

**Agenda**  
**D.C. OFFICE OF EMPLOYEE APPEALS (“OEA”) BOARD MEETING**  
Tuesday, November 7, 2017 at 11:00 a.m.  
Location: 955 L’Enfant Plaza, SW, Suite 2500  
Washington, DC 20024

**I. Call to Order**

**II. Ascertainment of Quorum**

**III. Adoption of Agenda**

**IV. Minutes Reviewed from Previous Meeting**

**V. New Business**

**A. Public Comments on Petitions for Review**

**B. Summary of Cases**

**1. Webster Rogers v. D.C. Public Schools, OEA Matter No. 2401-0255-10AF16** – This matter has been previously before the OEA Board. By way of background, Employee worked as a Music Teacher with Agency. On October 2, 2009, Agency notified Employee that he was being separated from his position pursuant to a Reduction-in-Force (“RIF”).

After a protracted litigation process with several levels of appeals, the OEA Administrative Judge (“AJ”) issued an Initial Decision on Remand on February 27, 2015. The AJ ordered that Agency’s action be reversed and that it reinstate Employee to his position with back pay and benefits. The Board issued its Opinion and Order on Petition for Review on July 21, 2015. It upheld the AJ’s decision to reverse Agency’s action and denied Agency’s Petition for Review.

On August 31, 2015, Employee filed a Supplemental Memorandum in Support of an Award of Attorney’s Fees and Costs. He requested that OEA adjudicate the motion for attorney’s fees and costs for time incurred in Superior Court. Accordingly, Employee requested that OEA and Superior Court award attorney’s fees and costs for litigation.

The AJ held a status conference and requested that both parties file briefs addressing the issues on remand. Employee explained that he was wrongly terminated and spent years seeking reinstatement. Employee argued that in *Andrew Jenkins v. D.C. Public Schools*, the OEA Board held that it lacked jurisdiction under D.C. Official Code § 1-606.08 to award fees incurred in Superior Court to an appellant who prevailed. However, Employee explained that after *Jenkins* was decided, it was overruled by the D.C. Court of Appeals in *Metropolitan Police Department v. Stanley*. Employee stated that in *Stanley*, a case that originated in OEA, the D.C. Court of Appeals declared that the responsibility to award fees should be placed on the trial court where the case arose, so the value of the service could be estimated in its entirety. Accordingly, Employee reasoned that the AJ should grant his Motion for Attorney’s Fees in full.

In its brief, Agency argued that Employee was not entitled to attorney’s fees incurred in Superior Court. Agency explained that in *Jenkins*, OEA held that it did not have jurisdiction to grant attorney’s fees for work done before any court or tribunal other than OEA. It contended that Employee’s claim that *Stanley* overturned *Jenkins* is incorrect. Moreover, Agency provided that in *Channavajjal M. Prasad v. Commission on Mental Health Services*, the AJ cited to *Jenkins* and reaffirmed OEA’s position that it does not have jurisdiction to grant

attorney fees for work done before any court other than OEA. Accordingly, Agency requested that the attorney's fees requested by Employee for work incurred before Superior Court be denied.

A new AJ was assigned to the case. He issued a Second Addendum Decision on Attorney's Fees and Costs on January 13, 2017. The AJ held that Employee was the prevailing party, and in the interest of justice, attorney's fees were warranted. As it related to the *Jenkins* and *Stanley* matters, the AJ determined that the D.C. Court of Appeals made clear in *Stanley* that in order to recover attorney's fees for work completed on appeal, the prevailing party should submit the request to the trial court in which the proceeding arose. The AJ explained that "... Agency cannot escape financial liability for attorney fees and costs when review before Superior Court presents itself in the normal course of litigation that originates before the OEA." Therefore, he held that the ruling in *Stanley* is mandatory authority that must be followed. Accordingly, the AJ awarded attorney's fees for work performed at OEA and Superior Court.

As it related specifically to the fees, the AJ noted that Agency did not contest the hourly rates cited by Employee's counsel. He found that the rates were reasonable and allowable pursuant to the *Laffey* Matrix and the holdings in *Copeland v. Marshall*, and *Henderson v. District of Columbia*. Therefore, he awarded Employee attorney's fees and costs for a total of \$149,537.69, which included fees incurred at the OEA and Superior Court.

On February 17, 2017, Agency filed a Petition for Review. It argues that in accordance with *Jenkins*, OEA has consistently held since 1994 that it does not have jurisdiction to award attorney's fees for work performed in the Superior Court. Furthermore, Agency contends that OEA did not award attorney's fees for work performed in the D.C. Court of Appeals in the matter of *Doney Olivieri v. District of Columbia Public Schools*. Finally, Agency explains that the AJ improperly made a sweeping finding on the issue of excessive fees instead of reviewing all of the entries to determine their reasonableness. Therefore, Agency requests that the Board deny Employee's request for fees incurred before Superior Court. Moreover, it sought to have the matter remanded for a review of its claims that portions of the fees requested are excessive.

Employee filed his answer to Agency's Petition for Review on March 24, 2017. He explains that Agency relies heavily on *Jenkins* even though the D.C. Court of Appeals overruled the *Jenkins* holding in *Stanley*. Employee contends that historically, Superior Court used to award attorney's fees for work performed there. However, he provides that the plain language of D.C. Official Code § 1-606.08; the holding in *Stanley*; and the ruling in *Bryant* make it clear that OEA is the proper forum to award attorney's fees for work performed at OEA and the courts. Additionally, Employee argues that Agency failed to articulate which time entries it deemed excessive and that the AJ clearly reviewed all of the requested fees and determined that they were reasonable. Accordingly, Employee requests that the Board affirm the Second Addendum Decision.

**2. Robert Alvarado v. D.C. Fire and Emergency Medical Services, OEA Matter No. 1601-0173-12** – Employee worked as a Lieutenant with Agency. On July 2, 2012, Agency issued a final notice of adverse action to Employee. It charged Employee with "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: Neglect of Duty." The notice provided that Employee was suspended for two hundred and sixty-four hours and demoted to the position of Sergeant.

The AJ issued his Initial Decision on February 2, 2015. After his review of the Trial Board Findings of Fact, Conclusions, and Recommendations, the AJ found that Agency did not prove that Employee violated any privacy rights absent a complaint from an aggrieved patient. He

explained that Agency did not provide evidence that the patient complained that his privacy was violated; therefore, it could not assume that the patient's rights were violated. Additionally, the AJ held that Agency did not have substantial evidence to make a finding of guilt regarding its uniform policy. As a result, he ordered that Employee's suspension and demotion be reversed. Additionally, he ordered that Agency reimburse Employee with back pay and benefits.

On March 9, 2016, Employee filed a Motion to Enforce. He explained that although he was suspended for two hundred and sixty-four hours, he used 1,363 hours of sick and annual leave as a result of Agency's action. It was Employee's position that he should be reimbursed for the 1,363 hours. In addition to arguing that Agency failed to reimburse him for sick and annual leave, he also contended that Agency failed to promote him to Captain; failed to pay him for lost overtime; failed to allow access to education training courses; and failed to pay for his attorneys' fees. Accordingly, Employee requested that Agency properly reimburse his back pay.

Agency filed its Response to Employee's Motion to Enforce on April 29, 2016. It argued that Employee was issued multiple checks as reimbursement for back pay for the two hundred sixty-four duty hour suspension period of July 2, 2012 to August 21, 2012, and for the reduction in rank between July 1, 2012 and May 30, 2015. Specifically, Agency provided that Employee was reimbursed a total of \$10,440.84 in back pay for the reversed suspension. Additionally, it explained that it reimbursed Employee \$51,557.80 in back pay for the reversed demotion. As for Employee's other arguments, Agency contended that Employee was not entitled to a promotion, reimbursement of sick and annual leave that he chose to use and was paid for, overtime pay, access to education, or attorneys' fees. Therefore, Agency requested that Employee's motion be denied.

On December 30, 2016, the AJ issued an Addendum Decision on Compliance. He held that Agency fully reimbursed Employee all back pay due to him. The AJ explained that because a promotion to the rank of Captain is predicated on passing the examination, Employee was not entitled to be automatically promoted to Captain. Furthermore, the AJ agreed with Agency and determined that Employee was fully compensated for all back pay due to him from the leave used as the result of the action taken against him. Therefore, he found that Employee was not entitled to be reimbursed for 1,363 hours of sick and annual leave. Accordingly, the AJ ruled that Agency complied with the Initial Decision and dismissed the matter.

Employee filed a Petition for Review on February 2, 2017. He argues that in accordance with DCMR § 1149.10, an employee who can demonstrate that they used sick and annual leave due to an agency's unwarranted or unjustified personnel action is entitled to recover back pay. Employee claims that he is able to provide medical documentation from his medical provider that he was on medical leave as a result of Agency's unjustified personnel action. Thus, he requests that his sick and annual leave be restored.

On March 8, 2017, Agency filed its response to Employee's Petition for Review. It argues that OEA Rule 633.1 provides for appeals through Petitions for Review of Initial Decisions, not Addendum Decisions on Compliance. Thus, it claims that Employee has no right to seek review of a finding on compliance. Therefore, Agency requests that Employee's petition be denied.

**3. David Bowles v. University of the District of Columbia, OEA Matter No. J-0057-16 –** Employee worked as an Assistant Professor with Agency. On May 27, 2016, Employee received a notice that he would be terminated by Agency. According to Agency, Employee was removed during his three-year probationary period.

On January 4, 2017, the AJ provided that OEA consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction. The AJ held that Employee commenced employment with Agency on August 16, 2013. Thus, under the provisions of the CBA, his probationary status would not end until August 15, 2016. Because he was still within the three-year probationary period, the AJ dismissed the matter for lack of jurisdiction.

Employee filed a Petition for Review on February 7, 2017. He argues that Agency did not provide proper notice. Moreover, Employee contends that he fulfilled the obligations of his nine-month annual contract. Thus, it is his position that Agency should have terminated him before May 15, 2016. Additionally, Employee claims that the AJ failed to consider his arguments pertaining to his disabilities. Therefore, he requests that the Initial Decision be reversed.

On March 13, 2017, Agency filed its Answer to Employee's Petition for Review. It argues that the AJ correctly determined that OEA lacks jurisdiction over probationary employees. Further, Agency provides that in accordance with the CBA, decisions to discharge a probationary employee are not subject to a grievance or arbitration process. Therefore, it explains that it would have been inappropriate for OEA to assert jurisdiction in this matter when the CBA makes clear that Agency can terminate a probationary faculty member without recourse for appeal. Accordingly, Agency requests that the Petition for Review be denied.

**4. Stevenson Wachira v. University of the District of Columbia, OEA Matter No. J-0055-16** – Employee worked as an Assistant Professor of Computer Science at Agency. On May 23, 2016, Employee received a notice that he would be terminated from Agency. According to Agency, Employee was removed during his three-year probationary period.

On January 5, 2017, the AJ found that OEA consistently held that an appeal to OEA by an employee serving in a probationary status must be dismissed for lack of jurisdiction. The AJ held that Employee commenced employment with Agency on August 18, 2014. Thus, his probationary status would not end until August 18, 2017. Because he was still within the three-year probationary period, the AJ dismissed the matter for lack of jurisdiction. Additionally, the AJ found that Employee's grievance and retaliation claims were unsubstantiated and fell outside the scope of OEA's jurisdiction.

Employee filed his Petition for Review on February 7, 2017. He argues that Agency did not provide proper notice. Moreover, Employee contends that he fulfilled the obligations of his nine-month annual contract. Therefore, it is his position that Agency should have terminated him before May 15, 2016. Additionally, Employee claims that the AJ failed to consider his arguments pertaining to retaliation. Therefore, he requests that the Initial Decision be reversed.

On March 13, 2017, Agency filed its Answer to Employee's Petition for Review. It argues that the AJ correctly determined that OEA lacks jurisdiction over probationary employees. Further, Agency provides that in accordance with the CBA, decisions to discharge a probationary employee are not subject to a grievance or arbitration process. Therefore, it explains that it would have been inappropriate for OEA to assert jurisdiction in this matter when the CBA makes clear that Agency can terminate a probationary faculty member without recourse for appeal. Accordingly, Agency requests that the Petition for Review be denied.

**5. Widmon Butler v. Metropolitan Police Department, OEA Matter No. 1601-0041-14** – Employee worked as a Civilian Claim Specialist with Agency. On July 22, 2013, while on duty, Employee accessed the medical records of Josephine Jackson, a civilian Agency employee, without authorization. Employee subsequently contacted the Director of the Office of Risk

Management, stating that he was Ms. Jackson's attorney and that he was retained to ascertain the status of her workers' compensation claim. Agency's Director of Human Resources was subsequently apprised of Employee's actions and forwarded the information to the Internal Affairs Department ("IAD") for investigation. Employee was placed on administrative leave with pay while IAD and the United States Attorney's Office ("USAO") conducted a review of the matter. On June 2, 2014, the USAO declined to prosecute Employee. On September 25, 2014, the IAD submitted its final investigative report to the Assistant Chief of Police.

As a result, Employee was charged with "any on-duty or employment related act or omission that interferes with the efficiency or integrity of government operations: misfeasance; dishonesty; unauthorized use of government resources; using or authorizing the use of government resources; using or authorizing the use of government resources for other than official business." On February 5, 2015, Agency issued its Notice of Final Decision. Employee's termination was effective on February 6, 2015.

After reviewing the record, the AJ issued a Remand Order to Agency on October 18, 2016. According to the AJ, Agency failed to present any evidence during the hearing to justify imposing a penalty beyond what was allowable under the Table of Appropriate Penalties ("TAP") in Chapter 16 of the District Personnel Manual ("DPM"). Specifically, he stated that to support termination under the TAP, Agency was required to prove that Employee committed three offenses of misfeasance. Since the AJ believed that Agency only presented two instances wherein Employee was disciplined for misfeasance, the matter was remanded to determine the proper penalty to impose against Employee in accordance with the TAP.

In response to the AJ's order, Agency identified a third offense of misfeasance committed by Employee. It stated that on November 8, 2013, Employee was issued a Notice of Final Decision on Proposed Suspension. Employee was suspended for thirty days based on a charge of misfeasance which occurred on June 13, 2013. Thus, Agency opined that the penalty in this matter should be affirmed because Employee's termination was permitted under the TAP.

The AJ issued an Initial Decision on November 30, 2016. First, he addressed Employee's contention that Agency violated D.C. Official Code § 5-1031, commonly referred to as the "90-day rule." The AJ held that although the USAO resolved its investigation on June 2, 2014 when it issued a Letter of Declination, Agency's IAD did not complete its own internal investigation until September 25, 2014. Since Agency commenced its adverse action against Employee less than ninety days after IAD concluded its investigation, the AJ held that the 90-day rule was not violated.

Next, the AJ found that there was substantial evidence in the record that Employee accessed his private law client's medical records using Agency's resources without authorization and that Employee's misconduct constituted an on-duty or employment related act or omission that interfered with the efficiency and integrity of government operations. Regarding the penalty, the AJ determined that Agency presented evidence of three charges of misfeasance against Employee. Accordingly, he held that Agency provided evidence of three charges of misfeasance and that a third charge carries a penalty of termination under the TAP. Lastly, the AJ dismissed Employee's contention that Agency failed to consider the *Douglas* factors.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on January 3, 2017. He challenges several of the AJ's findings as a basis for granting his petition. First, Employee argues that his termination was unreasonable because Agency should have been estopped from using a prior charge of misfeasance in support of its decision to terminate him. Employee also argues that Agency violated his procedural administrative due process rights by failing to appropriately consider the *Douglas* factors. In addition, he states

that the AJ erred in interpreting the 90-day rule. Employee further asserts that his termination was conducted in bad faith and was a result of harassment and retaliation. Lastly, he believes that Agency failed to meet its burden of proof in sustaining a charge of misfeasance in this case. As a result, Employee posits that the Initial Decision was not based on substantial evidence.

Agency filed a Response to Employee's Petition for Review on October 3, 2017. It argues that Employee's Petition for Review should be denied because he failed to articulate any cognizable grounds to overturn the Initial Decision. Agency further states that Employee has failed to show that the AJ's findings were not supported by substantial evidence. Lastly, Agency submits that the AJ correctly concluded that it did not violate the 90-day rule. Therefore, it requests that the Board deny Employee's Petition for Review.

**6. Paula Edmiston v. Metropolitan Police Department, OEA Matter No. 1601-0057-07R16** – This matter was previously before the Board. Employee was a captain with Agency. Employee appealed her demotion to former Chief of Police, Charles Ramsey. On August 29, 2006, Chief Ramsey denied Employee's appeal and recommended that her punishment be increased from demotion to removal. Employee elected to have the adverse action reviewed by a panel of police officers ("Trial Panel"). The Trial Panel found Employee guilty of all three charges and recommended that she be terminated. Employee appealed the Trial Panel's decision to Acting Chief of Police, Cathy Lanier. However, Employee's appeal was denied on February 23, 2007 and her termination became effective on March 2, 2007.

The AJ held that Chief Ramsey improperly increased Employee's penalty from demotion to removal. Therefore, he reversed Agency's adverse action and held that the correct remedy was to reinstate Employee's demotion. Employee filed a Petition for Review with OEA's Board. The Board agreed with the AJ's assessment and held that the AJ did not abuse his discretion by deciding this matter based solely on the documents of record. As a result, Employee's Petition for Review was denied and the AJ's Initial Decision was upheld.

Agency subsequently filed an appeal with D.C. Superior Court. On October 9, 2013, the Honorable Judge Judith Macaluso issued an Order Reversing Agency Decision, in part. In her analysis, Judge Macaluso, stated that "Chief Ramsey had the authority under amended MPD regulations to increase the recommended penalty for the Petitioner." Therefore, the matter was remanded to the AJ for reconsideration consistent with the Order.

On August 8, 2014, the AJ issued his Initial Decision on Remand. He reiterated his previous finding that Agency did not violate the 90-day rule. However, the AJ reversed his original decision with respect to Agency's ability to increase a proposed penalty and concluded that it did not abuse its discretion by terminating Employee. Consequently, Agency's termination action was upheld.

Employee appealed the Initial Decision on Remand to D.C. Superior Court on September 9, 2015, wherein she asserted that the AJ's decision should be reversed because the General Order ("GO") that the Chief of Police relied upon in imposing a higher penalty was superseded by D.C. Municipal Regulation ("DCMR") § 1613.2. In its June 8, 2016 Order, the Court discussed three issues: whether the argument raised by Employee in her petition regarding DCMR § 1613.2 was being raised for the first time; whether the law of the case doctrine prohibited the Court from making a determination with respect to the aforementioned issue; and whether DCMR § 1613.2 prohibited the Chief of Police from increasing Employee's penalty. In its analysis, the Court provided that Employee's argument was properly preserved for appeal. It further stated that the law of the case doctrine was inapplicable in this matter. Regarding the last issue, the Court agreed with Employee's contention that the AJ did not properly analyze whether Agency's GO could supersede a municipal regulation. Therefore, the matter was

remanded to the AJ “in order for OEA to make a determination as to whether MPD General Order 120.21 supersedes [the] applicable version of 6-B DCMR § 1613.2....”

The AJ issued his Second Initial Decision on Remand on December 12, 2016. He disagreed with Agency’s argument that DCMR § 1613.2 and GO 120.21 were congruent because Chief Ramsey was not the deciding official as envisioned by the regulations. According to the AJ, while Chief Ramsey remanded the matter for a hearing before the Trial Panel, it was Chief Lanier who ultimately acted as a deciding official in this case. He further stated that it was evident that § 1613.2 and GO 120.21 contained conflicting language and that an agency’s internal orders cannot override municipal regulations. Thus, in response to Superior Court’s Order, the AJ concluded that Chief Lanier, acting as the ultimate decision maker, was legally prohibited from increasing the proposed penalty levied against Employee from demotion to termination. As a result, the AJ determined that the imposed penalty of termination was an abuse of discretion and that there was substantial evidence in the record to support the penalty of demotion. Consequently, Agency’s termination action was reversed and Employee was ordered to be reinstated and demoted to the rank of lieutenant.

Agency filed a Petition for Review with OEA’s Board on January 17, 2017. It insists that the Second Initial Decision on Remand was based on an erroneous interpretation of DCMR § 1613.2 because the evidence shows that neither Chief Ramsey nor Chief Lanier increased the penalty of termination. According to Agency, the penalty of termination was recommended by the Trial Panel and imposed by the deciding official, Assistant Chief Cockett. Agency does not dispute that statutes and regulations override internal general orders. However, it argues that regulations and statutes supersede internal general orders only to the extent that the specific provision is in conflict with the regulation. Thus, Agency believes that Chief Ramsey acted in accordance with GO 120.21(VI)(L)(4) when he remanded Employee’s case for an alternative process and that the subsection he relied upon does not conflict with § 1613.2. Consequently, it opines that Employee’s termination was proper and requests that the Petition for Review be granted.

In response, Employee submits that Agency’s Remand Brief and Petition for Review are not responsive to the question presented by D.C. Superior Court. Employee states that Agency’s arguments go beyond the purview of the specific order to be addressed on remand. She further argues that Agency’s attempts to make semantical distinctions regarding Chief Ramsey’s actions are “meaningless” because Judge Okun has already concluded that Ramsey increased Employee’s penalty. Moreover, Employee reiterates her argument that the Chief of Police is the deciding official for every Agency disciplinary action. As a result, she contends that the language contained in GO 120.21 directly conflicts with DCMR § 1613.2 and that the maximum penalty Agency could impose was a demotion. Therefore, Employee asks this Board to deny Agency’s Petition for Review.

**7. Lynn Butler v. Metropolitan Police Department, OEA Matter No. 2401-0029-12R1–**

This matter was previously before the Board. Employee worked as a Clerical Assistant with Agency. On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a Reduction-in-Force (“RIF”).

The AJ issued an Initial Decision on October 28, 2014. He held that Agency provided Employee with thirty days’ written notice prior to the effective date of the RIF. The AJ noted that D.C. Official Code § 1-624.02(a)(2) was inapplicable in this case because Employee was the only Clerical Assistant in her competitive level and was not entitled to one round of lateral competition. In addition, the AJ determined that Employee’s separation from service was unlawful because Agency failed to produce the D.C. City Administrator’s signature on the

Realignment Approval Form (“RAF”) prior to implementing the RIF, which violated DPR § 2406.4 and DPM Instruction No. 24-1. Therefore, Agency’s RIF action was reversed Employee was ordered to be reinstated with back pay and benefits.

Agency filed a Petition for Review with OEA’s Board on December 2, 2014. In response, Employee requested that Agency’s Petition for Review be denied because it failed to satisfactorily authenticate the RAF. The Board issued its Opinion and Order on Petition for Review on May 10, 2016. It agreed with Employee’s argument that Agency failed to satisfactorily establish that the RAF was signed by the City Administrator given the peculiar circumstances under which the document was produced and submitted to OEA. However, the Board could not determine whether the RIF was properly authorized in light of the new and material evidence. Consequently, the matter was remanded to the AJ for the purpose of determining whether the newly-produced document could be sufficiently authenticated as to warrant a different outcome in the disposition of the matter.

An Initial Decision was issued on January 9, 2017. The AJ noted that it was unreasonable for Agency to argue that it could not produce a copy of the RAF with all of the necessary signatures prior to the issuance of the Initial Decision. Based on the documentary and testimonial evidence provided during the hearing, the AJ determined that Agency failed to meet its burden of proof in establishing that the RIF was properly authorized. Thus, he concluded that Agency’s inability to satisfactorily authenticate the RAF did not warrant a different outcome in the disposition of this matter and Agency’s RIF action remained reversed.

Agency disagreed and filed a Petition for Review of Initial Decision on Remand with this Board on February 10, 2017. It argues that the Initial Decision on Remand is not supported by substantial evidence because the AJ’s findings exceeded the purpose for which the matter was remanded. Agency further states that its witnesses provided ample testimony during the evidentiary hearing to show that the RAF was signed by former City Administrator, Allen Lew, on September 13, 2011. Thus, Agency posits that Lew’s testimony that he signed the RAF was “evidence of his authorship and satisfied that purpose for which the matter was remanded....” Moreover, Agency asserts that its inability to locate the signed RAF until after the Initial Decision was issued has no bearing on whether the signature of the City Administrator was authentic. Consequently, it believes that the Initial Decision on Remand is not based on substantial evidence.

Employee filed an Answer to Agency’s Petition for Review on March 16, 2017. She argues that Agency’s Petition for Review should be denied because it failed to articulate any cognizable grounds to overturn the Initial Decision. According to Employee, Agency’s protestations are merely disagreements with the AJ’s findings and do not serve as a valid basis for appeal. Employee, therefore, asks this Board to deny Agency’s Petition for Review and uphold the Initial Decision on Remand.

**8. Wanderline Benjamin-Banks v. Metropolitan Police Department, OEA Matter No. 2401-0027-12R16** – This matter was previously before the Board. Employee worked as a Computer Program Analyst with Agency. On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a Reduction-in-Force (“RIF”).

The AJ issued an Initial Decision on October 28, 2014. He held that Agency provided Employee with thirty days’ written notice prior to the effective date of the RIF. The AJ noted that D.C. Official Code § 1-624.02(a)(2) was inapplicable in this case because Employee was the only Computer Programmer Analysis in her competitive level and was not entitled to one round of lateral competition.



In addition, the AJ determined that Employee's separation from service was unlawful because Agency failed to procure the City Administrator's signature on the RAF prior to implementing the RIF, in violation of DPR § 2406.4 and DPM Instruction No. 24-1. Therefore, the AJ reversed the RIF action and ordered Agency to reinstate Employee with back pay and benefits.

Agency filed a Petition for Review with OEA's Board on December 2, 2014. In response, Employee requested that Agency's Petition for Review be denied because it failed to satisfactorily authenticate the RAF. The Board issued its Opinion and Order on Petition for Review on May 10, 2016. It agreed with Employee's argument that Agency failed to satisfactorily establish that the RAF was signed by the City Administrator given the peculiar circumstances under which the document was produced and submitted to OEA. However, the Board could not determine whether the RIF was properly authorized in light of the new and material evidence. Consequently, the matter was remanded to the AJ for the purpose of determining whether the newly-produced document could be sufficiently authenticated as to warrant a different outcome in the disposition of the matter.

An Initial Decision was issued on January 9, 2017. The AJ noted that it was unreasonable for Agency to argue that it could not produce a copy of the RAF with all of the necessary signatures prior to the issuance of the Initial Decision. Based on the documentary and testimonial evidence provided during the hearing, the AJ determined that Agency failed to meet its burden of proof in establishing that the RIF was properly authorized. Thus, he concluded that Agency's inability to satisfactorily authenticate the RAF did not warrant a different outcome in the disposition of this matter and Agency's RIF action remained reversed.

Agency disagreed and filed a Petition for Review of Initial Decision on Remand with this Board on February 10, 2017. It argues that the Initial Decision on Remand is not supported by substantial evidence because the AJ's findings exceeded the purpose for which the matter was remanded. Agency further states that its witnesses provided ample testimony during the evidentiary hearing to show that the RAF was signed by former City Administrator, Allen Lew ("Lew"), on September 13, 2011. Thus, Agency posits that Lew's testimony that he signed the RAF was "evidence of his authorship and satisfied that purpose for which the matter was remanded...." Moreover, Agency asserts that its inability to locate the signed RAF until after the Initial Decision was issued has no bearing on whether the signature of the City Administrator was authentic. Consequently, it believes that the Initial Decision on Remand is not based on substantial evidence.

Employee filed an Answer to Agency's Petition for Review on March 16, 2017. She argues that Agency's Petition for Review should be denied because it failed to articulate any cognizable grounds to overturn the Initial Decision. According to Employee, Agency's protestations are merely disagreements with the AJ's findings and do not serve as a valid basis for appeal. Employee, therefore, asks this Board to deny Agency's Petition for Review and uphold the Initial Decision on Remand.

**C. Deliberations** – This portion of the meeting will be closed to the public for deliberations in accordance with D.C. Official Code § 2-575(b)(13).

**D. Open Portion Resumes**

**E. Final Votes on Cases**

**F. Public Comments**

**VI. Adjournment**