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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CYNTHIA HOOPER-HILL)	
Employee)	
)	
)	OEA Matter No.: 1601-0149-00
v.)	
)	Date of Issuance: March 15, 2006
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

The D.C. Metropolitan Police Department ("Agency") removed Detective Cynthia Hooper-Hill ("Employee") after 14 years of service based on the charges of using a service weapon in violation of the applicable regulations and willfully and knowingly making an untruthful statement pertaining to an incident that involved Employee. Agency initiated this action against Employee because of an incident that occurred on July 15, 1999. On that date, Employee was driving her personal vehicle to a department

staff meeting and decided to stop at the dry cleaner while on her way. Upon arriving at the dry cleaner, Employee got out of her car, left her keys in the ignition, opened the car's trunk to place her purse into it, left the trunk open, and then went into the dry cleaner. A brief moment later, Employee noticed that her car was being stolen. At that point Employee ran out of the store and shot at the car with her service weapon.

During the course of the investigation of the incident, Employee led Agency officials to believe that she had fired her weapon because she feared for her safety. Based on the physical evidence and eyewitness accounts, Agency officials came to conclude, however, that Employee did not have cause to fear for her safety or the safety of others and thus should not have fired her weapon. Further, they concluded that Employee fired her weapon after the car had begun pulling away. Finding that Employee had made a false statement and had violated the regulations pertaining to the use of an officer's weapon, Agency charged Employee accordingly. Thus on December 22, 1999, Agency notified Employee of its proposal to terminate her employment.

Prior to the termination taking effect, a police trial board hearing was convened on February 29, 2000 and March 2, 2000. During the two-day hearing an Agency commander and two Agency captains heard testimony from witnesses who had been placed under oath and reviewed evidence that had been admitted into the record. Based on the evidence adduced at this hearing, coupled with the physical evidence obtained as a result of agency's investigation, Agency removed Employee effective July 29, 2000.

Thereafter, on August 8, 2000 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). The Administrative Judge assigned to the appeal determined that an evidentiary hearing was necessary. Thus on May 2, 2002 the

Administrative Judge began what was to have been the first day of a two-day hearing. At the conclusion of the hearing, the Administrative Judge scheduled the second day of the hearing for July 17, 2002. During the interim, however, the District of Columbia Court of Appeals issued its decision in the case of *D.C. Metro. Police Dep't v. Pinkard*, 801 A.2d 86 (D.C. 2002). That decision became relevant to Employee's appeal in that the Administrative Judge held that, based on the Court's ruling in *Pinkard*, she no longer had the authority to hold an evidentiary hearing *de novo* and instead had to base her decision on the evidence compiled by the police trial board. With that in mind, the Administrative Judge cancelled the second day of the hearing and went on to issue a decision based on the evidence in the record.

On March 7, 2003 the Administrative Judge issued an Initial Decision in which she held that there was substantial evidence in the police trial board record to sustain the charges brought against Employee. Thus Agency's action was upheld. On April 7, 2003 Employee filed a Petition for Review. In the petition Employee argues that although *Pinkard* limits OEA's review "to a review based upon the record of the evidentiary hearing conducted at the Agency level . . . [it does not] require[] strict deference to Agency credibility determinations."¹ Employee contends that the Administrative Judge erred when she deferred to the credibility determinations made by the Agency.

Pinkard was a case in which the Court had to determine the scope of OEA's review when there is a collective bargaining agreement between the city and a labor union to which Employee belongs, and such agreement provides that an appeal to OEA is to be based solely on the record established before the agency. The Court held that under

¹ Employee's Petition for Review at 2.

those circumstances OEA's review is limited to determining the following: 1.) whether the agency's decision is supported by substantial evidence; 2.) whether there is harmful procedural error; and 3.) whether the agency's decision is in accordance with law or applicable regulations. The Court went on to state that "OEA, as a reviewing authority, also *must generally defer to the agency's credibility determinations.*" *Pinkard* at 91-92. (Italics supplied). We believe that by stating that OEA must *generally* defer to an agency's credibility determinations, the Court is simply reaffirming OEA's authority to evaluate whether the evidence, as contained within the record, supports the agency's conclusions with respect to credibility and further, to make whatever ruling is warranted after such an evaluation.

In the case before us, it is clear that the Administrative Judge carefully reviewed all of the evidence. She scrutinized the testimony of each witness who appeared before the police trial board and determined that the conclusions drawn by the police trial board were supported by the testimony of each eyewitness. Because the record contained substantial evidence to support Agency's credibility determinations, the Administrative Judge properly deferred to Agency in this regard. We believe this review was in accordance with the standard as set forth by the Court in *Pinkard*. Employee has not raised an argument that would warrant a different outcome. Therefore, for these reasons we deny Employee's Petition for Review and uphold the Initial Decision.

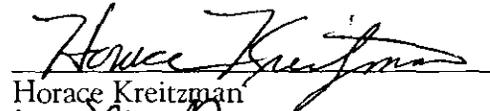
ORDER

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

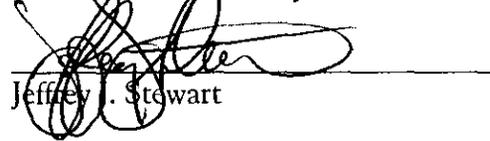
FOR THE BOARD:



Brian Lederer, Chair



Horace Kreitzman



Jeffrey J. Stewart

Keith E. Washington

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.