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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
MICHAEL DUBOSE)
Employee)
) OEA Matter No.: 1601-0030-07
v.)
) Date of Issuance: November 23, 2009
DISTRICT OF COLUMBIA)
DEPARTMENT OF CORRECTIONS)
Agency)
)

OPINION AND ORDER
ON
PETITION FOR REVIEW

The District of Columbia Department of Corrections (“Agency”) detailed Michael Dubose (“Employee”) to the position of Deputy Warden for Support Services in March 2005. Employee was assigned to the D.C. Jail. On July 26, 2006, Agency summarily removed Employee for an incident that occurred on June 3, 2006. The incident was the escape of two inmates for which Agency charged Employee with negligence in the performance of his duties.

On February 14, 2006, Employee gave the final approval for an inmate named Joseph Leaks to work at an off-unit detail. Before the paperwork was presented to Employee for his final approval, it had proceeded through the normal chain of command. The Case Manager was the first person responsible for the initial review of Inmate Leaks' Personnel Action Request Form. The Personnel Action Request Form ("PARF") is the form by which an inmate requests an assignment to an off-unit detail. If an inmate's institutional file contains a separation order or if the inmate has a history of committing violent crimes, that inmate is ineligible for an off-unit detail. If, however, the inmate from whom he is to be kept apart is no longer in the facility, the inmate with the separation order may be approved for an off-unit detail in spite of that particular order. As part of the initial review, the Case Manager must at the same time review an inmate's institutional file. Inmate Leaks was being jailed on a charge of First Degree Murder and his institutional file contained a separation order. Nevertheless, the Case Manager gave his approval to the PARF.

The PARF was then presented to the Non-Industrial Pay System ("NIPS") Coordinator for his approval. As the second level of review, he too was responsible for reviewing Inmate Leaks' institutional file before signing off on the PARF. Like the Case Manager before him, the NIPS Coordinator gave his approval as well to Inmate Leaks' PARF.

On February 14, 2006 the NIPS Coordinator presented the PARF to Employee for the final approval. In the margins of the PARF was a handwritten notation which stated "separation attached." Upon seeing this notation, Employee made a comment to the NIPS Coordinator regarding the notation. The NIPS Coordinator assured Employee

that he and the Case Manager had reviewed the files and that the inmate from whom Inmate Leaks was to be kept separate was no longer at the facility. Relying on this information, Employee approved Inmate Leaks' PARF. On June 3, 2006, while on his off-unit detail, Inmate Leaks escaped along with the inmate from whom Inmate Leaks was to have been kept separate. On June 4, 2006, both Inmate Leaks and his fellow escapee were recaptured.

Following an investigation into the incident, Employee was placed on paid administrative leave on June 23, 2006. As noted above, Agency charged Employee with negligence for having signed the PARF when he was not authorized to do so and for having signed the PARF when there was a separation order on file. Agency claimed that only a Deputy Warden for Programs and not a Deputy Warden for Support Services, as was Employee, had the authority to approve a PARF for an off-unit detail. For these reasons, Agency summarily removed Employee on July 26, 2006. On August 24, 2006, Employee received a written notice proposing that his removal be sustained. The District of Columbia Office of Administrative Hearings conducted an administrative review of Agency's removal action. On October 23, 2006, an Administrative Law Judge for that office found that the facts relied upon by Agency, even if true, did not support its decision to summarily remove Employee. Nevertheless, on November 1, 2006 Agency's Director issued a final notice sustaining the removal.

Employee timely filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). The Administrative Judge conducted an evidentiary hearing that lasted three days. At the conclusion of the hearing, the Administrative Judge rendered her decision. She held that based on the testimony adduced at the hearing, particularly the testimony

given by Employee's immediate supervisor, Employee did in fact have the authority to approve the PARF even though it was for an off-unit detail. Moreover, the Administrative Judge found that "Agency did not present any evidence that it was improper for Employee to approve PARFs for off-unit assignments . . ."¹ With respect to Agency's second claim, that Employee was negligent for having signed the PARF when there was a separation order on file, the Administrative Judge found that Employee testified, without contradiction, that "he [had] made the requisite inquiry of [the NIPS Coordinator] and that [the NIPS Coordinator] assured him that the separatee was no longer housed in the [jail]."² The Administrative Judge went on to find that because the status of Inmate Leaks and his fellow escapee had been misclassified so many times during their incarceration, "[e]ven if Employee had not accepted the NIPS Coordinator's word...and had reviewed documentation himself, there was no evidence that he would have discovered the errors at the level of review required of him."³ Thus in an Initial Decision issued October 19, 2007, the Administrative Judge reversed Agency's action and ordered it to reinstate Employee.

On November 23, 2007 Agency filed a Petition for Review. Employee filed a response on December 26, 2007. In the Petition for Review, Agency argues that the findings of the Administrative Judge are not based on substantial evidence and therefore, the Initial Decision did not address all of the issues of law and fact properly raised in the appeal.

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*

¹ *Initial Decision* at 8.

² *Id.*

³ *Id.* at 10

Dep’t of Employment Servs., 801 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). Evidence is substantial if it is “more than a mere scintilla.” *Vogel v. D.C. Office of Planning*, 944 A.2d 456, 463 (D.C. 2008) (quoting *Office of People’s Counsel v. Pub. Serv. Comm’n*, 797 A.2d 719, 725-26 (D.C. 2002)).

Essentially what Agency is arguing in its Petition for Review is that there is *competing evidence* that would have supported a finding in its favor. For example, Agency believes the Administrative Judge would have found in its favor had she given more weight to the testimony of Employee’s immediate supervisor who stated that he “personally” would have asked more questions before approving the PARF. Not only is this speculation, but it ignores that portion of the supervisor’s testimony wherein he stated that he would have questioned the location of the inmate from whom Inmate Leaks was to have been kept separate. In fact Employee testified, without contradiction, that when he saw the notation on the PARF, he made a comment to the NIPS Coordinator regarding the notation and was assured that the separatee was not at the facility.

It is not necessary that we reexamine every point which Agency believes to be decisive to the outcome of this case. The issue is not whether there is *competing evidence* that would have supported a finding favorable to Agency. Rather, the issue is whether there is substantial evidence in the record to support the Administrative Judge’s finding. We find that there is substantial evidence in the record to uphold the Initial

Decision and that it did address all of the issues of law and fact properly raised in the appeal. Therefore, we uphold the Initial Decision and deny Agency's Petition for Review.

ORDER

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

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

Hilary Cairns

Clarence Labor, Jr.

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.