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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
DUVON WINBORNE)	
Employee)	
)	OEA Matter No. 1601-0004-03
v.)	
)	Date of Issuance: November 30, 2005
)	
D.C. PUBLIC SCHOOLS)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

The District of Columbia Public Schools (“Agency”) hired Duvon Winborne (“Employee”) in 1999 to be its Executive Director of the Office of Educational Accountability. As part of his duties, Employee was responsible for overseeing the preparation and distribution of the homework practice booklets that the school children were to use to study for the Scholastic Aptitude Test (“SAT”).

In the spring of 2002, Employee’s new supervisor, who had been hired one year earlier, directed Employee to begin the distribution of the practice booklets. Employee

took the booklets that had been used in previous years, made a few cosmetic changes, and sent the booklets to the printers. Once the booklets returned from the printing shop, Employee began distributing the booklets to the school principals so that they could then distribute them to the children. Employee failed, however, to correct the spelling and content errors that were present throughout the booklets. The booklets contained these errors since they first began to be used in 1996 or 1997.

As a result of this misstep, Agency proposed Employee's removal based on the charge of incompetence. Agency claimed that Employee failed to perform satisfactorily the duties that were required of his position. The termination took effect May 3, 2002 and an agency hearing officer upheld the termination on September 18, 2002. Employee appealed to the Office of Employee Appeals ("Office") on October 11, 2002.

In an Initial Decision issued August 28, 2003, the Administrative Judge reversed Agency's action. Agency sought to prove during the trial of this appeal that Employee failed to follow the instructions given to him by his supervisor and, as a result, the booklets were issued with several mistakes. According to Agency, Employee's supervisor first met with Employee in February 2002 to discuss the preparation and issuance of the booklets. She told Employee to let her review the booklets before they were distributed and to also discuss the material with the content specialist. On March 14, 2002 Employee had a follow-up meeting with his supervisor. During that meeting Employee informed his supervisor that he had finished preparing the booklets and had sent them through the proper channels for distribution. The content specialist, who Agency claims was also present at that meeting, stated however that she had not been given an opportunity to review the booklets.

On March 18, 2002 the content specialist realized that the booklets contained many errors. Thereafter Employee's supervisor halted the further distribution of the booklets and recalled those booklets that had already been distributed. Somehow this fiasco came to the attention of the media. Agency held Employee responsible for the issuance of the error-ridden booklets and as a result, terminated him.

Only two witnesses testified at the hearing held in this appeal: Employee, on behalf of himself and Employee's supervisor, on behalf of Agency. Based on the testimony, the Administrative Judge found that Employee's supervisor did not instruct him to let her review the booklets before they were distributed or to let the content specialist review the booklets. Further, the Administrative Judge found that no mention of having the content specialist review the booklets was made at the March 14, 2002 meeting. In fact, according to the Administrative Judge, it was not until March 18, 2002, if at all, that Employee's supervisor instructed him to have the content specialist review the booklets. By that time many of the booklets containing the errors had already been printed and distributed to the school principals.

Given the fact that Employee had never been charged with incompetence in the past coupled with the evidence adduced at the trial, the Administrative Judge held that "Employee had the power, capacity, and means to perform the duties of his position, did not display any incompetency in attempting to complete this assignment, nor an inability or failure to perform satisfactorily the general and specific duties of his employment, based upon the instructions given and the time frame within which to complete the

assignment.”¹ The Administrative Judge concluded that Employee’s actions in this matter were an isolated event that amounted to the use of poor judgment. Therefore, the Administrative Judge held that Agency had not proven the charge brought against Employee and ordered that Agency’s action be reversed.

Agency filed a Petition for Review on October 2, 2003. Agency argues that the Administrative Judge made no finding, one way or the other, with respect to Agency’s contention that Employee failed to satisfactorily perform the duty of preparing acceptable homework preparation booklets. The Administrative Judge stated in the Initial Decision that he found that Employee “did not display . . . an inability or failure to perform satisfactorily the general and specific duties of his employment. . . .”² Later on he went on to make the following statement:

Therefore, with reference to the issue of whether Employee failed to satisfactorily perform the duty of preparing acceptable homework preparation packets for grades one through 11, the AJ determines that, based upon the instructions given and the time frame to complete the assignment, Employee did not unsatisfactorily perform the duty of preparing acceptable homework preparation packets.³

Although the syntax of this sentence may not be to Agency’s liking, we nonetheless believe that the Administrative Judge is holding that Employee did in fact satisfactorily perform the assigned task of preparing the booklets.

Agency’s next contention is that there was not substantial evidence in the record for the Administrative Judge to conclude that Employee’s assignment of preparing the

¹ *Initial Decision* at 10-11.

² *Initial Decision* at 10-11.

³ *Id.* at 14.

booklets was more procedural in nature. Substantial evidence is “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). The Administrative Judge arrived at this conclusion regarding the nature of the assignment based on all of the evidence in the record as a whole, including the testimony of the witnesses. Having reviewed the entire record as well, we believe there is substantial evidence to uphold the Administrative Judge’s finding.

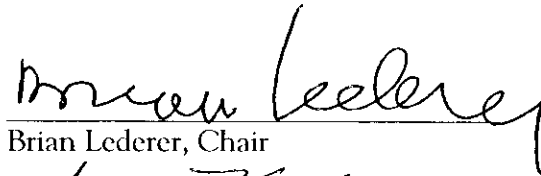
Agency’s last argument is that the Administrative Judge failed to address what effect his order to return Employee to his position and restore the lost pay and benefits would have upon Employee’s purported resignation. We believe that because the termination occurred prior to the date on which Employee had intended to resign, the resignation was not effectuated. It appears that notwithstanding Employee’s letter of resignation, Agency did not rescind its decision to terminate him. Employee could not resign from his position while at the same time be terminated from it. Further, even though the termination may have been held in abeyance until Agency’s hearing officer rendered his decision, Employee was in fact terminated. In view of these circumstances, we do not believe that Employee’s letter of resignation, which was not effectuated, has any impact on the Administrative Judge’s order. Agency is still bound to comply with the

order. For these reasons, we deny Agency's Petition for Review and affirm the Initial Decision.

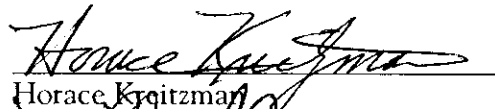
ORDER

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

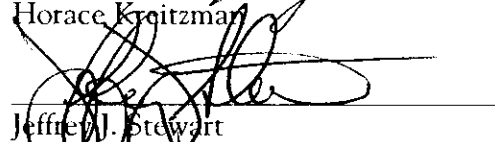
FOR THE BOARD:



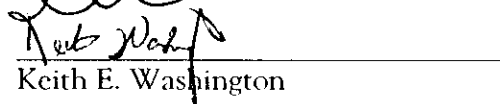
Brian Lederer, Chair



Horace Kreitzman



Jeffrey J. 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.