

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

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

_____	)	
In the Matter of:	)	
	)	
ERIC DENMARK	)	
Employee	)	
	)	OEA Matter No.: 2401-0273-09
v.	)	
	)	Date of Issuance: August 22, 2011
D.C. DEPARTMENT OF	)	
TRANSPORTATION	)	
Agency	)	
_____	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Eric Denmark (“Employee”) began his employment with the D.C. Department of Transportation (“Agency”) in 1988. During his tenure he was periodically promoted and he was eventually appointed to the position of Electrician Foreman. As several of Employee’s colleagues began to retire, he began to assume some of their duties and responsibilities. In fact, according to Employee, Agency instructed him to attend a training program so that he would be certified to perform some of the duties that were

once performed by the Traffic Services Electrical Technician. Employee received the training but was never promoted to the position of Traffic Services Electrical Technician. Instead, Employee's personnel record reflected that his official position was as an Electrician Foreman.

By letter dated July 17, 2009, Agency informed Employee that his position was being abolished pursuant to a reduction-in-force ("RIF"). The letter went on to provide that the RIF would take effect on August 21, 2009, and that Employee would be separated from government service on that same day. Employee was further advised that he could appeal this action to the Office of Employee Appeals ("OEA").

On July 30, 2009, Employee filed a Petition for Appeal with OEA. In his petition Employee alleged that the RIF was improper as it pertained to him because, according to Employee, he was actually working as a Traffic Services Electrical Technician at the time of the RIF. He contended that because that particular position survived the RIF, he should be returned to work. Employee asserted further that he should not have been subjected to the RIF because of the superior service he provided to the agency and to the community. For these reasons, Employee asked that the RIF be overturned and that he be returned to work.

In an Initial Decision issued April 26, 2010, the Administrative Judge upheld Agency's RIF action. Based on the applicable law, the Administrative Judge determined that an "employee whose position was abolished pursuant to a RIF may only contest before this Office:

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

2. That [he or] she was not afforded one round of lateral competition within [his or] her competitive level.”<sup>1</sup>

Employee did not dispute the amount of notice given to him by Agency. Moreover, the documents submitted by Agency revealed that, for the purposes of the RIF, it had established the Traffic Services division as a competitive area and had placed the Electrician Foreman position occupied by Employee into a single-person competitive level. For this reason, the Administrative Judge held that because Employee was the only person in his competitive level, “the statutory provision affording [Employee] one round of lateral competition was inapplicable.”<sup>2</sup> Therefore, the Administrative Judge upheld the RIF.<sup>3</sup>

Thereafter, Employee timely filed a Petition for Review. Employee asks that we “reverse [the] reduction in force and return [him] to work.”<sup>4</sup> Employee bases this request on his belief that he was working as a Traffic Services Electrical Technician at the time of the RIF and that Agency had “announced that [his] position description would...be changed...to accommodate [his] new responsibilities.”<sup>5</sup>

If Employee is correct in his assertion that Agency had agreed to change his position to that of Traffic Services Electrical Technician, Agency never took the steps to effectuate that change. Unfortunately for Employee, at the time of the RIF, his official position of record was that of Electrician Foreman. His position was the only one that comprised the competitive level to which it had been assigned. Therefore, there was no

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<sup>1</sup> *Initial Decision* at page 3.

<sup>2</sup> *Id.* (citations omitted).

<sup>3</sup> The Administrative Judge stated that another reason for upholding Agency’s action was because Employee had failed to submit his final legal brief as was required. For this reason, the Administrative Judge found that Employee had not “exercised the diligence expected of a petitioner pursuing an appeal before this Office.”

<sup>4</sup> *Employee’s Response to the Order* at page 1.

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

one left for Employee to compete with for retention, thereby rendering inapplicable the one round of lateral competition provision.

It appears from the record that Employee was an exemplary worker. The abolishment of his position in no way reflects upon his performance with the agency. Nevertheless, we have no basis upon which to overturn the Initial Decision. Thus, Employee's Petition for Review must be denied.

**ORDER**

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

FOR THE BOARD:

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Clarence Labor, Jr., Chair

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Barbara D. Morgan

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Richard F. Johns

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