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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DARLENE REDDING	)	
Employee	)	
	)	OEA Matter No.: 1601-0112-08
v.	)	
	)	Date of Issuance: March 15, 2011
DEPARTMENT OF PUBLIC WORKS	)	
Agency	)	
_____	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Darlene Redding (“Employee”) began working for the Department of Public Works (“Agency”) in 2001. During her tenure with Agency, Employee became a Parking Enforcement Officer. In this position Employee was required to ride throughout the city in a government vehicle with another employee and record the license tags of cars that were not registered in the District of Columbia.

On certain days during the period of March through April 2007, Employee was absent from work. On April 19, 2007, Employee submitted to Agency a comprehensive medical report authored by Employee's doctor. The medical report provided that Employee suffered from schizophrenia and depression and that she was being treated with medication and individual therapy. The doctor concluded the report by stating that with some support, supervision and understanding, Employee would be able to resume her duties.

In consideration of Employee's medical condition, Agency allowed Employee to request a medical leave of absence pursuant to the Family and Medical Leave Act. Employee submitted the leave request on October 15, 2007 and was granted a period of medical leave. At the end of the medical leave, Employee returned to work.

Thereafter, beginning on February 14, 2008 and continuing through April 18, 2008, Employee was again absent from work. Her absences for this period amounted to a total of 400 duty hours. As a result, on April 21, 2008 Agency charged Employee with being inexcusably absent without leave ("AWOL") and issued to her a proposed notice of removal.

Within days of receiving Agency's proposed notice of removal, Employee returned to work ready to resume her duties. At some point during that following May, Employee presented to Agency a statement from her doctor dated May 12, 2008. The statement provided that due to Employee's worsening mental condition, Employee had been in the doctor's care from March 15, 2008 through April 2008. The statement further provided that Employee's symptoms were being managed at that time by medication and intramuscular injections. The doctor concluded by stating that Employee felt ready to

return to work and that she (the doctor) believed Employee would be successful at work as long as Employee continued with her treatment program.

Notwithstanding the aforementioned medical statement, Agency proceeded to terminate Employee effective July 7, 2008. Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 10, 2008. Employee admitted that she had been absent from February 14, 2008 through April 18, 2008, but she claimed that the absences were excusable because of her mental illness. In an Initial Decision issued August 6, 2009, the Administrative Judge agreed with Employee and reversed Agency’s removal action.

Subsequently, Agency filed a Petition for Review. In its petition, Agency argues that the Initial Decision lacks substantial evidence, that the Administrative Judge relied upon an incorrect legal standard, and that the Administrative Judge erred by delving into Agency’s alleged violation of the collective bargaining agreement. For these reasons, Agency claims that the Initial Decision should be reversed.

The decisive case on the issue of when an illness can excuse a prolonged absence from work culminated with the District of Columbia Court of Appeals’ issuance of *Murchison v. D.C. Dep’t of Public Works*, 813 A.2d 203 (D.C. 2002). Bonnie Murchison worked as a Clerical Assistant with the Department of Public Works (“DPW”). During her tenure, DPW detailed her to its Shepherd Park site which was located across the highway from the city’s Blue Plains Treatment Plant. Murchison never reported for the detail but instead, claimed that the foul smell permeating the air around the treatment plant caused her to become nauseous and dehydrated and exacerbated her already

existing chronic sinus condition.<sup>1</sup> After this went on for awhile, DPW charged Murchison with being AWOL and terminated her employment.

Murchison appealed the removal to OEA. During an evidentiary hearing Murchison presented medical documentation that stated that she suffered from a chronic sinus condition that was exacerbated by the smell in the air surrounding the Blue Plains Plant. An OEA Administrative Judge held that because Murchison had established adequate justification for her absences, those absences were excusable. We affirmed that ruling.

DPW appealed to the Superior Court of the District of Columbia. That court reversed our ruling holding instead that the administrative record lacked substantial evidence to support our findings and further, that there had been no finding as to whether Murchison's aggravated sinus condition was so debilitating as to prevent her from performing her clerical duties. The Court of Appeals, however, reversed the lower court and, in essence, remanded the case to this office. The Court determined that because the administrative record was incomplete on the issue of whether Murchison was incapacitated by her sinus condition, it could not make a ruling on that issue. Specifically, the Court stated that "[t]he physician's reports that Murchison submitted did not address the severity of her sinusitis or the extent to which it was exacerbated by her working conditions. [Although her] physician recommended that she 'avoid dust/fumes and respiratory irritants'. . .[m]ore than this was called for to excuse seven weeks of absence without leave." The Court instructed this Office to "make specific factual findings regarding whether, and to what extent, [Murchison] was incapacitated by her

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<sup>1</sup> Murchison knew of the conditions at Shepherd Park as a result of having been detailed to that site on an earlier occasion.

sinus ailments and unable to work at her job during her seven week absence without leave.”

In a second Initial Decision issued following the remand, this Office held that “Employee was not medically incapacitated from working during the period of AWOL . . . [and] that Employee’s absence was inexcusable. . . .”<sup>2</sup> The judge arrived at this conclusion based on Murchison’s admission that her doctor never stated that she was medically incapacitated for work during the period that she was charged with AWOL and further based on two medical slips one of which indicated that Murchison was fit to return to work and the other slip which left unchecked the box to indicate that Murchison was unable to work. We denied Murchison’s subsequent Petition for Review. Therefore, based on *Murchison*, it is clear that in order to excuse an extended period of absence, an employee must prove that the employee had a legitimate medical illness that rendered him or her incapacitated and thus unable to perform his or her work duties.

Having established the legal standard on this issue, we must now determine whether there is substantial evidence in the record of this case to uphold the Administrative Judge’s finding that Employee’s prolonged absence from work was excusable. Like the Court of Appeals in *Murchison*, we believe the administrative record in the case at bar is not complete. Notwithstanding the comprehensive medical report prepared by Employee’s physician on April 19, 2007, there is currently existing in the administrative record only the May 12, 2008 statement which has just four paragraphs that attempt to explain the reason for Employee’s absence for at least some of the time period for which she was charged with being AWOL. The April 19, 2007 medical report explains the severity of Employee’s mental condition and goes on to provide that

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<sup>2</sup> October 4, 2005 *Initial Decision* at 6.

Employee's mental condition was in fact the reason why Employee missed work from March through April 2007. The May 12, 2008 statement simply provides that Employee was "seen in the clinic with worsening symptoms beginning approximately March 15, 2008 through April 2008." Unlike the April 19, 2007 report, the May 12, 2008 statement is silent as to whether the "worsening symptoms" caused Employee to be absent from work. As the Court concluded in *Murchison*, we too conclude that more evidence is needed to determine whether and to what extent Employee's mental condition was so severe that from February 14, 2008 through April 18, 2008 she was actually disabled and thus unable to perform her duties as a Parking Enforcement Officer. Therefore, we are compelled to grant Agency's Petition for Review, vacate the Initial Decision, and remand this appeal to the Administrative Judge to make the appropriate factual findings.

**ORDER**

Accordingly, it is hereby **ORDERED** Agency's Petition for Review is **GRANTED**, the Initial Decision is **VACATED**, and the appeal is **REMANDED** for proceedings consistent with this opinion.

FOR THE BOARD:

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Clarence Labor, Jr., Chair

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Barbara D. Morgan

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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.