Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant 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:	
ODIS W. BRADFORD Employee	
v.	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS Agency	

OEA Matter No. 2401-0215-96P01

Date of Issuance: March 10, 2004

OPINION AND ORDER
ON
PETITION FOR REVIEW

On July 18, 1996, Employee filed with the Office of Employee Appeals (OEA) a timely Petition for Appeal from Agency's final decision separating him from District Government service pursuant to a reduction-in-force (RIF). The effective date of Employee's separation was August 5, 1996. At that time, Employee was an Engineering Technician at Agency's Kramer Annex.

Under the regulations that governed RIF's then (43 D.C. Reg. 5264 *et seq.* (1996)), Agency employees were grouped into competitive areas and levels within which they could compete for employment retention. A competitive level consisted of positions in the same grade or occupational level that were sufficiently alike in numerous characteristics. If a decision had to be made between employees in the same competitive area and level, then Agency was charged with ranking the employees to determine who would be retained. The ranking factors were as follows: (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, and/or areas of expertise; and (d) length of service.

In order to assess each employee in the above areas, Agency devised a form known as the Competitive Level Documentation Form (CLDF). The CLDF was divided into four (4) categories that mirrored the above mentioned regulatory ranking factors. The maximum number of points attainable in each category was 25. In addition, five (5) points could be awarded for District residency. Thus, the maximum number of points an employee could receive was 105. After the CLDF's were completed and tallied, each employee was ranked within his or her competitive level. Positions were then eliminated in inverse order of each employee's ranking within the competitive level.

In this case, the competitive level in which Employee competed for retention was "Engineering Technician, EG-11." Employee was one of three employees in that competitive level. Mr. Ned Bacheldor, Chief of Facilities, was the official who rated each of the Engineering Technicians. Mr. Bacheldor awarded Employee 60 points on his CLDF, R.G. 65 points and D.E. 100 points. Agency abolished two of the three positions in Employee's competitive level. Therefore, R.G. and Employee, who ranked second and third respectively, were separated from service pursuant to the RIF. The instant appeal ensued.

On September 27, 2001, the Administrative Judge assigned to this appeal issued an Initial Decision in which she reversed Agency's action separating Employee from service. One area of disagreement between the parties had been whether Agency awarded the proper number of points to each competing employee. However, the Administrative Judge determined that it was not necessary to reach that question because the manner in which the scoring was done was fundamentally flawed, and therefore, it was improper for Agency to have relied upon the employees' CLDF scores at all.

Specifically, the Administrative Judge found that Agency failed to present evidence of any systematic, organized method by which the information upon which Mr. Bacheldor relied in completing and scoring the CLDF's had been gathered. Mr. Bacheldor could not identify the source of the information recited on the employees' CLDF's. He did testify that the information was gathered from managers with supervisory authority over the employees, but could not specifically identify those individuals. In addition, even though the CLDF evaluation

was intended by him to cover a two-year period, he was uncertain what time period was addressed by the unidentified individuals to whom he spoke. Further, the Administrative Judge noted that Mr. Bacheldor's description of the duties of the position of Engineering Technician, which he relied upon in rating the employees, were not duties that were in fact listed in the job description for that position. Lastly, the Administrative Judge determined that Employee had presented sound evidence in the form of a performance rating that contradicted some of the conclusions upon which his CLDF score was based.

Thereafter, Agency filed a timely Petition for Review of the Initial Decision. Agency argues that the procedure Mr. Bacheldor used for scoring the CLDF's was not fundamentally flawed. Agency also maintains that it was improper for the Administrative Judge to have relied upon the performance rating both because it was not authenticated and because Mr. Bacheldor intentionally did not use the rating in the evaluation process because performance ratings were unreliable.

We have carefully reviewed the record in this case and conclude that there is substantial evidence to support the Administrative Judge's finding that the procedure Mr. Bacheldor used for scoring the CLDF's was fundamentally flawed. Mr. Bacheldor did not have first hand knowledge of all of the information he used to evaluate the employees. Rather, he testified that he gathered the information from appropriate sources. It may be true that he considered the sources appropriate, but his inability to recall the identity of those individuals made it impossible for Employee to challenge and this Office to adjudicate the appropriateness of the

particular sources of information and their accuracy in evaluating the employees. Further, although Mr. Bacheldor intended the evaluation period to include a two-year period, he was uncertain what time period was addressed by the unidentified individuals to whom he spoke. We cannot be certain that the individuals who supplied the information even focused on the same period of time, regardless of whether that period was two years as intended by Mr. Bacheldor or otherwise. In addition, without knowing the time period upon which the individuals focused, again it is difficult for Employee to challenge and this Office to adjudicate the accuracy of the information. Lastly, Mr. Bacheldor's description of the duties of the position of Engineering Technician, which he relied upon in rating the employees, were not duties that were in fact listed in the job description for that position. That further underscores the unreliability of his scoring procedure.

Despite those difficulties, the Administrative Judge noted that Employee presented sound evidence contradicting some of the conclusions reached on his CLDF. In the category of "Relevant Significant Contributions, Accomplishments or Performance," Mr. Bacheldor described Employee as a satisfactory employee with limited initiative and poor attendance. Employee testified that his performance and work habits were not as described. He offered as evidence of his level of performance an "Excellent" performance rating for the period covering April 1, 1994 through March 30, 1995. At the Hearing, Agency challenged the authenticity of the supervisor's signature on the rating. The Administrative Judge, however, deemed the rating authentic and admitted it into the record because Agency had produced the document during discovery.

In its Petition for Review, Agency renews its authenticity objection and further argues that it was improper for the Judge to have relied on the rating because performance ratings are unreliable. Agency's arguments are not well taken. Agency cannot complain about the authenticity of the rating because it was produced by Agency in response to Employee's Request for Production of Documents and because Agency's objection was not noted within the time period established by the Administrative Judge. Further, it is disingenuous for Agency to argue that its own performance ratings, which are required by law, are now somehow unreliable. It is patently absurd for Agency to try to claim a benefit from its own admittedly substandard performance. Nonetheless, we would uphold the Initial Decision even in the absence of the rating. The Administrative Judge's finding that the scoring system was fundamentally flawed did not depend upon the accuracy of the information contained in the rating. The rating simply highlighted the unreliability of the CLDF's. Therefore, we conclude that Agency has not established any grounds that permit this Board to grant its Petition for Review. The Petition must be denied.

ORDER

Accordingly, it is hereby **ORDERED** that

Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

Erias A. Hyman, Chair

Horace Kreitzman

Brian Lederer

Jeffrey J. Stewart

Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals five days after the issuance date on 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.

Certificate of Service

I certify that the attached **OPINION AND ORDER** was sent by regular mail this day to:

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Katrina Hill
Clerk

March 10, 2004
Date