

Department expunge the indicated report of child abuse showing that he sexually abused K.H. The Department refused to do so, and B.R. appealed to the Bureau of Hearings and Appeals where the matter was assigned to ALJ Maria Greco (ALJ Greco). After hearing all of the testimony but before a decision was rendered, the case was turned over to ALJ Sara Flasher (ALJ Flasher) who had also been present at the hearing and listened to all of the testimony presented. ALJ Flasher authored the decision, which determined that K.H.'s testimony was inconsistent as it related to sexual abuse due to several discrepancies including when the incident occurred, the age of K.H. at the time of the alleged incident, and where K.H. was touched by B.R. ALJ Flasher also concluded that K.H.'s mother coached her to blame B.R. for touching her. The Department adopted ALJ Flasher's recommended decision and sustained B.R.'s administrative appeal. The County filed an application for reconsideration alleging, *inter alia*, that the opinions of the ALJ that K.H. was inconsistent in her testimony and that she was coached by her mother were erroneous. The request for reconsideration was granted, but the Department upheld ALJ Flasher's decision.

The County then appealed to this Court arguing that ALJ Flasher abused her discretion by finding that K.H.'s testimony was inconsistent with her report to the County and that her testimony was not credible. Reviewing the evidence presented, we agreed that there was an inconsistency as to when the alleged abuse occurred and where K.H. was touched by B.R., but determined that the record did not support a finding that K.H.'s mother coached her testimony. We then vacated the Department's order because the ALJ's finding that K.H. was not credible was based on an incorrect reading of some testimony regarding coaching

by K.H.'s mother and remanded the matter to the Department to make new credibility determinations.¹

On remand, ALJ Flasher essentially made the same findings with the exception that instead of finding as before that K.H.'s mom *actually* coached her to testify that B.R. touched her, this time she found that some of K.H.'s testimony raised the *potential* for coaching. Nonetheless, ALJ Flasher stated that K.H.'s demeanor was not convincing and it was her opinion that K.H.'s allegations regarding B.R. touching her on one occasion were fabricated and not a restatement of actual past events. She noted that she was present at the hearing, heard all of the witnesses testify and observed their demeanor. Based on her observations, she found B.R. more credible than K.H. and determined that there was not substantial evidence of sexual abuse by B.R. The Department accepted the recommended decision of ALJ Flasher in its entirety, and this appeal by the County followed.²

The County now contends that the ALJ failed to issue a decision consistent with this Court's remand order because ALJ Flasher simply rehashed her first opinion and made the same findings which were inconsistent with our

¹ Before the ALJ, B.R. argued that K.H. "has a history of making sexual abuse allegations and later recants the allegations." Additionally, the allegation is "the result of retaliation of [K.H.'s] mother, following an allegation of sexual abuse to Fayette County CYS regarding one other individual who was not [B.R.], but related to [K.H.]" (ALJ Flasher's August 24, 2009 decision at 4.)

² Our scope of review in expunction proceedings is limited to determining whether constitutional rights were violated, whether errors of law were committed, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

conclusions in our March 25, 2009 decision. However, what the County fails to acknowledge is that we ordered ALJ Flasher to make new *credibility determinations* on remand and, unlike the first appeal where she relied on the coaching of the mother in finding that K.H. was not credible, in this appeal, she found that K.H.'s demeanor was not credible. While ALJ Greco conducted the hearing, ALJ Flasher explained that she was present at the hearing and heard the witnesses testify and observed their demeanor. Finding the demeanor of K.H. not convincing,³ she found B.R., who denied the charges, more credible than K.H.

Absent an abuse of discretion, this Court will not review credibility determinations. *F.V.C. v. Department of Public Welfare*, 987 A.2d 223 (Pa. Cmwlth. 2010). As the Department has pointed out, the County has not alleged an abuse of discretion by the Department. Because ALJ Flasher has found B.R. credible, there is substantial evidence⁴ to support the Department's order to expunge the indicated report of child abuse by B.R.

³ “[T]he demeanor of witnesses is the very touchstone of credibility; in the absence of reactions produced by other applicable tests, the appearance and demeanor of witnesses are the litmus by which the presence of truth is revealed. They are trifles light as air, imponderables, but for all that they are luminous integrants which ineluctably enter into the calculation by which trustworthiness is appraised. The spontaneous gesture, the lifting of an eyebrow, the shrug of the shoulders, the intonation of the voice, the flash of the eye, the facial expression, - these are a few of the vital and influential indicia of credibility which the master observes and by which he is guided.” *Bobst v. Bobst*, 357 Pa. 441, 445, 54 A.2d 898, 901, n. 3 (1947).

⁴ Substantial evidence is evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion. Substantial evidence needed to maintain an indicated report of child abuse is evidence which so preponderates in favor of a conclusion that it outweighs, in the mind of the fact finder, any inconsistent evidence and reasonable inferences drawn therefrom. *D.T. v. Department of Public Welfare*, 873 A.2d 850 (Pa. Cmwlth. 2005).

Accordingly, because ALJ Flasher abided by our remand order and made new credibility determinations which the Department adopted in their entirety, the order of the Department is affirmed.

DAN PELLEGRINI, JUDGE

