

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:	)	
	)	
BONNIE MURCHISON	)	
Employee	)	
	)	
	)	OEA Matter No. 1601-0257-95-R03
v.	)	
	)	Date of Issuance: January 25, 2006
	)	
DEPARTMENT OF PUBLIC WORKS	)	
Agency	)	
	)	
_____	)	

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

The Department of Public Works (“Agency”) removed Bonnie Murchison (“Employee”) from service effective September 1, 1995, charging her with inexcusable absence without leave (“AWOL”). Employee had worked for Agency for 19 years and was a Clerical Assistant at the time of her removal.

The events that led to Employee being removed began when Agency detailed Employee to its Shepherd Park site which was located across the highway from the

District's Blue Plains Treatment Plant. Employee was to report for the detail beginning March 30, 1995; however, Employee did not report for duty on that day. When Agency had detailed Employee to this site in the past, she often reported that the foul smell permeating the air around the treatment plant caused her to become nauseous and dehydrated and exacerbated her already existing chronic sinus condition.

Employee failed to report for duty at the Shepherd Park location from April 10, 1995 through May 13, 1995. She did, however, call to report her absences and request leave for an extended period. On May 2, 1995, Employee made a written request to Agency for advanced leave. That request was denied. On June 13, 1995, Agency served Employee with an advance notice of its proposal to remove her for AWOL due to her failure to report to work. The removal took effect September 1, 1995, and Employee timely filed a Petition for Appeal with the Office of Employee Appeals.

The Administrative Judge held an evidentiary hearing in this appeal. During the hearing Employee presented medical documentation that stated that she suffered from a chronic sinus condition that was exacerbated by the smell in the air surrounding the Blue Plains Plant. The Administrative Judge held that because Employee had established adequate justification for her absences, those absences were excusable. Thus, Agency's removal action was reversed.

Thereafter, Agency filed a Petition for Review. On July 15, 1998, we issued an *Opinion and Order on Petition for Review* in which we held that Employee had proven that she had a legitimate medical illness that rendered her incapacitated and thus excused her absence from work. Agency appealed that ruling to the Superior Court of the District of Columbia. That court reversed our ruling. It held that the administrative record lacked

substantial evidence to support our findings and further, that there had been no finding as to whether Employee's aggravated sinus condition was so debilitating as to prevent her from performing her clerical duties. Employee then appealed to the District of Columbia Court of Appeals. On December 31, 2002, the Court reversed the Superior Court ruling and instructed that court to remand the appeal to this Office. The Court of Appeals ruled that because the administrative record before them was incomplete, they could not determine whether Employee had offered credible evidence to show that she was incapacitated for duty. The Court instructed this Office to "make specific factual findings regarding whether, and to what extent, [Employee] was incapacitated by her sinus ailments and unable to work at her job during her seven week absence without leave."

On June 16, 2005, the Administrative Judge held a second evidentiary hearing in this appeal. Employee's physician did not attend this second hearing.<sup>1</sup> However, Employee conceded that at the first evidentiary hearing her doctor would not state that she was medically incapacitated for work during the period that she was charged with AWOL. Instead, according to Employee, the doctor testified only that she was under his care during the relevant time period.

Employee also presented several exhibits that were admitted into evidence. Two of Employee's exhibits were medical slips. One slip noted that on May 11, 1995, Employee was treated for chronic sinusitis and bronchitis which was aggravated by the air outside the Blue Plains Treatment Plant. Nevertheless the box that would indicate that Employee was unable to work was not checked. A second medical slip, also dated May 11, 1995 and signed by Employee's treating physician, indicates that Employee was fit to

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<sup>1</sup> Apparently, Employee was not able to serve the doctor with a subpoena.

return to work. Based on all of the evidence in the record, the Administrative Judge found that “Employee was not medically incapacitated from working during the period of AWOL . . . [and] that Employee’s absence was inexcusable. . . .”<sup>2</sup> Thus in an Initial Decision issued October 4, 2005, the Administrative Judge upheld Agency’s action removing Employee.

On November 7, 2005, Employee filed a Petition for Review. Her petition is very brief and simply states that she would like to have an attorney to represent her, that she would like the physician to be subpoenaed, and that she would like to be able to present documentary evidence. These statements do not form a basis for granting a petition for review. First, Employee had an attorney from the time she initiated her appeal with this Office on September 12, 1995 until an appeal was taken from the Superior Court ruling. Even without an attorney Employee was able to obtain some measure of victory at the Court of Appeals level. Secondly, Employee’s physician testified at the first evidentiary hearing. There is nothing in Employee’s petition for review to indicate that the physician would say anything contrary to what he has already stated. Thirdly, Employee offered four exhibits that were admitted into the record. We have already discussed two of those exhibits. One of the other two exhibits indicates that Employee was on a non-pay status pending the outcome of a Worker’s Compensation claim. The other exhibit indicates that the Worker’s Compensation examiner found that Employee had not established an injury or disability that would have entitled her to that benefit. None of this evidence substantiated Employee’s claim. We believe that had Employee had any evidence to substantiate her claim, she would have presented it when given the opportunity to do so

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<sup>2</sup> *Initial Decision* at 6.

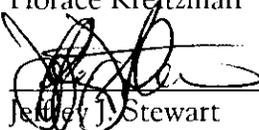
at the June 16, 2005 evidentiary hearing. We see no reason to disturb the Administrative Judge's ruling. Therefore, we deny Employee's Petition for Review and uphold the Initial Decision.

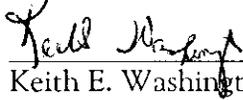
ORDER

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

FOR THE BOARD:

  
\_\_\_\_\_  
Brian Lederer, Chair

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Horace Kreitzman  
  
\_\_\_\_\_  
Jeffrey J. Stewart

  
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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.