

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:	)	
	)	
SHIRLEY BUTLER	)	
Employee	)	OEA Matter No.: 2401-0092-09
	)	
v.	)	
	)	Date of Issuance: August 22, 2011
DEPARTMENT OF HEALTH	)	
Agency	)	
_____	)	

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

Shirley Butler (“Employee”) was a Public Health Technician with the Department of Health (“Agency”). Her position was located within Agency’s Nutrition and Physical Fitness Bureau. That bureau contained three program areas which included the Women, Infants and Children’s Program, the Commodity Supplemental Food Program, and the Food Stamp, Nutrition and Education Program. Employee’s position came under the Commodity Supplemental Food Program within the bureau.

By letter dated December 29, 2008, Agency informed Employee that her position was being abolished pursuant to a reduction-in-force (“RIF”). The letter went on to provide that the RIF would take effect on January 30, 2009, and that she would be separated from government service on that same day. Employee was further advised of her right to appeal the action to the Office of Employee Appeals (“OEA”).

Employee timely filed a Petition for Appeal with the OEA. She argued therein that Agency’s RIF action should be reversed because, according to Employee, Agency failed to adhere to all of the applicable laws and regulations when it undertook the RIF action; Agency failed to assist her in seeking employment elsewhere within the agency; and Agency failed to place her position within the proper competitive area and competitive level.

The Administrative Judge determined that D.C. Official Code § 1-624.08 was the starting point in this appeal. That section provides that when an employee’s position has been abolished pursuant to a RIF, the employee may raise only the following two issues before this Office: that the employee did not receive a written notice of at least 30 days prior to the effective date of the separation; and that the employee was not afforded one round of lateral competition within the competitive level. Employee did not raise any issues with respect to the notice given to her by Agency. She did, however, contest the competitive area and competitive level within which her position was placed and argued generally that this impacted the one round of lateral competition to which she was entitled. The Administrative Judge found “that Agency was within its right to classify Employee’s position” as it had.<sup>1</sup> He went on to further find that because “the entire unit in which Employee’s position was located was abolished,” the statute granting an

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<sup>1</sup> *Initial Decision* at page 4.

employee one round of lateral competition was inapplicable.<sup>2</sup> The Administrative Judge considered Employee's other arguments to be grievances that were not within his jurisdiction to consider. Thus in an Initial Decision issued May 4, 2010, the Administrative Judge upheld Agency's action.

Thereafter, Employee filed a Petition for Review. In her petition, Employee tries to convince us that this Office's jurisdiction, as it pertains to RIFs, is not limited to the parameters established by the aforementioned statute. Rather, according to Employee, D.C. Official Code § 1-624.02 grants this Office sweeping authority to consider all aspects of a RIF, especially one that is conducted due to a shortage of money. Employee argues further that when she received the RIF notice, it provided that her position had been placed within the Nutrition and Physical Fitness Bureau competitive area but that when the RIF was actually conducted, her position was then placed within the Commodity Supplemental Food Program competitive area. According to Employee, this supposed "switch" of competitive areas is reversible error. Finally, Employee believes that the Administrative Judge erred by not considering her claims "that because the Agency contracted out services previously performed by the District government, it was obligated to follow the requirements of the D.C. Privatization Act prior to conducting the RIF."<sup>3</sup>

D.C. Official Code § 1-624.02 lists, *inter alia*, the procedures that an agency must follow when it undertakes a RIF action. For example, that section requires an agency to give to separated employees one round of lateral competition within that employee's competitive level and to give to the separated employee priority consideration for

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<sup>2</sup> *Id.*

<sup>3</sup> *Employee's Petition for Review of Initial Decision* at page 8.

reemployment opportunities. This section does not, however, confer upon this Office any more jurisdiction than that which is specifically conferred by D.C. Official Code § 1-624.08. D.C. Official Code § 1-624.08(f)(2) provides that “[a]n employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.” Subsections (d) and (e) pertain, respectively, to the one round of lateral competition to which an employee is entitled and the 30 days notice that must be given to an employee. Conversely, D.C. Official Code § 1-624.02 makes no mention of what this Office may consider when an employee contests a RIF action.

Employee’s second argument regarding the competitive area within which her position was placed is also without merit. The record makes it clear that Employee’s position was placed within the Commodity Supplemental Food Program competitive area. Admittedly, this competitive area was much narrower than the much larger competitive area of the Nutrition and Physical Fitness Bureau. However, both of these competitive areas contained a competitive level that was comprised of Public Health Technician positions. Unfortunately for Employee, all of the Public Health Technician positions within her competitive level were abolished. When an entire competitive level is abolished pursuant to a RIF, there are no positions that can be used to conduct the one round of lateral competition. Therefore, the statute which grants this right to an employee is inapplicable under these circumstances. Moreover, D.C. Official Code § 1-624.08(f) makes it clear that “[n]either the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished...shall be subject to review....”

Lastly, we agree with the Administrative Judge that Employee’s arguments regarding Agency’s alleged violation of the Privatization Act are “ancillary arguments [that] are best characterized as grievances and outside of the OEA’s jurisdiction to adjudicate.”<sup>4</sup> Whether or not Agency complied with the Privatization Act is immaterial to how it conducted the RIF. Furthermore, we’ve already established what may be considered by this Office when an employee files an appeal contesting a RIF action. Employee has given us no basis upon which to overturn the Initial Decision. Therefore, we are compelled to uphold the Initial Decision and deny Employee’s Petition for Review.

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<sup>4</sup> *Initial Decision* at page 4.

**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.