THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
LYNN C. EDWARDS Employee	
v.	OEA Matter No.: 1601-0012-05
D.C. METROPOLITAN POLICE DEPARTMENT Agency	Date of Issuance: May 23, 2011

OPINION AND ORDER
ON
PETITION FOR REVIEW

Lynn C. Edwards ("Employee") worked as a Shop Supervisor in the Fleet Management Division of the District of Columbia Metropolitan Police Department ("Agency"). The Fleet Management Division ("FMD") is that section of the agency which dealt with all aspects of the vehicles owned and used by the agency including the repair and maintenance of those vehicles. As the Shop Supervisor, Employee was responsible for preparing an estimate of the cost of repairing vehicles, forwarding the estimate to the Fleet Supervisor, ensuring that the required work was done properly, and most importantly, maintaining control of the keys of all vehicles brought in for repairs.

Because there had been reports of parts being stolen from vehicles that had been taken to the FMD for repairing, Agency conducted a secret investigation. They installed a video camera in the repair shop and began monitoring the activity of the employees. In November of 2003, footage from the surveillance camera showed several Agency employees removing an engine, rear axle, transmission, and other parts from a Ford Crown Victoria owned by the agency and installing those parts into a privately owned Mercury Marquis. As a result, Employee, along with two of his co-workers, was arrested and charged with First Degree Theft and Conspiracy.

On March 14, 2004, a grand jury returned an indictment that charged Employee and his two co-workers with one count each of First Degree Theft and Conspiracy. On April 6, 2004, Agency summarily removed Employee from his position. On October 14, 2004 and on October 19, 2004, Employee's two co-defendants pleaded guilty to Attempted Theft in the Second Degree. The co-defendants did not, however, implicate Employee in any of the criminal activity for which they had been charged. Consequently, the government dismissed all of the charges it had brought against Employee.

Nonetheless, Agency charged Employee with any act or omission which constitutes a criminal offense, whether or not such act or omission results in a conviction. Based on that charge, Agency removed Employee. After completing the internal agency review process, Employee's removal took effect on October 13, 2004. Thereafter, Employee timely filed a Petition for Appeal with the Office of Employee Appeals.

On July 19, 2007, the Administrative Judge held an evidentiary hearing in this matter. Agency had five witnesses to testify on its behalf. The Administrative Judge found that three of Agency's witnesses presented the most compelling testimony. One of those witnesses, who was a detective in Agency's Office of Internal Affairs and who had been

assigned to investigate the incident, testified that when he questioned one of Employee's co-defendants regarding the secretly recorded activity, the co-defendant told him that it was Employee who had given to the co-defendant the keys to the Crown Victoria. The co-defendant went on to state to the detective that by having the keys, he and the others were able to gain access to the Crown Victoria and to move it in and out of the shop as needed. Furthermore, he stated that Employee was to have been present on the night of the incident, but that he had called Employee and informed Employee that he thought they were being watched. Therefore, Employee did not show up that night and thus was not recorded on the surveillance camera.

Another Agency witness, who was a Fleet Supervisor at the time of the incident, testified that in November of 2003, he noticed a privately owned Mercury Marquis parked among several Agency owned vehicles at the FMD lot. Further this witness testified that on a Friday in November of 2003 he noticed that the front end of the Marquis had been lifted off of the ground. The witness testified that this position of the vehicle indicated to him that the engine transmission was to be removed. According to this witness, when he returned to work on that following Monday, he noticed that an agency owned Crown Victoria was sitting on a wrecker without any engine, transmission, or rear axle in it. He also noticed that the Marquis now had an engine. The witness testified that he attempted to question Employee about the Marquis, but that Employee told him he did not need to know anything about that vehicle. This led the witness to believe that Employee had some knowledge of what was being done with the Marquis.

The third Agency witness that the Administrative Judge found to be credible testified that when he spoke to Employee's co-defendant about the incident, the co-defendant told him that he had purchased a car that needed a transmission. The co-defendant went on to

state to the witness that Employee had given to the co-defendant a key to a car so that the co-defendant could remove the transmission from that car. The witness also testified that the co-defendant told him that on one occasion when Employee and his two co-defendants were talking, Employee said to take the transmission out of the car.

Agency also called to testify, albeit as a hostile witness, Employee's co-defendant in this matter.[1] He testified that even though Employee gave him the keys to the Crown Victoria and the repair documents accompanying the vehicle, Employee took that action only because the other co-defendant had directed Employee to do so. Furthermore, the co-defendant testified that Employee was not present on the night of the incident and that Employee was unaware of what was taking place with the agency vehicle.

The Administrative Judge acknowledged that the co-defendant was the only witness with direct knowledge and that the "sworn testimony of all of Agency's other witnesses [was] 'Hearsay.'"[2] Even so, the Administrative Judge held that "[w]hile none of Agency's . . . witnesses . . . specifically linked Employee to the theft of MPD property, [his] analysis of the testimony [provided by the three most compelling witnesses and the co-defendant] le[d] [him] to find that there is substantial evidence that at least a conspiracy to commit a crime was present."[3] Moreover, he went on to find that the testimony given by the co-defendant was "seriously compromised and undermined by the testimony of [Agency's] three far more credible witnesses . . . [all of whom] added something significant to the case."[4] Therefore, in an Initial Decision issued April 28, 2009, the Administrative Judge upheld Agency's action of removing Employee from his position.

---

1 The second co-defendant had died by the time of the evidentiary hearing.
2 *Initial Decision* at page 11.
3 *Id.*
4 *Id.* at page 12.

Thereafter, on June 2, 2009, Employee filed a Petition for Review. Subsequently, Agency filed an opposition to the Petition for Review. In the Petition for Review, Employee asks us to overturn the Initial Decision. According to Employee, the Administrative Judge improperly relied upon hearsay evidence instead of relying upon the direct evidence supplied by the co-defendant who testified that Employee had no knowledge of, or involvement in, the incident.

The Administrative Judge was well aware that he was dealing with hearsay evidence in this proceeding. Nonetheless, he found the hearsay evidence to be more reliable than the direct evidence. The Administrative Judge determined that the witnesses who supplied the hearsay evidence were "far more credible"[5] than the co-defendant who supplied the direct evidence. According to the District of Columbia Court of Appeals in *Metropolitan Police Dep't v. Baker*, 564 A.2d 1155 (D.C. 1989), great deference to any witness credibility determinations must be given to the administrative fact finder. The Administrative Judge, who was the fact finder in this proceeding, was able to observe "first hand" the demeanor of each witness during the hearing and was thus able to gain an impression and draw a conclusion about each witness.

Because the Administrative Judge found these witnesses to be credible, the hearsay evidence which they supplied was considered by the judge to be substantial. 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 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

---

[5] *Id.*

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)). Moreover, the District of Columbia Court of Appeals stated in *Compton v. D.C. Board of Psychology*, 858 A.2d 470, 476 (D.C. 2004) "that duly admitted and reliable hearsay may constitute substantial evidence."

Admittedly, the evidence relied upon by the Administrative Judge was hearsay evidence. Nevertheless, because the witnesses who supplied that evidence were considered credible witnesses by the Administrative Judge, he found that evidence to be substantial. We agree with the Administrative Judge's findings. It is well established that we will uphold a decision so long as it is supported by substantial evidence in the record notwithstanding that there may be contrary evidence in the record. (citations omitted) Because there is substantial evidence in the record, we uphold the Initial Decision and deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

_____
Clarence Labor, Jr., Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

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.