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

_____	)	
In the Matter of:	)	
	)	
WANDA C. POLITE	)	
Employee	)	
	)	OEA Matter No.: 1601-0011-05
v.	)	
	)	Date of Issuance: October 25, 2010
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF TRANSPORTATION	)	
Agency	)	
_____	)	

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

Wanda C. Polite (“Employee”) worked as an Administrative Management Officer with the District of Columbia Department of Transportation (“Agency”). She was assigned to Agency’s Urban Forestry Administration (“UFA”). At some point, Agency began an investigation into the operations of the UFA division. During the process of the investigation, Agency decided to reassign Employee to its Operational Support and

Applied Technology (“OSAT”) division. Although Employee’s workplace was to have changed, her title, grade and step were to have remained the same.

In a letter dated August 27, 2004, Agency’s Chief of Staff notified Employee that she had been reassigned to the OSAT division and that she was to report to that location on Monday, August 30, 2004. The letter went on to provide that Employee was to report to OSAT’s Interim Chief Technology Officer (“ICFO”) when she arrived on that Monday. Even though Employee did not sign in the space to indicate that she received the letter, a hand-written notation in the margin of the letter indicates that the letter was left in the mail slot at Employee’s residence.

On the morning of August 30, 2004, which was to have been Employee’s first day at OSAT, Employee called the ICFO of OSAT and informed him that she was on approved leave for two weeks. Later on that same day, Agency’s Chief of Staff spoke with Employee, who had reported to the UFA location despite her claim of being on leave. Employee told the Chief of Staff that she was on pre-approved leave through September 8, 2004. The Chief of Staff then told Employee that she was to gather up all of her belongings at UFA, that she was not to return to UFA, and that she was to report to OSAT on September 9, 2004.

Thereafter, on August 31, 2004, September 1, 2004 and again on September 2, 2004, Employee continued reporting for duty at the UFA location. As a result, in a letter dated September 2, 2004, Agency’s Chief of Staff reiterated to Employee that she had until 6:00 p.m. that day to remove all of her personal items from the UFA location, that she was not to return to UFA, and that she was to report to OSAT on September 9, 2004.

This letter was hand delivered to Employee by a messenger and a copy was sent to her residence by certified mail.

On September 9, 2004, the first day Employee was to have reported to OSAT, Employee was charged with being absent without leave for failing to report to work.<sup>1</sup> On September 14, 2004, Employee again reported to the UFA location. This time Agency contacted the police, but Employee left before the police arrived.

Consequently, on September 14, 2004, Agency issued to Employee an advance notice of a proposal to remove her for the causes of insubordination and dishonesty. Specifically, the insubordination charge was based on Employee's refusal to accept the reassignment, failure to comply with the direct orders given in the August 27, 2004 and September 2, 2004 letters, and her refusal to carry out her assigned duties and responsibilities. The dishonesty charge was based on Employee's misrepresentation that she was on pre-approved leave beginning on August 30, 2004 through September 8, 2004. The removal took effect November 26, 2004.

Employee timely filed a Petition for Appeal. A seven-day evidentiary hearing was conducted during which several witnesses testified on behalf of both Agency and Employee. Based on the documentary evidence contained in the record as well as the corroborating testimony given by Agency's witnesses, the Administrative Judge found that Employee "was in an official duty status, and not on pre-approved leave, from August 30, to September 2, 2004 and that Employee was paid for August 30, August 31, September 1 (seven hours), and September 2, 2004. . . . Further, Employee executed sign-

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<sup>1</sup> Originally, Employee's reassignment was to have begun on August 30, 2004. However, Agency's Chief of Staff allowed Employee to delay in reporting for the reassignment until September 9, 2004 in order to accommodate the annual leave that Employee claimed she had been granted permission to use.

in sheets reflecting that she was at UFA on August 30, 31, and September 1, 2004.”<sup>2</sup> Moreover, the Administrative Judge found that Agency’s Chief of Staff credibly testified that Employee “failed to report to work on September 9, 2004, as directed. Instead, Employee returned to UFA on September 14, 2004. . . .”<sup>3</sup> According to the Administrative Judge, Agency had proven that Employee was indeed insubordinate as charged. With respect to the dishonesty charge, the Administrative Judge found that there was “a preponderance of evidence that Employee misrepresented . . . that she had pre-approved leave from August 30, through September 2, 2004 . . . [and] documentary records [to] reflect that Employee had only received pre-approved leave for one hour on September 1, and a total of twenty-four hours for September 3, 7 and 8, 2004.”<sup>4</sup> Hence, Agency had also proven that Employee acted dishonestly as charged. Thus, in an Initial Decision issued February 11, 2009, the Administrative Judge upheld Agency’s removal action.

Thereafter, Employee filed a Petition for Review on March 18, 2009. Employee claims that the Initial Decision is not based on substantial evidence and that it does not address all of the issues of law and fact properly raised in the appeal. Agency filed a response on April 30, 2009.

Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Kralick v. District of Columbia Dep’t of Empl. Servs.*, 842 A.2d 705, 710 (D.C. 2004). Therefore, we “will affirm the agency’s ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law.” *McCamey v. D.C. Dep’t of Empl. Servs.*, 947 A.2d 1191, 1196

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<sup>2</sup> *Initial Decision* at 6.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.* at 16.

(D.C. 2008). Based on this standard of review, we believe there is substantial evidence in the record to support the Initial Decision. The record compiled in this case is voluminous and includes a transcript of over 1500 pages. The Administrative Judge found all of Agency's witnesses to be credible. Additionally, he found that the documentary evidence corroborated the testimony given by the witnesses. Conversely, the Administrative Judge found that Employee, who testified on her own behalf, was not credible and often gave testimony that contradicted her sworn statements given during a prior deposition. Moreover, two of Employee's witnesses testified adversely to her case.

Despite the length of Employee's Petition for Review, it fails to present any evidence that would compel us to overturn the Initial Decision. In the petition, Employee attempts to reargue her case; however, she does not put forth any legal arguments to rebut the insubordination and dishonesty findings. Moreover, we believe the Administrative Judge thoroughly addressed every issue of law and fact raised before him. For the foregoing reasons, we must 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:

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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.