

**DECISION ON REMAND**

---

IN THE MATTER OF THE APPEAL OF:

**ANGELICA PETTWAY**, Appellant,

vs.

**DEPARTMENT OF FINANCE, ASSESSMENT DIVISION**

and the City and County of Denver, a municipal corporation, Agency.

---

This is Angelica Pettway's appeal of her 2009 layoff. After a full hearing on the merits, the layoff decision was reversed by the Hearing Officer on March 11, 2010. The Agency filed a petition for review. On October 21, 2010, the Career Service Board remanded the matter back to the Hearing Officer for further findings and conclusions.

**I. PROCEDURAL BACKGROUND**

This remanded appeal stems from Appellant's challenge of her Sept. 15, 2009 layoff from the position of Assessment Information Technician (AIT) in the Denver Assessor's Office, a layoff compelled by agency budget reductions. The layoff plan was designed to select three out of the six AITs in the layoff group for retention.<sup>1</sup>

Under the Career Service Rules, an appointing authority may choose to rank employees for layoff purposes based on their "knowledge, skills, abilities, expertise and/or documented performance ('proficiency'), and place employees with greater proficiency above employees with longer length of service." § 14-44 C.2. This Agency selected Appellant and two other AITs for layoff based on a proficiency test designed by the Assessor with the assistance of Appellant's supervisor, Information Manager RaeAn Cantrall.

At the December 2009 hearing in this appeal, the Agency presented evidence that the proficiency test measured the work of the six AITs in the layoff group as to three key job duties: processing deeds filed at the Assessor's Office, processing change of address forms, and correcting addresses based on mail returned to the Assessor's office as undeliverable. Assessor Paul Jacobs testified that he used the TimeTracker and Kronos databases from April to August 2009 to rank the employees'

---

<sup>1</sup> Employees in three other job classifications were also laid off as part of the layoff plan. [Exh. 7.]

production rate and share of work. [Exh. 49.]

After the initial hearing, I found that ten Agency errors in calculating the proficiency rankings changed Appellant's production rate and ultimate ranking to number three in the group of six, thereby rendering her eligible to be retained as one of the top three most proficient employees during the layoff. [Decision, 3/11/2010.] As noted in the Career Service Board's Findings and Order, the work sheets showing the Agency's calculations were not produced until after the hearing started, and the TimeTracker data used to calculate the ratings was not produced until after the close of the hearing. [Exhs. 47 - 49; Findings and Order, 10/21/2010, p. 2.] Testimony about the methodology used to calculate the production rate was not offered at the first hearing. I concluded that the Agency decision lacked competent evidence to support it because the production numbers and resulting rankings were incorrect, and that the decision was therefore arbitrary and capricious.

On the Agency's petition for review to the Career Service Board challenging the reversal, the Board noted confusion and discrepancies within the exhibits, but found that the Agency's final rankings appear to have been calculated by averaging each employee's daily production rate<sup>2</sup>, averaging the resulting monthly production rates, then averaging the monthly rates to produce the employee's production rate in each task for the five-month period. The Board observed that the six employees' final production rates may then have been ranked against one another to determine their final rankings. The appeal was remanded for further findings consistent with the Board's decision, and a determination as to whether the Agency's layoff action was arbitrary and capricious. [CSB Findings and Order, 10/12/2010.]

## **II. ISSUES ON REMAND**

The Career Service Board remanded this appeal for determination of the following issues:

1. The methodology used by the Agency in calculating production rates for the purpose of determining proficiency rankings pursuant to CSR § 14-41 f);
2. Whether the proficiency standards were reasonable and fair in conformity with the layoff rules, and
3. Whether correction of errors in the Agency's exhibits would change the production rates or final rankings.

## **III. FINDINGS OF FACT AND ANALYSIS ON REMAND**

At the remand hearing, the Agency presented the testimony of one witness, Denver Assessor Paul Jacobs. The Agency also submitted the data contained in

---

<sup>2</sup> Production rates are the product of work completed divided by the time it took to complete it.

Exhibit 48 in the wider Excel format. [Compare Exhs. 48, Record pp. 448 – 453 to Remand Exh. 1.]

1. What methodology was used to calculate production rates?

As found in the March decision, employees in the layoff group were given two separate scores in determining their proficiency: production rate and share of the work. Mr. Jacobs testified at the remand hearing that the ten transcription errors noted in the original decision did not affect the layoff decision for three reasons: 1) he calculated the production rate using a method different from the Hearing Officer's method, but one that was nonetheless justified by legitimate business reasons, 2) the share rankings were not affected by his errors, and 3) the sum of the production rankings and share rankings as originally calculated was the same as the sum of those rankings after correction of the errors, and showed that Appellant was not one of the top three most proficient employees in the layoff group.

a) Calculation of production rates

As to the methodology used to calculate the production rate, Mr. Jacobs testified that the source of his data was Exhibit 49, which was prepared by Ms. Cantrall using the AITs' time and work code entries recorded on TimeTracker and Kronos.

Mr. Jacobs calculated each employee's production rates separately for each task: deeds, addresses and returned mail. He first divided the number of work items the AIT completed each day by the time taken to complete the work, and arrived at an average hourly production rate for the task, rounded to the first decimal place. He then entered those hourly rates into an Excel chart under the column assigned to that work day<sup>3</sup>, totaled the average rates for each month, then totaled all five months' average production rates. He divided that sum by the number of days during the entire period when work on that task was performed and time reported, and arrived at the average hourly production rate per task for that employee. [Remand Exh. 1-1 to 1-3, columns G – CA; Exh. 48-2 to 48-7.] For example, Appellant's average hourly production rate for deeds was calculated as 7.98, as shown on Remand Exh. 1-3 at column CA, row 14, and Exh. 48-1.

In determining production rates, Mr. Jacobs did not include work recorded on days where there was no "time worked" shown on the TimeTracker. [Exh. 49.] He explained that "time worked" was not listed in the measured tasks when employees were at the front desk answering citizen inquiries, a duty coded as public information.<sup>4</sup>

---

<sup>3</sup> Appellant's first work day of April was assigned to column 401. Since she worked eleven days that month, her production rate for the last day of April was added to column 411. The cells following the last day worked by each employee were left empty. [Exh. 48-1, Record p. 448, Remand Exh. 1-1.]

<sup>4</sup> Public information was not included as one of the three tasks used to measure proficiency, since the varying complexity and length of public inquiries would make it difficult to quantify success in performing that duty.

For example, on June 23, 2009, Appellant worked eight hours at the front desk handling public inquiries. [Exh. 49-3, column 17.] During that time, she also processed one deed, 22 address changes, and 28 pieces of returned mail. Employees who multi-tasked at the public information desk received credit for the extra work as a part of the separate "share of work" calculation, in addition to the hours of credit they received in the public information work category. However, the extra work could not be assigned a production rate, since that rate is the product of work done divided by time spent doing it, and employees were instructed not to report hours in more than one category when multi-tasking.

b) Calculation of share of work

As noted above, proficiency was measured in two ways: production rate and share of the work. Mr. Jacobs divided each employee's work by the group total for the five-month period to arrive at individual work shares for the three tasks.

Employees' monthly total of work completed for each task is the first number in the third column, entitled "month average". [Exh. 49.] One of those totals was added incorrectly, and Mr. Jacobs inaccurately transferred another five monthly totals from the TimeTracker to his work sheet, which errors were then incorporated into the final proficiency calculations. [Jacobs testimony, 4/4/11, 8:39 am; Decision, pp. 6 - 7.] In any event, those errors did not change the share rankings for any task. [Decision, pp. 5 - 8; Exh. 48-1; Record on Petition for Review p. 455.]

c) Final rankings

After calculating the average hourly production rates and share of work, the Agency then ranked each employee from one to six in both categories. The employee ranked number one in production was the person who completed the most work in the least amount of time. Number one in the share category was the employee who carried the largest share of the group's work in each task. In both production and share, Mr. Jacobs gave deeds twice the weight of the other tasks, in light of its central role in the work of the Assessor's Office. The last two steps in the proficiency formula were to add the employee's production and share rankings for each of the three tasks, then rank each employee from one to six according to the results of that calculation. Those ranked in the top three were considered the most proficient, and were not laid off.

By duplicating Mr. Jacob's methodology without correcting his errors, I was able to arrive at the same average hourly production rates as those listed on Exhibit 48-1. Mr. Jacob testified he did not simply calculate the overall production rate for the entire period because he was interested in first determining daily and monthly productivity rates in order to compare employees' improvements during the five-month assessment period. Mr. Jacobs testified that the daily and monthly rates did not demonstrate any notable difference in the employees' rates of improvement. I find that the methodology was a reasonable effort to assess an important facet of proficiency for each employee.

2. Were the proficiency standards reasonable under the layoff rules?

Proficiency standards used to select employees for layoff in lieu of seniority must be reasonable and fair. Findings and Order, pp. 4 -5, 10/21/2011. Proficiency is defined in the rules as "knowledge, skills, abilities and/or documented performance". The criteria and procedures used to determine proficiency must be reviewed and approved by the Career Service Authority "as part of its responsibility to audit and approve the lay-off plan" for conformance with the layoff rules. CSR § 14-44 C.2.

In its order of remand, the Career Service Board raised several issues requiring further findings based on its analysis of the record. The Board noted that proficiency included data from April 2009, despite the fact that a new TimeTracker system and performance improvement plan (PEP) were both implemented that month, and production rates were significantly lower in April than the other four months. [Exhs. 46, 49.] In addition, data in July and August was sparse in address changes and nonexistent in returned mail. The Board questioned whether inclusion of April, July and August in the rating period was reasonable and fair under the layoff rules given those circumstances.

As to inclusion of the April numbers, it is noted that all employees had a minimum of 17 years' experience in their positions performing the same duties. All were in the identical situation with regard to the new PEP and the need to record their time and work in the new TimeTracker database. The only change made by the April PEP was establishment of productivity standards for addresses and returned mail. [Exhs. 46, 41, and 42.] However, proficiency for layoff purposes was not measured against the new PEP standards. Instead, employees were ranked against one another according to their productivity. Mr. Jacobs calculated production rates by month, including April, to help him compare employees' improvement over time. He noted that all six employees struggled in April as expected, but improved steadily during the rating period. Statistical tracking of trends was a tool routinely used in the Assessor's Office to evaluate seasonal property values, and a gauge Mr. Jacobs reasonably believed would be useful in determining who should be retained as most proficient. [Jacobs testimony, 4/4/11, 10:03 am.] In addition, my own calculations indicate that exclusion of April productivity numbers would not have affected the final rankings. Under these circumstances, use of the April data in the proficiency test was not unreasonable or unfair.

Likewise, exclusion of July and August data was not improper. Mr. Jacobs decided in June or July to use the precise time and work records already being gathered in the TimeTracker since April, and to measure performance up until August, the month before the September layoff. A longer assessment period provides a greater amount of measurable data than a shorter one, a result that is consistent with the layoff plan's requirement to measure documented performance. Addresses and returned mail work became sparse in July and nonexistent in August as employees reduced the backlog of unprocessed mail. Because the production rates were averages and calculated only for the days on which those tasks were done, no one

was prejudiced by the gradual disappearance of this work. All six AITs had an equal opportunity to do the address work, all did perform some address work in July, and none complained at hearing that the shortage of address or return work was unfair or contributed to their layoff. Finally, elimination of those months from the assessment period for addresses and returns would not have resulted in a change in either the final rankings or this layoff decision.

3. Did errors in the Agency's exhibits change the production rates or final rankings?

As part of my responsibility to conduct a de novo review of the Agency decision, I recalculated each employee's production rates using the Agency's mathematical formula after correcting the errors noted in the previous decision. As stated above, the Agency determined the share rates using a method similar to the one I first employed to compute the production rates: adding each employee's work units for the entire period, and then dividing that sum by the total work done by all six AITs in each task.

Determination of the average hourly production rates using the Agency's method proved to be more complicated. As noted in the March 2010 decision, the Agency's description of a production rate as the average work produced per hour led me to calculate it by dividing total work production per employee per task by the total time spent on that task during the rated period. Based on Mr. Jacobs' explanation at the remand hearing, I recalculated the production rate after correcting the Agency's errors using his method: divide each day's work by the time used to perform it, add each month's production rates, add all five month's production rates, then divide that number by the total number of days the employee performed that task from April to August. The results show the same numbers as shown on Agency's Exhibit 48-1, with the exception of slight rounding differences, shown in bold below, which did not affect the ultimate rankings. The Agency's production rates from Exh. 48-1 are in brackets after the bolded numbers. One additional omission was revealed by use of the Agency's methodology, but that too did not affect the result. See footnote 5.

<u>DEEDS:</u>	<u>Production Rate</u>	<u>Prod. Rank</u>	<u>Share Rank</u>	<u>Total Rank</u>	<u>Total Rate</u>	<u>X 2</u>	
M. Armijo	5.23	6	+	6	=	12	24
B. Martinez	8.49	1	+	2	=	3	6
L. Martinez	<b>8.17</b> [8.16]	3	+	1	=	4	8
L. Navarrete	<b>8.20</b> [8.21]	2	+	3	=	5	10
C. Owens	7.94	5	+	4	=	9	18
A. Pettway	7.98	4	+	5	=	9	18

<u>ADDRESSES:</u>	<u>Production Rate</u>	<u>Prod. Rank</u>	<u>Share Rank</u>	<u>Total Rate</u>
M. Armijo	23.44	2	6	8
B. Martinez	<b>28.04</b> [28.05]	1	1	2
L. Martinez	<b>15.27</b> [15.31]	5	4	9
L. Navarrete	22.53	4	3	7
C. Owens	<b>12.63<sup>5</sup></b> [11.85]	6	5	11
A. Pettway	<b>23.41</b> [23.40]	3	2	5

<u>RETURNED MAIL:</u>	<u>Production Rate</u>	<u>Prod. Rank</u>	<u>Share Rank</u>	<u>Total Rate</u>
M. Armijo	27.26	3	5	8
B. Martinez	36.26	1	1	2
L. Martinez	<b>28.75</b> [28.77]	2	4	6
L. Navarrete	24.34	5	2	7
C. Owens	14.82	6	6	12
A. Pettway	26.19	4	3	7

When the above rates for each task are added and the employees ranked from one to six on that combined score, the results are identical to that used by the Agency to determine proficiency.

<u>TOTAL RANKINGS:</u>	<u>Deeds</u>	<u>Addresses</u>	<u>Returns</u>	<u>Total</u>	<u>FINAL RANK</u>
M. Armijo	24	8	8	40	5
B. Martinez	6	2	2	10	<b>1</b>
L. Martinez	8	9	6	23	<b>2</b>
L. Navarrete	10	7	7	24	<b>3</b>
C. Owens	18	11	12	41	6
A. Pettway	18	5	7	30	4

ORDER

Based on the above findings of fact and conclusions of law, I conclude that the proficiency standards used by the Agency were reasonable and fair, and the decision to lay off Appellant was not arbitrary or capricious under the Career Service Rules.

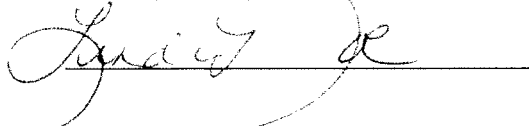
Done this 9<sup>th</sup> day of May, 2011.

  
 Valerie McNaughton  
 Career Service Hearing Officer

<sup>5</sup> Ms. Owens-Manis' address work on Aug. 31, 2009 was erroneously omitted from Mr. Jacobs' worksheets. [Exh. 49-11, Remand Exh. 1-2.]

I certify that on May 9, 2011, I delivered a copy of this Decision on Remand to the following:

Angelica Pettway, 11308 Newark, Henderson, CO 80640	(via U.S. mail)
Michael O'Malley, Esq., <a href="mailto:Michaelomalleylaw@hotmail.com">Michaelomalleylaw@hotmail.com</a>	(via email)
Kathy Hand, <a href="mailto:Kathy@legalnavigators.net">Kathy@legalnavigators.net</a>	(via email)
Julie Locke, <a href="mailto:Julie.Locke@denvergov.org">Julie.Locke@denvergov.org</a>	(via email)
Paul Jacobs, <a href="mailto:Paul.Jacobs@denvergov.org">Paul.Jacobs@denvergov.org</a>	(via email)
City Attorney's Office at <a href="mailto:Dlefilng.litigation@denvergov.org">Dlefilng.litigation@denvergov.org</a>	(via email)



### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 19-60 et seq., within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. The Career Service Rules are available as a link at [www.denvergov.org/csa](http://www.denvergov.org/csa).

#### **All petitions for review must be filed with the:**

Career Service Board  
c/o CSA Personnel Director's Office  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [Leon.Duran@denvergov.org](mailto:Leon.Duran@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND

Opposing parties or their representatives, if any.