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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
RODERICK L. WHEELER)	
Employee)	
)	OEA Matter No.: 1601-0261-95
)	
v.)	
)	Date of Issuance: April 14, 2008
D.C. METROPOLITAN DEPARTMENT)	
Agency)	
_____)	

OPINION AND ORDER
ON
REMAND

Roderick Wheeler (“Employee”) was a Detective with the Metropolitan Police Department (“Agency”). On April 14, 1994, because he was not feeling well, Employee went to Agency’s health clinic. While there, he underwent his pre-five year physical examination. As part of the examination, Employee was required to submit a urine sample. The urine sample allegedly tested positive for marijuana. As a result, Agency charged Employee with insubordination, commission of any act that would constitute a crime, and other conduct during and outside of duty hours that would affect adversely the

employee's or the agency's ability to perform effectively and proposed that he be removed.

A Police Trial Board ("PTB") evidentiary hearing was convened on October 20, 1994, December 15, 1994, and January 25, 1995. At the conclusion of the hearing, the panel recommended that the charges brought against Employee be sustained. Thus on September 1, 1995 the removal took effect.

Employee then filed a Petition for Appeal with the Office of Employee Appeals. On February 4 and 5, 1997 and on March 5 and 12, 1997, the Administrative Judge conducted an evidentiary hearing. Based on the evidence elicited at these series of hearings and the documentary evidence contained in the record, the Administrative Judge, in an Initial Decision issued June 17, 1998, reversed Agency's action and ordered it to reinstate Employee. Agency filed a Petition for Review. On March 23, 2000 we issued an Opinion and Order on Petition for Review wherein we adopted the Initial Decision as our opinion and thus upheld the Initial Decision.

On April 24, 2000 Agency filed an appeal with the Superior Court of the District of Columbia. While this appeal was pending, the District of Columbia Court of Appeals rendered its decision in the case of *District of Columbia Metropolitan Police Dep't v. Pinkard*, 801 A.2d 86 (D.C. 2000). *Pinkard* had an effect on the outcome of Employee's case because it set forth the principle that under certain conditions, an administrative judge is bound by the record established at the agency level and may not conduct a *de novo* hearing in the event an employee files an appeal with this Office. The following conditions must be present to invoke the *Pinkard* standard:

1. The employee is an employee of either the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subjected to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement provides that when an employee has been granted a departmental hearing and subsequently files an appeal with this Office, any further appeal shall be based solely on the record established in the departmental hearing; and
5. At the agency level, Employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an employee's removal.

Where all of these conditions are present, this Office's review of an agency decision is then "limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations." *Pinkard*, 801 A.2d 86, 92.

In view of the court's decision in *Pinkard*, the Superior Court issued its Order Reversing Decision and Remanding Case to Office of Employee Appeals on January 16, 2007. The court told us to reconsider the instant case in light of the *Pinkard* standard. We, however, are compelled to further remand this case to the administrative judge. As noted earlier, the PTB held a three day hearing in this case. Unfortunately, the record contains transcripts from only two days of the hearing. The administrative judge is in a better position to convene the parties and ascertain the whereabouts of the missing transcript. Moreover, we have consistently held that it is more appropriate for the

administrative judge to evaluate the evidence in the first instance. For these reasons, we remand this case to the administrative judge for proceedings consistent with this opinion.

ORDER

Accordingly, it is hereby **ORDERED** that this appeal is **REMANDED** to the Administrative Judge for proceedings consistent with this opinion.

FOR THE BOARD:

Sherrí 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.