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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
|----------------------------|---|--------------------------------------|
| In the Matter of: |) | |
| |) | |
| MICHAEL D. CHAMBERS |) | |
| Employee |) | |
| |) | OEA Matter No.: 1601-0034-01 |
| |) | |
| v. |) | |
| |) | Date of Issuance: September 19, 2006 |
| DEPARTMENT OF PUBLIC WORKS |) | |
| Agency |) | |
| |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Michael Chambers ("Employee") began working for the Department of Public Works ("Agency") in 1986 as a streetlight Mechanic/Electrician. During his tenure he was placed in the position of Electrical Worker. On July 3, 2000 Agency proposed terminating Employee for the cause of discourteous treatment. Specifically, Agency alleged that Employee had threatened bodily harm to another. The removal took effect March 5, 2001.

The discourteous treatment charge arose from a conversation that Employee had with the foreman of the sign fabrication department and the foreman's supervisor. The

conversation occurred on April 20, 2000 and dealt with the topic of who was needed to work overtime in the sign fabrication department. Employee had heard that the foreman had told his supervisor that he did not want Employee working overtime in the sign fabrication department. When Employee heard about this, he met with both men on April 20, 2000 to discuss the overtime situation. It was during this meeting, according to Agency, that Employee threatened that if he could not do overtime like everyone else, he would do harm to the wife and daughters of the foreman's supervisor. As a result of this conversation, Agency took the removal action against Employee.

The Administrative Judge held a two-day evidentiary hearing in this matter. Several people, including Employee, the foreman and the foreman's supervisor, testified at the hearing. The Administrative Judge found that "Employee's testimony [was] significantly more credible than that of both [the foreman and his supervisor]." He arrived at this conclusion "because of the detail and specificity of Employee's testimony," which he found compelling, "and the inconsistencies in the testimony of [the foreman and his supervisor]."¹ Moreover, the Administrative Judge found that Agency's case was further undermined by "its inaction toward Employee after the alleged threats against [the foreman and his supervisor] were communicated . . . to upper management."² For these reasons, the Administrative Judge held that Employee had not made the threats attributed to him. Thus in an Initial Decision issued March 7, 2005, Agency's removal action was reversed and Agency was ordered to reinstate Employee.

¹ *Initial Decision* at 13.

² *Initial Decision* at 15.

Thereafter, Agency timely filed a Petition for Review. Agency argues that the Administrative Judge failed to give proper consideration to all of the testimony elicited from the foreman's supervisor. Additionally Agency argues that the Administrative Judge was wrong to conclude that no threat was made simply because Agency failed to immediately remove Employee from the premises.

With respect to Agency's first point, it is clear from the Initial Decision that the Administrative Judge gave full consideration to all of the testimony elicited from the supervisor. What is also clear is the fact that the Administrative Judge found that the supervisor was not a credible witness. The Administrative Judge pointed out the inconsistencies in the supervisor's testimony as well as the areas in which the supervisor failed to be specific and detailed. We have held in the past that assessments made an administrative judge regarding the credibility of a witness are given deference in the absence of anything contrary to that assessment. We have held thusly for two reasons: the administrative judge is the one who is present to hear a witness testify and to observe his or her demeanor and demeanor evidence cannot be reflected fully and therefore accurately in a written transcript. See *Hinton v. Dep't of Corrections*, OEA Matter No. 1601-0136-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ () at 6.

Concerning Agency's second argument, Agency must think that the only reason the Administrative Judge found that no threat had been made was because no immediate action was taken against Employee. This is incorrect. While the Administrative Judge did take that fact into consideration, he also considered the friendly nature of the relationship that Employee continued to have with the supervisor. Other witnesses

corroborated the fact that Employee and the supervisor remained friendly toward each other after the April 20 conversation. The Administrative Judge even noted that of “utmost importance is [the supervisor’s] testimony that the ‘open-door’ policy between himself and Employee remained unchanged after April 20, 2000.”³ The Administrative Judge went on to state that “[i]t is inconceivable to me that this would have been so had Employee made such serious threats to [the supervisor] and his family.”⁴ Therefore, for all of these reasons the Administrative Judge held that no threat had been made.

Agency has not given us any compelling reason to overturn the Initial Decision. Therefore, we will deny Agency’s Petition for Review and uphold the Initial Decision.

³ *Initial Decision* at 15.

⁴ *Id.*

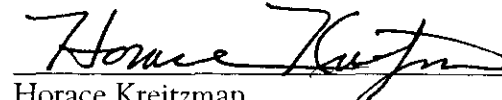
ORDER

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

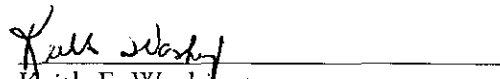
FOR THE BOARD:



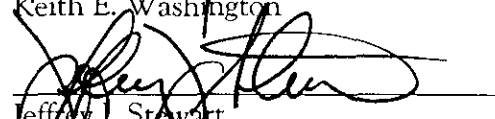
Brian Lederer, Chair



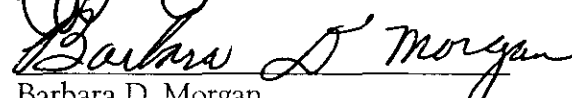
Horace Kreitzman



Keith E. Washington



Jeffrey J. Stewart



Barbara D. Morgan

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.