

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:)	
)	
WILLIAM H. DUPREE)	
Employee)	
)	
)	OEA Matter No. 2401-0088-01
v.)	
)	Date of Issuance: January 25, 2006
)	
DEPARTMENT OF CORRECTIONS)	
Agency)	
)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

William H. Dupree ("Employee") was a Sergeant, DS-9 in the Career Service with the Department of Corrections ("Agency"). During the course of his tenure, Employee filed a Petition for Appeal with the Office of Employee Appeals to grieve Agency's failure to select him for one of three vacancies for the position of Criminal Investigator. He based the grievance appeal on the fact that two of the candidates selected for the positions had been awarded a District residency preference despite the fact that neither

were *bona fide* residents of the District and that he had been improperly denied the residency preference.

On March 15, 1999, the Administrative Judge issued an Initial Decision in favor of Employee. As a result, Agency was ordered to vacate its prior action that resulted in the candidate who was improperly given the residency preference being selected for one of the criminal investigator positions and also to give Employee proper consideration for one of the positions. The Initial Decision became a final decision of the Office on April 19, 1999.

On June 1, 1999, Employee filed with the Administrative Judge a Petition to Enforce the Initial Decision. In that filing Employee claimed that Agency had failed to comply with the Office's final decision. On June 28, 1999, Agency appointed Employee to the position of Criminal Investigator and on October 10, 1999 the employee who had been improperly selected for the position resigned from Agency.

Subsequently, on August 3, 2001 Agency abolished Employee's position pursuant to a modified reduction-in-force ("RIF"). Employee appealed the action to this Office on August 29, 2001. The Administrative Judge determined that two issues were critical to the outcome of this appeal: whether Employee was entitled to four years additional credit for an "Outstanding" performance rating and whether two other persons had been properly excluded from Employee's competitive level and resulting retention register. If, according to Employee, Agency had credited him with four years additional service and had included the two other persons within his competitive level, he would not have been reached for separation.

The regulations applicable to the performance rating issue prohibited an employee from receiving additional credit for an "Outstanding" rating unless that employee had served in his or her position for at 12 months prior to the time that the rating period ended. Even if an employee had served in a position for the requisite amount of time, the regulations stipulated that the performance rating must have been officially acted upon with all of the necessary approvals and received in the appropriate personnel office. The rating period for Employee ended March 31, 2000. Employee was not promoted to the position of Criminal Investigator until June 28, 1999. Even though Employee had received an "Outstanding" rating, the Administrative Judge nonetheless held that because Employee had occupied the Criminal Investigator position for only nine months by March 31, 2000, he was not entitled to be credited with four years additional service. Further, according to the Administrative Judge, the form that memorialized Employee's performance rating lacked all of the necessary signatures. For these reasons, the Administrative Judge held that Employee was not entitled to the additional credit.

With respect to the second issue, Agency created a separate competitive level for two other employees having the title of Criminal Investigator. Those two employees, however, also had the designation of "(Internal Affairs)" included in their position title. Employee's position title had no such designation. In view of this special designation the applicable regulations required that Agency place them in a separate competitive level for the purposes of the RIF. Employee argued before the Administrative Judge that Agency erred when it did not place those two employees in the same competitive level in which it had placed Employee. Nevertheless, the Administrative Judge found that Agency was justified in establishing a separate competitive level for the other two Criminal

Investigators. Thus in an Initial Decision issued February 6, 2004, the Administrative Judge upheld the RIF.

Employee subsequently filed a Petition for Review. He argues therein that the Initial Decision is not based on substantial evidence and that the Administrative Judge failed to address all of the issues of law and fact that were before him. Substantial evidence is defined as any "relevant evidence such as a reasonable mind might accept as adequate to support a conclusion." *Mills v. District of Columbia Dep't of Employment Servs.*, 838 A.2d 325, 328 (D.C. 2003) (quoting *Black v. District of Columbia Dep't of Employment Servs.*, 801 A.2d 983 (D.C. 2002)). As long as there is substantial evidence in the record to support the decision, the decision must be affirmed "notwithstanding that there may be contrary evidence in the record (as there usually is)." *Ferreira v. District of Columbia Dep't of Employment Servs.*, 667 A.2d 310, 312 (D.C. 1995).

It is not necessary that we reexamine herein every point which Employee believes to be decisive to the outcome of his case. Our review of the entire record reveals that the Administrative Judge gave full consideration to all of these points during the trial of this appeal and properly disposed of them. Just because Employee disagrees with the Administrative Judge's ruling on these issues does not negate the fact that we believe there is substantial evidence in the record to uphold the ruling.

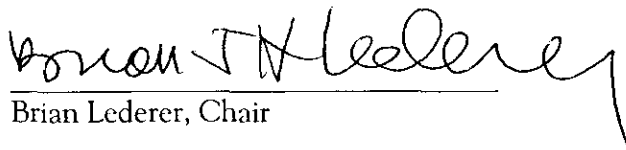
At the heart of Employee's second argument is his belief that he was entitled to have four additional years credited to his service for an "Outstanding" performance rating and that Agency improperly placed the other two Criminal Investigators with the "(Internal Affairs)" designation in a separate competitive level. As we have already noted, both of these issues were thoroughly considered by the Administrative Judge. He

found that Agency acted in accordance with the regulations that pertain to both of these issues. Employee has failed to present any evidence to persuade us otherwise. For these reasons we deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

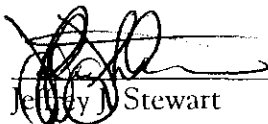
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

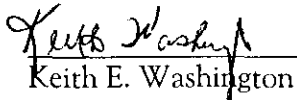


Brian Lederer, Chair

Horace Kreitzman



Jeffrey N 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.