

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:)	
)	
DEEPAK BUTANI,)	OEA Matter No. 1601-0093-98
Employee)	
)	Date of Issuance: November 13, 2008
)	
)	
DISTRICT OF COLUMBIA WATER)	
AND SEWER AUTHORITY,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Deepak Butani (“Employee”) worked as a Supervisory Environmental Engineer at the D.C. Water and Sewer Authority (“Agency”). On March 16, 1998, Employee received a notice from Agency to remove him from his position for discourteous treatment of the public, a supervisor, or other employees.¹ On April 3, 1998, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He claimed that there was no misconduct on his part and that he did not violate any rules. Employee went on to state that the action was discriminatory in nature. Therefore, he requested that

¹ Employee was specifically accused of fighting, threatening, or inflicting bodily harm on another; use of abusive or offensive language or discourteous or disrespectful conduct toward the public or other employees; and use of insulting or threatening language to official supervisor.

he be reinstated to his position and awarded back pay, benefits, and attorney's fees.²

Agency filed its Response to Employee's Petition for Appeal on October 22, 1999. It argued that Employee was properly removed for engaging in inappropriate conduct by arguing with his supervisor and calling him names. To justify Employee's removal, Agency highlighted several other occasions where he was rude, discourteous, offensive and threatening to others within the department.³

The Administrative Judge ("AJ") issued her Initial Decision on March 30, 2001. She found no convincing evidence that Employee committed the alleged misconduct. She held that if two conclusions could be inferred from the evidence then neither can be said to have been proven, and the judgment must go against the party upon whom the burden rests. Therefore, she reversed Agency's decision and ordered that Employee be reinstated to his position with back pay and benefits.⁴

Agency filed a Petition for Review where it argued that the AJ failed to resolve credibility issues in the case.⁵ However, the OEA Board upheld the AJ's ruling in its Opinion and Order on Petition for Review. Moreover, the Board found that deference should be given to the AJ's assessments regarding issues of credibility because the AJ was present to hear witnesses testify and observe their demeanor.⁶

In February of 2004, Agency appealed OEA's decision to the Superior Court of the District of Columbia. The Court denied its appeal stating that it could not find that the OEA Board was erroneous in its findings. Employee then filed a Motion to Enforce

² *Petition for Appeal*, p. 2 (April 3, 1998).

³ *Agency's Response to Petition for Appeal*, p. 2-5 (October 22, 1999).

⁴ *Initial Decision*, p. 6 (March 30, 2001).

⁵ *Agency's Petition for Review*, p. 1 (May 4, 2001).

⁶ *Opinion and Order*, p. 4 (January 14, 2004).

the OEA Order.⁷

After filing several motions and a Petition for Review, on September 10, 2007, both parties filed a Stipulation of Dismissal with Prejudice. They agreed that all claims by Employee against Agency were dismissed pursuant to a settlement agreement executed by the parties.⁸ Therefore, there are no outstanding issues for this Board to consider. Accordingly, Agency's Petition for Review is dismissed.

⁷ In her Addendum Decision on Compliance, the AJ certified the enforcement matter to the OEA General Counsel. On May 9, 2006, Agency filed a Petition for Review of the Addendum Decision on Compliance.

⁸ *Stipulation of Dismissal with Prejudice*, p. 1 (September 10, 2007).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DISMISSED**.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

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.