

Notice: This decision may be revised before publication in the *District of Columbia Register*. Parties should promptly notify the Office of any formal errors so that this Office can correct them before publishing this decision. This notice is not intended to provide an opportunity for substantive challenge to the decision.

THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of: )  
)  
BRIDGETTE WHITE-CHASE )  
Employee )  
) OEA Matter No. 1601-0354-96  
v. )  
) Date of Issuance: May 4, 2001  
DEPT. OF HUMAN SERVICES )  
Agency )  
)  

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OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Agency suspended Employee for thirty days for “inexcusable neglect of duty.” She was an acting youth correctional officer at the Oak Hill Youth Center, the detention center for the District’s most incorrigible youthful offenders. Her specific duties were to act as a treatment team co-ordinator responsible for ensuring that residents of Oak Hill received appropriate counseling.

The incident leading to Employee's suspension occurred April 9, 1996. Agency charges that Employee used excessive force against Desmond Price, also known as "Monkey man", a resident of the detention facility. Agency claims that Employee struck the first blow against Price and continued to strike him after he had been restrained by other correctional officers. Employee appealed the suspension to this Office. She denied hitting Price. At the evidentiary hearing, Mr. Price did not testify. Instead, another resident, Baron Lanier, provided the sole testimony against Employee. Mr. Lanier was 16 years old at the time of the incident and had been incarcerated at Oak Hill for 3 ½ years for selling crack cocaine. Employee testified that Price had been the aggressor. She said that he had charged her without provocation, yelling profanities and threats. She claimed that Price hit her twice in the face. They grappled and fell over a sofa onto the floor. She denied ever hitting Price.

The Administrative Judge reversed the suspension. In doing so, he found:

Based on her demeanor, I find Employee to be more credible than the agency's witness. Employee was forthright and consistent in her testimony. The agency's sole witness, Mr. Lanier, came off as arrogant and incredible. Based on the evidence adduced at the hearing, I therefore find that Price struck the first blow and Employee defended against his attack.

Agency filed a Petition for Review, in which it argued that the Office had no jurisdiction to hear the appeal, that the Initial Decision did not address all the material issues raised in the appeal, and that the decision was unsupported by substantial evidence.

On the question of jurisdiction<sup>1</sup>, Agency points out that before filing with the Office, Employee's attorney requested the union to pursue a grievance through arbitration. Citing our decision in *Singletary v. Metropolitan Police Dep't*, OEA Matter No. JT-0123-93, *Opinion and Order on Petition for Review* (Dec. 23, 1996), Agency argues that the mere filing of the request for arbitration under the procedures of the collective bargaining agreement divests the Office of jurisdiction over the matter. However, we recently overruled *Singletary*. In *McRae v. Metropolitan Police Dep't*, OEA Matter No. 1601-0004-98, *Opinion and Order on Petition for Review* (September 28, 2000) and *Beeton v. Dep't of Corrections*, OEA Matter No. J-0198-98, *Opinion and Order on Petition for Review* (September 28, 2000), the Board held that if the union does not actually proceed under the negotiated procedure, this Office retains jurisdiction to hear the appeal. Here the union did not pursue arbitration, and therefore this Office has jurisdiction.

Second, Agency maintains that the Initial Decision does not address the question of whether Employee continued to strike Price after he had been restrained, and as a corollary proposition that the Initial decision is unsupported by substantial evidence. We do not agree. Two witnesses testified at the hearing— Mr. Lanier and Employee. Mr. Lanier furnished the only testimony that Employee struck Mr. Price in anyway. The Administrative Judge who

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<sup>1</sup>Agency also maintains that the Office has no jurisdiction because the petition for appeal was filed before the effective date of the adverse action. In our view, this is harmless error, and not properly the basis for a dismissal for want of jurisdiction.

visibly observed the demeanor and presentation of the witnesses found Mr. Lanier to be “arrogant and incredible.” The Administrative Judge, thus, did not credit his testimony. Employee testified that she did not strike Mr. Price at all but only took defensive measures to fend off his attack. The Administrative Judge found her to be “forthright and consistent in her testimony.” Consequently, the Administrative Judge found:

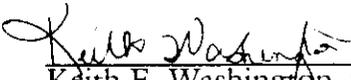
The evidence establishes that Employee acted reasonably and solely in self-defense. Agency did not prove that Employee used excessive force as alleged or that Employee failed to follow the agency’s regulation on the use of force. Agency thus had no cause for charging Employee with inexcusable neglect of duty. Accordingly, I conclude that Agency’s action should be reversed.

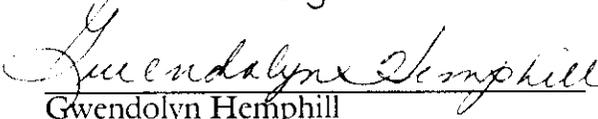
Our careful review of the record taken as a whole demonstrates that the Initial Decision is supported by substantial evidence. Agency’s Petition for Review is therefore denied.

ORDER

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

FOR THE BOARD:

  
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Keith E. Washington, Chair

  
\_\_\_\_\_  
Gwendolyn Hemphill

  
\_\_\_\_\_  
Michael Wolf, Esq.

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance 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.