

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
|--------------------------|---|---------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| DEBORAH HOWARD |) | |
| Employee |) | |
| |) | OEA Matter No.: 1601-0127-05 |
| v. |) | |
| |) | Date of Issuance: April 3, 2009 |
| D.C. METROPOLITAN POLICE |) | |
| DEPARTMENT |) | |
| Agency |) | |
| _____ |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Deborah Howard (“Employee”) was a 22-year veteran with the D.C. Metropolitan Police Department (“Agency”) and was a Lieutenant working as the Manager of Agency’s Property Division at the time of her removal. On September 30, 2005 Agency removed Employee for having violated the following departmental orders: being involved in the commission of an act which would constitute a crime; engaging in conduct unbecoming an officer; falsifying official records or reports; misusing one’s official position for personal gain or benefit; and willfully destroying government property.

The charges brought against Employee stem from a vehicle auction that occurred on September 29, 1998. Agency’s Property Division conducted vehicle auctions on a

quarterly basis and on that date, Employee bid for and bought a 1994 Honda Accord. According to Employee, she purchased the vehicle for \$1,800. After the auction, Employee was issued a sales receipt which indicated that the 1994 Honda was sold to Employee for \$1,800. Moreover, Employee received a Certificate of Title which also indicated that the car was purchased for \$1,800. All certificates of title for that particular auction had been signed by the auction supervisor prior to the auction and the price paid for each vehicle was filled in after the auction.

Several days after the auction and as part of her duties, Employee prepared an after auction report. The report listed the total amount of money collected from the sale of all of the vehicles at the September 29th auction. Employee included with this report a tally which she had compiled on an adding machine and which showed the monies collected from the auction.

At some point after the auction, Employee presented her Certificate of Title to the Maryland Motor Vehicle Administration (“MVA”) to register her vehicle. Furthermore, after the auction but before the requisite amount of time had passed, Employee ordered the destruction of the auction records.

Meanwhile, Agency saw no reason to question anything pertaining to the September 29th auction until another employee, Susie Smith, claimed to have proof that Employee actually paid more than \$1,800 for the car Employee bought. Smith worked for Agency as an Evidence Technician and Employee was her immediate supervisor. As part of Smith’s duties, she was responsible for attending the vehicle auctions and simultaneously recording, by hand, the amount each successful bidder paid for a vehicle. Smith recorded these amounts on a bid sheet. Other bid sheets, bearing the date of the

auction, were also prepared for this auction. These particular bid sheets reflect that Employee paid \$3,000 for the vehicle she bought. Smith's own bid sheet, which is dated September 28, 1998, indicates, however, that Employee paid \$8,400 for the vehicle.

According to Smith, on the day after the auction, she found on the copier machine a blank certificate of title belonging to Employee. From this certificate, Smith claims to have noticed a discrepancy in the amount Employee said she paid for the vehicle and the amount reflected to have been paid as indicated on the bid sheet Smith prepared and the other bid sheets.

Even though Smith became aware of this alleged discrepancy on September 30, 1998, she did not report it to Agency officials until June 23, 1999. In fact, the report was made after Smith had been evaluated by Employee on June 11, 1999. Employee's June 11, 1999 evaluation of Smith's job performance was unfavorable.

Agency then undertook an investigation of the matter. Based on their findings, they concluded that Employee actually paid \$3,000 for the vehicle but then altered certain documents to make it appear as if she had purchased the car for only \$1,800. Furthermore, according to Agency, Employee then presented fraudulent documents to the MVA when she went to register her vehicle. Supposedly to cover-up her actions, Agency alleges that Employee had the relevant documents destroyed. For these reasons, Agency brought the aforementioned charges against Employee and eventually terminated her.

Employee timely filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). In an Initial Decision issued October 6, 2006, the Administrative Judge upheld Agency's action. In the Initial Decision, the Administrative Judge stated that the only "credible evidence [from which] to deduce what happened would be" the September 29th

bid sheets, the after auction report and its accompanying adding machine tally prepared by Employee, the Certificate of Title, and the vehicle sales receipt.¹ Based on this documentary evidence, the Administrative Judge reasoned that the September 29th bid sheets reflected the true price Employee had paid for the vehicle. Those sheets indicated that Employee had paid \$3,000 for the car. The Administrative Judge stated that “[t]his amount corresponds to the amount recorded on the adding machine tally. Even more significant is the fact that the total net proceeds of the vehicle auction, \$34,672.30, is correct only if the amount actually paid for the 1994 Honda is \$3,000, not \$1,800.”² The Administrative Judge went on to note “that Employee never explained this discrepancy.”³

In the end the Administrative Judge found that Agency had proven that “the actual amount paid by Employee for her vehicle was \$3,000 and not \$1,800” and that because of Employee’s position and power, she had “caused a fraudulent amount to be written on her car’s sales receipt.” Agency did not prove, however, its claim that Employee had caused certain auction documents to be destroyed in an effort to conceal her wrongdoing. Even though Agency failed to prove that particular charge, the Administrative Judge ordered that Agency’s removal action be upheld.

Thereafter, Employee timely filed a Petition for Review. Employee’s sole argument in her petition is that the Administrative Judge’s findings are not based on substantial evidence.⁴ As support for this claim, Employee cites to several portions of the

¹ *Initial Decision* at 6.

² *Id.*

³ *Id.*

⁴ Employee also claims that the Administrative Judge slept during parts of the evidentiary hearing thereby missing crucial testimony. Employee has not drawn our attention to anything that would substantiate this claim nor are we able to find any specific evidence to support it.

testimony given at the evidentiary hearing wherein Employee believes the testimony was confusing and contradictory and the witnesses were skeptical.

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)).

Essentially what Employee is arguing in her Petition is that there is competing evidence that would have supported a finding in her favor. According to Employee, Agency’s witnesses could not authenticate several exhibits and were confused in giving their testimony. The issue, however, is not whether there is competing evidence that would have supported a finding favorable to Employee. Rather, the issue is whether there is substantial evidence in the record to support the Administrative Judge’s finding.

Based on the foregoing legal standard, we believe there is substantial evidence in the record to uphold the Initial Decision. The Administrative Judge found credible several exhibits which had been introduced into evidence by both Agency and Employee. Furthermore, as the Administrative Judge stated, Employee never did explain the

discrepancy between the bid sheet which noted that she had paid \$3,000 for the car and the sales receipt which indicated that she had paid \$1,800. We believe there is substantial evidence in the record to uphold the Initial Decision. Accordingly, 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:

Sherri Beatty-Arthur, 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.