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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
MARQUES GLASCOE	)	
Employee	)	
	)	OEA Matter No.: 1601-0004-07
v.	)	
	)	Date of Issuance: September 16, 2009
D.C. FIRE AND EMERGENCY MEDICAL	)	
SERVICES DEPARTMENT	)	
Agency	)	
_____	)	

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

Marques Glascoe (“Employee”) was hired by the D.C. Fire and Emergency Medical Services Department (“Agency”) in 2004 as a Firefighter/Emergency Medical Technician. On June 10, 2006 Agency charged Employee with committing an on-duty or employment related act that interferes with the efficiency or integrity of government operations and failing to report an arrest. The charges stemmed from a sexual assault allegedly committed by Employee when he was a student attending a college in Alabama

in 1996. At the time of the alleged assault, the state of Alabama issued a warrant for Employee's arrest.

In 2005, Employee was in fact arrested on the outstanding warrant. In early 2006, the District's Court Services and Offender Supervision Agency informed Agency that Employee had been placed on supervised probation for the next three years with its Sex Offender Unit. Thereafter, Agency charged Employee with the aforementioned charges and proposed to terminate him.

A Fire Trial Board hearing was held on July 11, 2006. The trial board found Employee guilty of both charges and recommended that he be terminated. By letter dated September 28, 2006, Agency's Fire Chief notified Employee that he would be removed from his position effective October 14, 2006.

Employee timely filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Before the Administrative Judge could begin consideration of this appeal, she had to first determine whether this appeal was subject to the guidelines set forth by the District of Columbia Court of Appeals in *D.C. Metropolitan Police Dep't v. Pinkard*, 801 A.2d 86 (D.C. 2002). Pursuant to *Pinkard*, the Administrative Judge may not conduct a *de novo* hearing, but rather is bound by the record created at the agency level when all of the following conditions are met:

1. The employee is employed by the Metropolitan Police Department or the D.C. Fire and 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 contains language essentially the same as the language in *Pinkard*, i.e., “[A]n employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing (Trial Board) has been held, any further appeal shall be based solely on the record established in the Departmental hearing”; and

5. At the agency level, Employee appears 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 adverse action being taken against Employee.

In an effort to resolve this threshold issue, the Administrative Judge ordered the parties to submit the collective bargaining agreement so that she could ascertain whether or not it included the language found in the *Pinkard* case. The parties were advised that they could make the submission jointly and that they had until August 10, 2007 to make the submission.

Neither party ever submitted the agreement nor does it appear that either party asked for an extension of time to make the submission. Therefore, on October 3, 2007 the Administrative Judge issued an Initial Decision in which she dismissed Employee’s petition. The Administrative Judge held that “[b]y failing to respond to the Order and submit the collective bargaining provision, Employee [has] failed to prosecute his appeal in violation of OEA Rule 622.3.<sup>1</sup> This is sufficient to result in the dismissal of the petition for failure to prosecute. . . . [Moreover] [b]y failing to submit the pertinent provision of the collective bargaining agreement, Employee did not meet his burden of

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<sup>1</sup> OEA Rule 622.3 provides in pertinent part the following:

If a party fails to take reasonable steps to prosecute...an appeal, the Administrative Judge...may dismiss the action...Failure of a party to prosecute...an appeal includes...a failure to:

...

(b) Submit required documents after being provided with a deadline for such submission....

proof on this jurisdictional issue.”<sup>2</sup> For these reasons, Employee’s petition was dismissed.

On November 7, 2007 Employee filed a Petition for Review. In the petition Employee argues that the Initial Decision is erroneous and not based on the law, that Employee did in fact vigorously prosecute his appeal, and that the Administrative Judge had already determined that the *Pinkard* standard applied to this case even without having the collective bargaining agreement. For these reasons, Employee asks that we vacate the Initial Decision and allow him to proceed with his appeal.

We are not persuaded by Employee’s arguments. We find no basis upon which to pronounce the Initial Decision erroneous and not based on the law and Employee has not given us any reason for doing so. Furthermore, we do not believe that the Administrative Judge had already determined that the *Pinkard* standard applied to this appeal. Even though the parties had already briefed certain issues pertaining to the case, it’s clear to us that the Administrative Judge had not determined that *Pinkard* applied to this appeal. If she had made that determination, there would have been no need for her to order the parties to submit the collective bargaining agreement. The essence of Employee’s final argument is that because the Administrative Judge ordered “the parties” to submit the collective bargaining agreement, Agency was as much at fault as he was for not making the submission. Because Employee’s job hung in the balance, it seems to us that he is the party who would have been more diligent in his efforts at prosecuting the appeal by submitting the agreement and less inclined to shift the blame to Agency. For these reasons, we must deny Employee’s Petition for Review and uphold the Initial Decision.

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<sup>2</sup> *Initial Decision* at 3.

**ORDER**

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

FOR THE BOARD:

\_\_\_\_\_  
Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

\_\_\_\_\_  
Hilary Cairns

\_\_\_\_\_  
Clarence Labor, Jr.

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.