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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROSETTA B. DAVIS)	
Employee)	
)	OEA Matter No.: 1601-0123-96
v.)	
)	Date of Issuance: April 4, 2007
D.C. METROPOLITAN POLICE)	
DEPARTMENT)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW No. 2

Rosetta Davis ("Employee") was a police officer with the D.C. Metropolitan Police Department ("Agency"). Agency removed Employee from her position based on the allegation that on December 1, 1992 she gave a bribe to a Bureau of Traffic Adjudication Hearing Clerk for the specific purpose of having him improperly dismiss traffic fines from her record. On February 12, 13, and 14, 1996 Agency's Police Trial Board ("PTB") conducted an evidentiary hearing. The panel recommended that the charges brought against Employee be sustained. Thus on May 24, 1996 the removal took effect.

Subsequently Employee filed a Petition for Appeal with the Office of Employee Appeals. On August 12, 13, and 14, 1998 the Administrative Judge conducted an evidentiary hearing. Based on the evidence elicited at this hearing and the documentary evidence contained in the record, the Administrative Judge, in an Initial Decision issued August 16, 1999, reversed Agency's action and ordered it to reinstate Employee.

Thereafter, Agency filed a Petition for Review. One of Agency's claims was that the Administrative Judge erred by conducting a *de novo* evidentiary hearing, rather than adopting the findings of the PTB. Believing that then-D.C. Code § 1-606.2 granted this Office the authority to conduct such a hearing, we dismissed that argument as being without merit. Because we found no reason to reverse the Initial Decision, we denied Agency's Petition for Review.

Agency then filed an appeal with the Superior Court of the District of Columbia. While the appeal was pending, the District of Columbia Court of Appeals rendered its decision in the case of *District of Columbia Metropolitan Police Dep't v. Pinkard*, 801 A.2d 86 (D.C. 2002). *Pinkard* was critical to the outcome of Employee's case because it set forth the principle that under certain conditions, an administrative judge is bound by the record established at the agency level and may not conduct a *de novo* hearing in the event an employee files an appeal with this Office. The following conditions must be present to invoke the *Pinkard* standard:

1. The employee is an employee of either the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subjected to an adverse action;

3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement provides that when an employee has been granted a departmental hearing and subsequently files an appeal with this Office, any further appeal shall be based solely on the record established in the departmental hearing; and
5. At the agency level, Employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an employee's removal.

Where all of these conditions are present, this Office's review of an agency decision is then "limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations." *Pinkard*, 801 A.2d at 92.

In view of the Court's decision in *Pinkard*, the Superior Court issued an Order remanding this appeal to us for reconsideration in light of the Court's ruling in *Pinkard*. Because we did not have access to the transcript of the hearing conducted by the PTB, we were compelled to further remand this case to the Administrative Judge for proceedings consistent with this decision.

Utilizing the *Pinkard* standard, the Administrative Judge issued an Initial Decision on Remand on December 3, 2003. After a thorough and in-depth review of the entire record established before the PTB, the judge ultimately concluded that "Agency's decision to terminate Employee from her position as a D.C. Metropolitan Police officer was supported by substantial evidence and was in accordance with law and applicable

regulations. Further, Agency committed no procedural error, let alone harmful error. Therefore, I conclude that Agency's decision must be upheld."¹

On February 11, 2004 Employee filed a Petition for Review. Employee's first contention is that the Initial Decision on Remand is not supported by substantial evidence. Specifically, Employee claims that the PTB's findings with respect to Employee's misconduct are inconsistent with the charge and specification brought against Employee.

On May 5, 1994, Agency notified Employee of its proposal to remove her. That notice stated, in part, the following:

Charge No. 1: Violation of General Order Series 1202, Number 1, Part I-B-12, which provides: "Conduct unbecoming an officer

Specification No. 1: In that on Tuesday, December 1, 1992, at approximately 1230 hours, while on duty in the District of Columbia, you did corruptly pay an \$80.00 bribe to Mr. Ronald Morris, a Hearing Clerk at the Bureau of Traffic Adjudication, to have \$225.00 in parking fines dismissed which had been issued to your personally-owned vehicle, without attending a hearing on the matter. Paying a bribe is a violation of Title 18, U.S. Code Sections 201, (b)(1)(A) and (C).

At the conclusion of the PTB hearing, the Board found Employee guilty of Charge No. 1, Specification No. 1. The Board went on to conclude the following:

In that on December 1, 1992, you did conspire with Mr. Ronald Morris, an employee of the Bureau of Traffic Adjudication, to have approximately \$225.00 in parking fines dismissed. The evidence shows that on that date you handed Mr. Morris an envelope containing \$80.00 dollars in cash to have him dismiss the four NOIs that you were found liable for at the BTA hearing on November 25, 1991.

¹ *Initial Decision on Remand* at 19.

On November 3, 1994, you testified before Judge John H. Pratt, U.S. District Court and admitted that on December 1, 1992, you did give Mr. Morris \$80.00 in an envelope at the Union Station to dismiss four NOIs.

Employee believes that the inconsistency between Specification No. 1 and the PTB's conclusion requires a reversal of the Initial Decision on Remand. We disagree.

As can be seen from the aforementioned statement, the PTB, when issuing its conclusion, stated that Employee had conspired with Ronald Morris for the purpose of engaging in the misconduct that ultimately led to her removal. Admittedly, Charge No. 1 and its accompanying Specification No. 1 do not mention that Agency was charging Employee with conspiracy. However, conspiracy is not the misconduct or charge for which the PTB found Employee guilty. The PTB clearly stated that it found Employee guilty of Charge No. 1, Specification No. 1. Even though the PTB stated that Employee "did conspire with Mr. Ronald Morris . . .," such statement was not a part of any of the facts which the PTB had found to be true based on the evidence.

Employee's second contention is that the specification accompanying the charge brought against Employee contained factual misstatements. According to Employee, these misstatements are reversible error. Again, we disagree. Before Agency issued its final notice of removal to Employee, it amended the notice to reflect that Employee was indeed off duty when she engaged in the misconduct. Further, in its findings of fact, the PTB noted that Employee had in fact attended a hearing at the Bureau of Traffic Adjudication. As part of this argument, Employee again claims that the PTB was incorrect in stating that Employee had conspired with Morris. Nevertheless as we just

noted, the PTB did not find Employee guilty of conspiracy nor did it find that Agency had proven that Employee was guilty of conspiracy.

The balance of Employee's Petition for Review is devoted to questioning the credibility of two of Agency's witnesses. While reviewing the agency record, the Administrative Judge evaluated the PTB's credibility determinations. In the Initial Decision on Remand, the Administrative Judge made the following observation:

In making its determination, the PTB obviously weighed the questions of Ronald Morris's credibility, since there were some components in this record which called his credibility into question, especially when viewed in the context of Employee's own testimony in two federal trials, as gleaned from the transcripts of both trials. In the end, the PTB determined that, as to the conduct between Morris and Employee, the sworn testimony of Morris was credible enough to sustain a finding of Employee's illegal conduct. Morris's credibility is also enhanced when evaluated as a component of the larger picture, which included Agency's other witnesses and multiple Agency exhibits.

As noted earlier, *Pinkard* counsels me, as the "reviewing authority", to "generally defer to the agency's credibility determinations." Based on my review of the testimony, I can find no reason to disturb the PTB's credibility determinations.²

The Administrative Judge's evaluation on this issue is further buttressed by the PTB's findings with respect to the credibility of Morris and Timothy Jacobson, an FBI Special Agent. Concerning Morris the PTB concluded that in spite of Morris's alleged inconsistency, "he has arrived at the same end point over and over and over."³ Concerning Jacobson, it was established through his own testimony that "at no time . . . has he ever knowingly told a lie about [this] matter—not to the grand jury, not in either

² *Initial Decision on Remand* at 15.

³ Police Trial Board Transcript at 399.

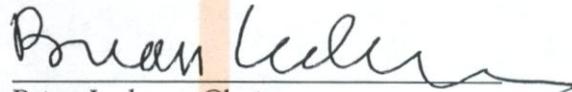
of the two federal trials, and again not at the current PTB proceedings.”⁴ We believe there is substantial evidence in the record to support the Administrative Judge’s conclusions, not only with respect to the issue of credibility, but also with respect to the other issues raised by Employee. Therefore, we are compelled to uphold the Initial Decision on Remand and deny Employee’s Petition for Review.

⁴ *Initial Decision on Remand* at 13 (quoting from the Police Trial Board Transcript at 619-622).

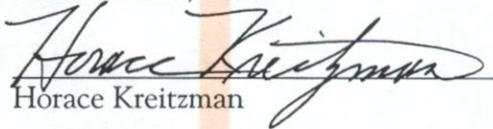
ORDER

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

FOR THE BOARD:

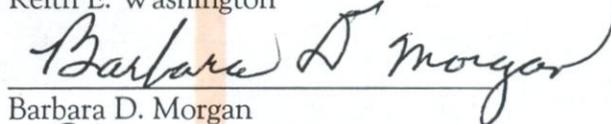


Brian Lederer, Chair

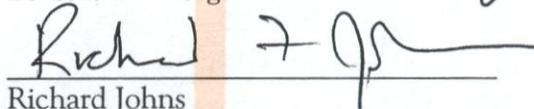


Horace Kreitzman

Keith E. Washington



Barbara D. Morgan



Richard 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.