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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
TEMISHA LASSITER,)	
Employee)	
)	OEA Matter No.: 1601-0039-14
v.)	
)	Date of Issuance: July 11, 2017
DEPARTMENT OF)	
TRANSPORTATION,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Temisha Lassiter (“Employee”) worked as a Staff Assistant with the Department of Transportation (“Agency”). On November 18, 2013, Agency issued a Notice of Final Decision for Proposed Removal to Employee. She was charged with “any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty” and “any knowing negligent or material misrepresentation on [a] document given to a government agency: falsification of time and attendance records.” The effective date of Employee’s termination was November 21, 2013.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 20, 2013. In her appeal, Employee argued that she never neglected her duties as a

Staff Assistant. She further denied falsifying her time and attendance sheets. As a result, Employee requested that she be reinstated with back pay and benefits.¹ In response, Agency contended that Employee neglected her job duties by erroneously approving incorrect invoice amounts and failing to exercise discretion and proper judgment. In addition, it asserted that Employee's failure to accurately fill out her time and attendance records negatively impacted Agency. Consequently, Agency opined that the record supported Employee's termination.²

An OEA Administrative Judge ("AJ") was assigned to the matter on July 18, 2014. On September 11, 2014, the AJ held a Prehearing Conference to assess the parties' arguments. After determining that there were factual issues in dispute, the AJ held an evidentiary hearing on February 19, 2015, wherein the parties presented documentary and testimonial evidence in support of their positions.

An Initial Decision was issued on September 16, 2016. The AJ held that Agency failed to meet its burden of proof regarding the neglect of duty charge. He stated that Employee provided credible testimony regarding her regular duties as a Staff Assistant. The AJ further explained that at the time of her removal, Employee's daily activities centered on the Department of Public Works' ("DPW") and Agency's shared responsibility for snow removal as well as the Procurement Automated Support System ("PASS"), the District's accounting system for payment. In his analysis, the AJ noted that Agency only presented one witness during its case-in-chief, Operations Manager, Steve Messam. The AJ provided that Messam had no first-hand knowledge of the events in question that led to Employee's termination and was not directly involved in effectuating her removal. By using Messam's testimony as the only source of

¹ *Petition for Appeal* (December 20, 2013).

² *Agency Answer to Petition for Appeal* (February 28, 2014).

justifying Employee's termination, the AJ could not reasonably conclude that there was substantial evidence in the record to prove that Agency's removal action was taken for cause.³

In addition, the AJ stated that the primary purpose of conducting an evidentiary hearing is to "assess witness credibility with respect to the actors that either viewed and/or in some fashion participated in the events that led to an employee's removal." The AJ was persuaded by Employee's explanation that her position description did not authorize her to act independently when creating requisitions, invoices, or approving contracts because she was required to work at the behest of her supervisor, Angelo Rao. The AJ further believed that Employee provided credible testimony that she had her supervisor's approval for every incident cited by Agency in support of her removal. Therefore, the AJ determined that Employee did not neglect her duties as a Staff Assistant.⁴

With respect to the falsification of time and attendance charge, the AJ held that Agency failed to provide any testimonial evidence to support its position that Employee fabricated her time and attendance records on June 10, 2013 and June 17, 2013. He was convinced by Employee's explanation that her absence on June 10, 2013 was preauthorized by her supervisor, Mr. Rao, because she was scheduled to attend training at the Federal Highway Administration ("FHA").⁵ Regarding the June 17, 2013 time entry, Employee clarified that she had an Alternative Work Schedule ("AWS") that day and was scheduled to work from home. However, her supervisor asked that she come to work to assist with a problem concerning a contract. Thus, it only appeared as if she did not work an entire shift. Lastly, the AJ was swayed by Employee's reasoning that any remaining time entries in question were pre-approved "Comp Time," wherein

³ *Initial Decision* (September 16, 2016).

⁴ *Id.*

⁵ Employee stated that she returned to her office from training at approximately 12:00 p.m. and worked the remainder of her shift.

her supervisor would repay her for working odd hours, such as Saturday mornings. Based on the foregoing, the AJ determined that Agency did not present any witness testimony to refute Employee's first-hand rendition of events, as it solely relied on the documentary evidence already in the record. As a result, the AJ held that Agency failed to meet its burden of proof with respect to the charge of falsification of time and attendance records. Consequently, Employee's termination was reversed and Agency was ordered to reinstate her with back pay and benefits.⁶

Agency disagreed and filed a Petition for Review with OEA's Board on October 20, 2016. It argues that the Initial Decision was based on an erroneous interpretation of regulation because the AJ ignored the substantial documentary evidence that was submitted during the course of this appeal. According to Agency, there was no requirement to produce testimony from any persons in Employee's chain of command during the evidentiary hearing. In addition, it asserts that there is substantial documentary evidence in the record to establish that Employee made time entries in the PeopleSoft Time Reporting System for hours during which she was not present at work. Accordingly, Agency posits that it met its burden of proof to support both the neglect of duty and the falsification of time and attendance charges. Therefore, it asks that this Board reverse the Initial Decision and uphold Employee's termination.⁷

Employee filed an Opposition to Agency's Petition for Review on November 29, 2016. She submits that the AJ was correct in concluding that Agency failed to prove that she was terminated for cause. Further, Employee states that Agency's arguments on Petition for Review are merely disagreements with the AJ's credibility determinations and ultimate findings. As a result, she requests that Agency's Petition for Review be denied.

⁶ *Id.*

⁷ *Agency Petition for Review* (October 20, 2016).

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Agency disagrees with the AJ's finding that it failed to meet its burden of proof with respect to the charges against Employee. Agency further states that it was not required to present testimonial evidence from anyone in Employee's chain of command during the evidentiary hearing. However, on Petition for Review, this Board must determine whether the AJ's findings were based on substantial evidence in the record. The Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), held that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.⁸

In this case, after adducing both documentary and testimonial evidence from both parties, the AJ concluded that Agency failed to prove, by a preponderance of the evidence, that

⁸*Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

Employee was terminated for cause.⁹ While Agency takes exception with his findings, there is no evidence in the record to indicate that the AJ failed to consider all of the documents that it submitted during the course of this appeal. Moreover, the AJ never stated that Agency was required to present testimonial evidence from witnesses who were directly involved in effectuating Employee's removal. He simply noted that by failing to do so, Agency could not substantiate the charges that it levied against Employee based solely on the documents of record. Agency was afforded the opportunity to present witnesses during the hearing to further buttress its argument that Employee neglected her duties as a Staff Assistant and falsified PeopleSoft records, but it did not. Its sole witness had no first-hand knowledge of the events surrounding the charges against Employee.

Conversely, the AJ found Employee's testimony to be truthful and forthright. The D.C. Court of Appeals in *Metropolitan Police Department v. Ronald Baker*, 564 A.2d 1155 (D.C. 1989), ruled that great deference to any witness credibility determinations are given to the administrative fact finder. The OEA Administrative Judge was the fact finder in this matter. Thus, as this Board has consistently ruled, we will not second guess the AJ's credibility determinations.¹⁰

⁹According to OEA Rule 628.1, the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean "that degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

¹⁰ *Ernest H. Taylor v D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 31, 2007); *Larry L. Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Paul D. Holmes v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0014-07, *Opinion and Order on Petition for Review* (November 23, 2009); *Derrick Jones v. Department of Transportation*, OEA Matter No. 1601-0192-09, *Opinion and Order on Petition for Review* (March 5, 2012); *C. Dion Henderson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 1601-0050-09, *Opinion and Order on Petition for Review* (July 16, 2012); *Ronald Wilkins v. Metropolitan Police Department*, OEA Matter No. 1601-0251-09, *Opinion and Order on Petition for Review* (September 18, 2013); and *Theodore Powell v. D.C. Public Schools*, OEA Matter Nos. 1601-0281-10 and 1601-0029-11, *Opinion and Order on Petition for Review* (June 9, 2015).

Based on the foregoing, this Board finds that the Initial Decision was based on substantial evidence. The AJ's conclusions of law flowed rationally from the evidence submitted by both parties. Thus, while there may be evidence in the record to reach a different conclusion, there is substantial evidence in the record to support a finding that Agency failed to meet its burden of proof for the neglect of duty and falsification of time and attendance record charges. Consequently, Agency's Petition for Review must be denied.

ORDER

Accordingly, it is hereby ordered that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams.

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.