Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
JAMES YATES Employee	
v.	OEA Matter No.: 1601-0077-06
DEPARTMENT OF MENTAL HEALTH Agency	Date of Issuance: June 23, 2009

OPINION AND ORDER
ON
PETITION FOR REVIEW

James Yates ("Employee") worked for the Department of Mental Health ("Agency") as a Forensic Psychiatric Technician. Employee was assigned to the John Howard unit at Saint Elizabeth's Hospital and had worked there for 16 years. On January 20, 2006 Agency summarily removed Employee from his position for the cause of malfeasance. Specifically, Agency accused Employee of engaging in a financial transaction with a patient and being physically aggressive toward that patient.

The malfeasance charge stemmed from an incident that occurred on November 16, 2005. Even though Employee was off-duty on that day, he came to Saint Elizabeth's Hospital and entered the campus through gate 4. Once he was inside of the gate, Employee

saw a patient that he knew. Employee approached the patient, began choking him, and said to the patient "you better have my money by this evening." Employee then left the campus.

One of Agency's security guards observed the incident and immediately reported it to his supervisor. At that point, the security guard and his supervisor questioned the patient as to what the security guard had just observed. The patient told the two of them that what the security guard had just seen was none of their business but was something involving only himself and Employee.

The incident was then reported to Agency's Assistant Director of Nursing, Forensic Services Administration. Thereafter, an investigation ensued. During the course of the investigation it was revealed that Employee regularly sold cigarettes to the patients. The patient whom Employee spoke to on November 16, 2005 told Agency officials that while Employee charged other patients only $5.00 per pack, Employee would charge him $10.00 per pack. The patient went on to state that on the day of the incident, Employee choked him and demanded money from the patient. Another patient who was present and observed the incident corroborated the account given by the patient who was involved in the incident.

On November 23, 2005 an Agency official interviewed Employee. During the interview Employee stated that on November 16, 2005, as he was driving past Saint Elizabeth's Hospital, he observed a patient standing in the middle of Martin L. King, Jr. Avenue, S.E. According to Employee, he pulled into gate 4, got out of his car, went to the patient, and brought him back onto the campus. Employee stated that his actions saved the patient's life. In a written statement dated December 1, 2005, Employee recounted what he verbally stated during the interview and went on to write that he called out to the patient while pointing his finger in the patient's face and told the patient that he was going to report him for being on the street without permission.

Based on the information gathered from its investigation, Agency determined that Employee had violated the Department of Mental Health Policy 482.1, DMH Policy on Protecting Consumers from Abuse. That policy provides that "[c]onsumers shall be free from physical, emotional, sexual, or financial abuse, neglect, harassment, coercion, and exploitation when seeking or receiving mental health supports. Such abuse will not be tolerated and shall result in swift disciplinary action." Financial exploitation is further defined as "[a]ny financial dealing between an employee and consumer with or without the consumer's consent . . . ." As a result, Agency charged Employee with malfeasance and removed him effective January 20, 2006.

On June 21, 2006 Employee filed an appeal with the Office of Employee Appeals. On February 23, 2007 the Administrative Judge held an evidentiary hearing. The security guard and his supervisor, the Assistant Director of Nursing, and the Director of Nursing all testified on behalf of Agency. Employee testified on his own behalf. The Administrative Judge found that "Employee's testimony dramatically contradict[ed] the testimony of all the other witnesses . . . ."[1] He went on to state that "Employee practically accused everyone . . . of lying under oath . . . [y]et . . . never produced any evidence to show why all these witnesses would lie against him."[2] The Administrative Judge concluded that "[b]ased on the witnesses' demeanor during testimony and the documentary evidence of record, . . . Agency's witnesses [were] more credible than Employee."[3] Thus, in an Initial Decision issued April 5, 2007, the Administrative Judge held that Agency had proven that Employee was in fact guilty of the charge brought against him.

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1 *Initial Decision* at 4.
2 *Id.*
3 *Id.*

On May 9, 2007 Employee filed a Petition for Review. In his petition Employee argues that the Initial Decision should be overturned because it is not based on substantial evidence. Employee contends that the testimony given by the security guard and his supervisor included evidence that the two witnesses had not included in their written statements. Moreover, Employee claims that because the patient involved in the incident suffers from schizophrenia, his statements were unreliable.

Substantial evidence is "relevant evidence such as a reasonable mind might accept as adequate to support a conclusion." *Mills v. D.C. Dep't of Employment Servs.,* 838 A.2d 325, 328 (D.C. 2003) (quoting *Black v. D.C. Dep't of Employment Servs.,* 801 A.2d 983, 985 (D.C. 2002)). 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)). An action can be set aside as clearly erroneous as a matter of law if "the interpretation is unreasonable in light of the prevailing law or inconsistent with the statute" or if it "reflects a misconception of the relevant law or a faulty application of the law." *Doctors Council v. D.C. Pub. Employee Relations Bd.,* 914 A.2d 682, 695 (D.C. 2007) (quoting *Teamsters Union 1714 v. Pub. Employee Relations Bd.,* 579 A.2d 706, 709 (D.C. 1990)).

Based on the foregoing legal standard, we believe there is substantial evidence in the record to uphold the Initial Decision. The Administrative Judge did not base his decision on the statements made by the patient involved in the incident. Rather, the Administrative Judge found that Agency's witnesses and the testimony they gave were more credible than Employee's testimony. Even if we accept as true Employee's claim that the testimony of the security guard and his supervisor included evidence which they had not included in their written statements, the Administrative Judge nevertheless held that "Agency's witnesses all

testified in a forthright and direct manner while Employee was evasive and unconvincing."[4] The Administrative Judge had more than a mere scintilla of evidence upon which to base his decision; he had substantial evidence. Accordingly, we believe there is substantial evidence in the record to uphold the Initial Decision. Therefore, we uphold the Initial Decision and deny Employee's Petition for Review.

[4] *Id.*

ORDER

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

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

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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.