THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
LEONARD H. EDWARDS	)	
Employee	)	
	)	OEA Matter No.: 1601-0004-08
v.	)	
	)	Date of Issuance: May 23, 2008
D.C. FIRE AND EMERGENCY AND MEDICAL SERVICES DEPARTMENT	)	
Agency	)	
	)	

OPINION AND ORDER
ON
MOTION FOR INTERLOCUTORY APPEAL

Leonard Edwards ("Employee") was a Firefighter/EMT with the D.C. Fire and Emergency Medical Services Department ("Agency"). In accordance with its operating procedures, Agency ordered Employee to report for a fitness for duty examination scheduled for May 17, 2007. Before the exam could begin, Employee was asked to sign a Disclosure and Release Form. Employee refused to sign the form. Thereafter, an agency official ordered Employee to sign the form so that the exam could be administered. Again, according to Agency, Employee refused to sign the form. As a result, the exam was not administered.

Based on this series of events, Agency charged Employee with insubordination and proposed that he be terminated from his position. Before the termination took effect, the Fire Trial Board held a hearing. At the conclusion of the hearing the panel recommended that the termination be upheld. Thus on October 13, 2007 Agency terminated Employee.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). During the course of the proceedings, Employee requested on several occasions that the Administrative Judge order a period of discovery. Employee contended that through discovery he would be able to compile what he believed to be a more complete and accurate record for the Administrative Judge to review prior to rendering a decision.

On March 3, 2008 the Administrative Judge issued an Order in which he denied Employee's request for discovery. The Administrative Judge reasoned that based on the decision in *D.C. Metropolitan Police Dep't v. Pinkard*, 801 A.2d 86 (D.C. 2002), this Office's scope of review in cases where there has been a trial board hearing is limited to reviewing the record established at the agency level. In view of this limitation, the Administrative Judge concluded that "the issue of the Office's authority to grant post-Trial Board discovery is likewise beyond the parameters enumerated by the court's ruling in *Pinkard.*" Therefore the Administrative Judge denied Employee's motion for discovery.

Thereafter on March 6, 2008 Employee filed an interlocutory appeal and a motion that the matter be certified to the Board for us to review the March 3, 2008 ruling.[1] On

[1] Employee raises the same issues in his interlocutory appeal that are the subject of the Administrative Judge's March 3, 2008 Order.

March 11, 2008 the Administrative Judge issued an Order in which he granted Employee's motion for certification and referred this appeal to us so that we could consider Employee's interlocutory appeal.

An interlocutory appeal is an appeal that is taken before there has been a final ruling on a case. OEA Rule 617 *et seq.* sets forth the following rules with respect to interlocutory appeals:

> 617.1 An interlocutory appeal is an appeal to the Board of a ruling made by an Administrative Judge during the course of a proceeding. . . .The Board shall make a decision on the issue and the Administrative Judge shall proceed in accordance with that decision.
>
> 617.2 A party seeking review by interlocutory appeal must file a motion for certification within five (5) business days of service of the Administrative Judge's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board.
>
> 617.3 The Administrative Judge shall grant or deny a motion for certification. If certification is granted, the record shall be referred to the Board.
>
> 617.4 At the discretion of the Administrative Judge, the proceeding may be stayed during the time an interlocutory appeal is pending. The Board may stay a proceeding during the time an interlocutory appeal is pending.

It appears that based on the procedural history of this appeal, it is properly before the Board.

We agree with the Administrative Judge's conclusion that *Pinkard* is controlling in this case. The court clearly stated that an Administrative Judge must base his or her

decision solely on the record established at the agency level when all of the following conditions are present:

> 1. The employee is an employee of the either the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department;
>
> 2. The employee has been subjected to an adverse action;
>
> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
>
> 4. The collective bargaining agreement contains language that is essentially the same as that found in *Pinkard*, i.e.: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [i.e., Trial Board] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and
>
> 5. At the agency level, the employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in, *inter alia*, the employee's removal.

All of these conditions are met in this matter. Therefore the Administrative Judge's decision must be based solely on the record established below. With these constraints, there can be no additional discovery as Employee would like. Moreover, we see no basis for the issuance of sanctions against Agency.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's interlocutory appeal is **DENIED** and this matter is **REMANDED** to the Administrative Judge for further proceedings consistent with this opinion.

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns