a Petition for Review with the Board of the OEA. The Board remanded the case to the Senior Administrative Judge, who again upheld his removal. Mr. Willis seeks reinstatement, back pay, and other relief that the Court may find just.

B. **Address of Respondent, Agency or Official:**

D.C. Public Schools
c/o Carl Turpin, Esq.
Assistant Attorney General
Office of General Counsel
1200 First Street, NE, 10th Floor
Washington, DC 20002-7954

[1] Referred to as "Robert Willis" in the Decision being appealed.

C. **Names and address of all other parties to the Agency's proceeding:**

Robert Willis, Jr.
10909 Flintlock Lane
Fort Washington, Maryland 20744-4168

D. **Names and addresses of parties or attorneys to be served:**

1. **Stephen Christopher Swift, Esq.**
Swift & Swift, Attorneys at Law, P.L.L.C.
2121 Eisenhower Avenue, Suite 200
Alexandria, Virginia 22314-4688
Attorney for Petitioner

2. **Carl Turpin, Esq.**
Assistant Attorney General
Office of General Counsel
1200 First Street, NE, 10th Floor
Washington, DC 20002-7954

E. **A copy of the Agency's Decision or Order sought to be reviewed is attached.**

Stephen C. Swift

Stephen Christopher Swift, Esq.
D.C. Bar No. 428459
Swift & Swift, Attorneys at Law, P.L.L.C.
2121 Eisenhower Avenue, Suite 200
Alexandria, Virginia 22314-4688
Telephone: (703) 418-0000
Facsimile: (703) 535-8205
E-Mail: steve@swift.law.pro

Attorney for Petitioner
Robert Willis, Jr.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing attached PETITION FOR REVIEW OF AGENCY DECISION was sent by regular mail on this twelfth day of April, 2018 to:

Carl Turpin, Esq.
Assistant Attorney General
Office of General Counsel
1200 First Street, NE, 10th Floor
Washington, DC 20002-7954

Stephen C. Swift

Stephen Christopher Swift

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

ROBERT WILLIS, JR.[1] **Petitioner,** **v.** **THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS and THE OFFICE OF EMPLOYEE APPEALS** **Respondents.**	**2018 CA 002456 P (MPA)** **Next Event: Initial Status Conference** **September 21, 2018 at 10:30 a.m.** **Honorable Judge Michael L. Rankin**

AMENDED PETITION FOR REVIEW OF AGENCY DECISION

A. Notice is hereby given that Robert Willis, Jr., Employee ("Mr. Willis") appeals to the Superior Court of the District of Columbia from the Second Initial Decision on Remand of the Office of Employee Appeals, issued on the thirteenth day of March, 2018. A copy of that Decision is attached to this Petition.

Description of Judgment or Order: Mr. Willis' removal was upheld.

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B. Address of Respondents:

D.C. Public Schools
D.C. Office of Employee Appeals
c/o Nada A. Paisant, Esq.
Assistant Attorney General
441 4th Street, NW, Suite 1180N
Washington, DC 20001-2714

[1] Referred to as "Robert Willis" in the Decision being appealed.

C. Names and address of all other parties to the Agency's proceeding:

Robert Willis, Jr.
10909 Flintlock Lane
Fort Washington, Maryland 20744-4168

D. Names and addresses of parties or attorneys to be served:

1. Stephen Christopher Swift, Esq.
Swift & Swift, Attorneys at Law, P.L.L.C.
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Alexandria, Virginia 22314-4688
Attorney for Petitioner

2. Nada A. Paisant, Esq.
Assistant Attorney General
441 4th Street, NW, Suite 1180N
Washington, DC 20001-2714
Attorney for Respondents

E. A copy of the Agency's Decision or Order sought to be reviewed is attached.

/s/ Stephen Christopher Swift
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Counsel for Petitioner
Robert Willis, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2018, a copy of the foregoing was submitted via CaseFile*Xprss* to:

Nada A. Paisant, Esq.
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441 4th Street, NW, Suite 1180N
Washington, DC 20001-2714

Counsel for Respondents

/s/ Stephen Christopher Swift
Stephen Christopher Swift
Counsel for Petitioner

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT WILLIS	)	
Employee	)	OEA Matter No. 2401-0210-10R14R17
	)	
v.	)	Date of Issuance: March 13, 2018
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
	)	

Mattie Johnson, Esq., Union Representative
Carl K. Turpin, Esq., Esq., Agency Representative

SECOND INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

On December 1, 2009, Robert Willis ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("the OEA" or "the Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of abolishing his position through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time his position was abolished was an ET-15 Science Teacher at Ballou Senior High School ("Ballou"). I was initially assigned this matter on February 7, 2012. On February 16, 2012, I sent out an Order wherein I ordered the parties to submit written briefs on the issue of whether Agency conducted the instant RIF in accordance with all applicable District laws, statues, and regulations. Both parties complied with this order and after reviewing the documents of record, the undersigned issued an Initial Decision ("ID") in this matter on June 3, 2012, wherein I upheld DCPS' decision to abolish Employee's last position of record through a RIF.

Employee timely filed a Petition for Review with the Board of the OEA ("Board"). On October 29, 2013, the Board issued its Opinion and Order on Petition for Review ("O&O") in this matter. The Board elected to remand this matter to the undersigned in order to determine

whether the Competitive Level Documentation Form ("CLDF") used by DCPS to justify Employee's removal was supported by substantial evidence.[1]

Thereafter, the undersigned rescheduled the status conference multiple times in this matter due to various scheduling conflicts including certain dates where the District government was closed due to inclement weather. Eventually, an Evidentiary Hearing was held on December 11, 2014. On June 10, 2015, the Undersigned issued an Initial Decision on Remand ("IDR") wherein DCPS' abolishment of Employee's last position of record via RIF was upheld, again. Employee filed a second Petition for Review. In response, on January 24, 2017, the Board issued an Opinion and Order on Remand ("2nd O&O"). In it, the Board remanded the matter to the Undersigned to determine if the Agency complied with DPM Chapter 24, as provided in D.C. Official Code § 1-624.08, when conducting the RIF action. Consequently, a Status Conference was held and as part of the deliberative process, the parties opted to participate in extended Mediation/Settlement discussions. Unfortunately, their efforts to settle this matter were unsuccessful. The Undersigned provided the parties with a briefing schedule whereby they could address the concerns of the Board as noted in the 2nd O&O. The parties have submitted their respective briefs. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

ISSUE

Whether Agency complied with DPM Chapter 24, as provided in D.C. Official Code § 1-624.08, when it conducted the instant RIF action.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

Analysis

D.C. Official Code § 1-624.08 ("Abolishment Act") states in pertinent part that:

---

[1] *See* O&O at 5.

> (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 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.

Under Title 5 DCMR § 1501.1, the Chancellor of DCPS is authorized to establish competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach

> other specialty subjects, the subject taught by the employee.[2]

Here, Ballou was identified as a competitive area and ET-15 Science Teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were eleven (11) other ET-15 Science Teachers stationed at Ballou. Three of those positions did not survive the instant RIF. According to the aforementioned Retention Register, Employee was the lowest ranked ET-15 Science Teacher stationed at Ballou. Accordingly, his position was abolished as part of the instant RIF.

Employee was not the only ET-15 Science Teacher within his competitive level and area; as such he was required to compete with other similarly situated employees in one round of lateral competition. According to Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;
>
> (b) Relevant supplemental professional experiences as demonstrated on the job;
>
> (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
>
> (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

> (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)

[2] District of Columbia Public Schools' Brief at 2-3 (March 7, 2012). School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

(b) Significant relevant contributions, accomplishments, or performance – (10%)

(c) Relevant supplemental professional experiences as demonstrated on the job – (10%)

(d) Length of service – (5%)[3]

Agency argued that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.[4] Agency cites *to American Federation of Government Employees, AFL-CIO v. OPM*, 821 F.2d 761 (D.C. Cir. 1987), wherein, the Office of Personnel Management was given "broad authority to issue regulations governing the release of employees under a RIF…including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority." I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

As part of its defense of the instant RIF action, Agency noted a relatively recent development of pertinent case law issued by the District of Columbia Court of Appeals. DCPS argues that *Vilean Stevens & Ike Prophet v. District of Columbia Department of Health*[5] clarified prior case law that had been relied upon by both the Undersigned and the OEA Board.[6] DCPS noted that case law issued by the District of Columbia Court of Appeals is mandatory authority for the OEA and the District of Columbia Superior Court. DCPS further argues that *Stevens* holds, in part, as follows:

> To put it differently, we construe the "each subsequent fiscal year" language of § 1–624.08 (a) together with the "February 1" deadline of § 1–624.08 (b) to mean that the Abolishment Act establishes a once-per-fiscal-year, time-limited opportunity for each District of Columbia agency to effect a RIF to manage its operations and workforce. This interpretation harmonizes the two RIF statutes on a basis that relies on the Abolishment Act's plain language without rendering the general RIF statute superfluous. It means, for example, that if an agency determines after February 1 of the fiscal year that a RIF during the fiscal year is "necessary," see D.C. Code § 1–624.03,12 it must implement the RIF, if at

[3] It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

[4] District of Columbia Public Schools' Brief at 5 (March 8, 2012).

[5] 150 A. 3d 307 (December 15, 2016).

[6] DCPS' Positon on Employee's Appeal Based on the December 16, 2016 Court of Appeals Decision: *Vilean Stevens & Ike Prophet v. District of Columbia Department of Health* ("Position Statement") at 1(March 30, 2017).

all, pursuant to the general RIF statute and may not do so under the Abolishment Act. [7]

DCPS contends that the Court of Appeals has harmonized the usage of the two statutes that regulate the invocation and conduct of a RIF. In a nutshell, the Court of Appeals has ended the practice of determining whether a RIF is being conducted pursuant to the Abolishment Act solely by means of an Agency's claim of budgetary distress. Rather, when in doubt as to the agency's use of the applicable RIF statute, the seminal analysis that must prevail as to which RIF statute applies to a particular matter is whether the RIF, in any given fiscal year, was implemented prior to February 1 of that fiscal year. *Stevens* also held that "the [Abolishment] Act did not require District official to have 'intended' to act under any particular statutory authority and the fact that DOH afforded appellant more process rather than the minimally required process was not a basis for denying DOH the opportunity afforded to it under the Abolishment Act."[8]

The instant RIF was implemented on November 2, 2009. The Undersigned takes judicial notice that the District of Columbia 2010 fiscal year began on October 1, 2009 and ended on September 30, 2010. Accordingly, I find that the instant RIF was implemented prior to February 1 of the fiscal year in question. Therefore, according to mandatory case law provided by the Court of Appeals in *Stevens*, I find that Employee's RIF was governed by the Abolishment Act. Given the instant facts and applicable law, I further find that the Superior Court and the OEA Board's prior mandate to cite to budgetary distress when justifying the use of an Abolishment Act RIF has been voided by the Court of Appeals in this matter.

According to the Abolishment Act, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That he/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

2. That he/she was not afforded one round of lateral competition within his/her competitive level.

The requirements that an agency must fulfill when effectuating an Abolishment Act RIF are less stringent than what it must do in order to effectuate a General RIF. I find that the one round of lateral competition that is required under both RIF statutes are functionally similar in that one process can be utilized under either circumstance and still be fundamentally sound. In *American Federation of Government Employees, AFL-CIO v. OPM*, the Court held that OPM had "broad authority to issue regulations governing the release of employees under a RIF ... including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority."[9] It has been thoroughly established that "principals have total discretion to rank their teachers"[10] While it is true that there was an era where seniority was the

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[7] *Stevens* at 320 – 321.
[8] *Id.* at 321.
[9] 821 F.2d 761 (D.C. Cir 1987).
[10] *See Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774, 780-81 (D.C. Cir. 1997).

ultimate "trump" card when establishing who would be retained (or dismissed) when conducting a RIF; that era has passed. I find that the rating and ranking of Employee herein was done in a manner that is congruent with D.C. Official Code § 1-624.08. To establish a different rubric could, generally speaking, subject the youth of the District of Columbia to sub-par teacher methodologies and rigor. It would also hinder DCPS' overall mission of providing a world-class education to its student populace.

Of note, it is not subject to genuine dispute that Employee herein was provided with thirty days written notice of the effective date of the instant RIF. As was discussed in detail in both the ID and the IDR, it is also not subject to genuine dispute that Employee was adequately provided with one round of lateral competition. The following excerpt from the IDR succinctly explains the Undersigned's finding that Employee received legally adequate one round of lateral competition.

> Despite Employee's protestations to the contrary, there is no credible indication that any supplemental evidence would supplant the higher scores received by the remaining employees in Employee's competitive level and area who were not separated from service.
>
> I further note that Employee's argument regarding the similarity of [then Ballou Principal] Branch's responses for all of his former colleagues CLDFs as proof of the illegality of the CLDFs is unpersuasive. Branch explained that he utilized similar terminology and phrases for all of his employees so that he could fulfill the mandate of providing fair and consistent performance evaluations for all similarly situated employees. In weighing the credibility of the testimonial evidence between Branch and Employee it is clear to the undersigned that Branch used his good faith judgment when he ranked Employee against his peers as part of the instant RIF. As noted above in the summary of his testimony, Branch has presented more than sufficient evidence that Employee's effectiveness as a Science Teacher was lacking for a number of reasons most notably, his tardiness and the lack of rigor and fidelity with respect to presenting the coursework to his students. Ultimately, this was the cause of Employee's lackluster CLDF score. To buttress this point, Branch credibly contrasted the scores that Employee's colleagues received and was able to explain why their CLDF scores were considerably higher than Employee's. Moreover, in an effort to be fair with the scoring, Branch only utilized his impressions for that current school year. As has been noted previously, Principals are granted wide discretion to rate and rank employees under their supervision. Nothing in the record would lead the undersigned to believe that this RIF was conducted unfairly or with any animus towards Employee herein. Consequently, I find that Employee has failed to present credible evidence that his CLDF score was unjustified. I also find that Employee has not proffered any credible evidence to suggest that a re-

evaluation of his CLDF scores would result in a different outcome in this matter.[11] [12]

I incorporate by reference my findings of fact and conclusion of law from the ID and the IDR. Employee herein was provided one round of lateral competition and was the lowest scoring incumbent within his competitive level and area. I find that Employee has not proffered any credible argument that proves that the competitive level and area in the instant matter was improperly constructed. I further find that Employee's score was accurate and his placement as the lowest ranked ET-15 Science Teacher at Ballou was the proper result.

According to *Stevens*, the fact that DCPS did not specifically state that the lateral competition was being done under the auspices of the Abolishment Act is of no moment in the instant matter.[13] Regardless of Employee's contention to the contrary, I find that the lateral competition that was provided to Employee was done in a manner that complies with both the DCMR and the Abolishment Act.[14]

Conclusion

Based on the foregoing, I find that Employee's position was abolished after he properly received one round of lateral competition and a timely thirty (30) day legal notification was properly served. I further find that the CLDF that was used in this matter is overwhelmingly supported by substantial evidence. I further find that DCPS has met its burden of proof in this matter with respect to how it implemented and carried out the instant RIF and the resulting abolishment of Employee's last position of record. Therefore, I conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in his removal should be upheld.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

[11] See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).
[12] IDR at 12 – 13.
[13] *Id.*
[14] *See* ID at 11; *See also* IDR at 10 – 14.

CERTIFICATE OF SERVICE

I certify that the attached **SECOND INITIAL DECISION ON REMAND** was sent by regular mail on this day to:

Robert Willis
10909 Flintlock Lane,
Fort Washington, MD 20744

Mattie P. Johnson, Esq.
Law Office of M. P. Johnson
P.O. Box 75356
Washington, DC 20013

Carl Turpin, Esq.
Assistant Attorney General
Office of General Counsel
1200 First St., NE, 10th Floor
Washington, DC 20002

Katrina Hill
Clerk

March 13, 2018
Date

NOTICE OF APPEALS RIGHTS

This is an Initial Decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a Petition for Review with the office. A Petition for Review must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the Initial Decision in the case.

All Petitions for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;

2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;

3. The finding of the presiding official are not based on substantial evidence; or

4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

All Petitions for Review should be supported by references to applicable laws or regulations and make specific reference to the record. The Petition for Review, containing a certificate of service, must be filed with Administrative Assistant, D.C. Office of Employee Appeals, 955 L'Enfant Plaza Suite 2500, Washington, D.C. 20024. Four (4) copies of the Petition for Review must be filed. Parties wishing to respond to a Petition for Review may file their response within thirty-five (35) calendar days, including holidays and weekends, after the filing of the Petition for Review.

Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF EMPLOYEE APPEALS

REPLY TO:
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ROBERT WILLIS, Petitioner v. D.C. PUBLIC SCHOOLS, Respondent.	Case No. 2018 CA 002456 P(MPA) Judge Michael L. Rankin

MOTION TO SEAL RECORD

Superior Court Rule 5-III(a)(1) provides that "[a]bsent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order." Moreover, pursuant to Superior Court Civil Rule 5(e)(2), a party wishing to file a document containing the unredacted personal identifiers may submit a motion to file an unredacted document under seal.

In accordance with Agency Rule 1(e), Respondent D.C. Office of Employee Appeals is required to file with the Clerk the entire agency record, including all original papers comprising that record. The original record contains documents that were submitted by D.C. Public Schools and Robert Willis which include the social security number and date of birth for Robert Willis. In an effort to maintain the record in its original form and to protect the privacy of those involved, we humbly request that you grant our motion to seal the record to prevent it from being viewed by the public via the court's electronic filing system. Counsel for Respondent D.C. Public Schools does not object to this motion.

Respectfully submitted,

Lasheka Brown Bassey

Lasheka Brown Bassey
D.C. Bar # 489370
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2018, the forgoing Respondent District of Columbia Office of Employee Appeals' Motion to Seal Record was served via the Court's electronic filing system, CaseFileXpress.com to the following:

Stephen Swift
Counsel for Petitioner

Nada Paisant
Counsel for Respondent

Lasheka Brown Bassey

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ROBERT WILLIS, JR., Petitioner,	Case No. 2018 CA 002456 P(MPA)
v.	Judge Michael L. Rankin
D.C. PUBLIC SCHOOLS Respondent.	

CERTIFICATE OF FILING

I hereby certify that this is the true and correct official case file in the matter of *Robert Willis v. D.C. Public Schools,* OEA Matter No. 2401-0210-10R14R17. The record consists of three volumes containing fifty-five (55) tabs.

Wynter Clarke
Wynter Clarke
Paralegal Specialist

LASHEKA BROWN BASSEY NOTARY PUBLIC MY COMMISSION EXPIRES 6/14/2021 DISTRICT OF COLUMBIA

District of Columbia: SS
Subscribed and Sworn to before me
this 16th day of January, 2019
Lasheka Brown Bassey
Lasheka Brown Bassey, Notary Public, D.C.
My commission expires June 14, 2021