

COMMONWEALTH OF PENNSYLVANIA

Michael A. Lanier : State Civil Service Commission  
v. :  
Department of Labor and Industry : Appeal No. 29136

Michael A. Lanier : Gayle Frink-Johnson  
*Pro Se* : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Michael A. Lanier challenging his removal from regular Social Worker 2 employment with the Department of Labor and Industry. A hearing was held on March 24, 2017, at the State Civil Service Commission’s Eastern Regional Office, in Philadelphia, Pennsylvania before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issue before the Commission is whether there is just cause for appellant’s removal.

FINDINGS OF FACT

1. By letter dated August 25, 2016, appellant was removed from his position as Social Worker 2, regular status, effective at the close of business

August 26, 2016. By this same letter, the appointing authority notified appellant that his removal:

...is a result of your inappropriate release of personal identifiable OVR customer information; violations of the Conditions Statement of your supplementary employment approval; Executive Order 1980-18 Amended, Code of Conduct; Management Directive 205.34 Amended, Commonwealth of Pennsylvania Internet Technology (IT) Acceptable Use Policy; flouting of authority; and inappropriate behavior.

Specifically, it was discovered that you forwarded work-related emails containing personal and disability related information regarding three OVR customers who were identified by first and last name; two children of minor age and a senior citizen. You released this information to individuals who are not affiliated with OVR and who were not authorized to receive this information. . . .

In addition . . . , you engaged in activities directly related to supplementary employment during worktime and with the use of Commonwealth IT equipment and resources. Further, you used Commonwealth IT equipment and resources for personal activities unrelated to the job duties of your position to an extent that exceeds the acceptable criteria of occasional, limited, and incidental. Lastly, you authored and sent correspondence

from your Commonwealth email account which contained profane and inappropriate language, including profane and disrespectful comments directed at management.

Comm. Ex. A.

2. The appeal was properly raised before this Commission and was heard under Section 951(a)<sup>1</sup> of the Civil Service Act, as amended.
3. Appellant was employed as a Social Worker 2 in the Philadelphia Office of the Bureau of Blindness and Visual Services (hereinafter “BBVS”). N.T. p. 28.
4. Appellant began employment with BBVS on December 22, 2014. N.T. p. 153.
5. As a Social Worker 2, appellant’s duties included: intakes; reviewing completed applications; determining eligibility for financial and visual services; creating service authorization to purchase devices; providing information and referrals to other agencies that may be able to help the individual; and conducting outreach regarding blindness and visual services. N.T. pp. 28-29.

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<sup>1</sup> Appellant’s request for a hearing under Section 951(b) was denied due to an insufficient allegation of discrimination.

6. An email dated February 4, 2016, from a non-Commonwealth email address, was sent to appellant's Commonwealth email address. Attached to this email was a document entitled "Yearly Residential Rental Agreement." The Agreement identified appellant as the landlord and indicated that payment was to be made to appellant. AA Exs. 9, 12.
7. By emails dated February 11, 2016 and March 25, 2016, appellant forwarded information about minor customers to non-Commonwealth addresses. The minor customers were identified by their first and last names. Additionally, by email dated March 25, 2016, appellant forwarded information about a grief counseling session with a senior citizen customer to non-Commonwealth email addresses. The senior citizen customer was identified by her first and last name. The persons to whom appellant forwarded these emails were not authorized to receive them. N.T. pp. 96, 102; AA Exs. 5, 7, 12.
8. Appellant sent an email dated March 17, 2016, from his Commonwealth email address to a non-Commonwealth email address. By this email, appellant placed an order for the creation of business cards. The text of the email references

Lanier Management, LLC. The text of the email also indicates that the services provided by appellant include residential and commercial real estate, travel, and cruise specialist. These services are not related to appellant's job duties with the appointing authority. N.T. pp. 111-112; AA Exs. 9, 12.

9. An email dated April 5, 2016 was sent to appellant's Commonwealth email address from a non-Commonwealth email address, which contained appellant's last name and first initial. Attached to this email was a spreadsheet. In the upper left-hand corner of the spreadsheet, it references rents and Uber. The remainder of the spreadsheet details monies that were paid or owed. AA Exs. 9, 12.
10. By email dated June 7, 2016, appellant forwarded work-related emails to three non-Commonwealth email addresses. Appellant included the following text with the forwarded emails:

A Bitch is going IN!.....  
YAAAAASSSSSS [sic]

AA Exs. 5, 8.

11. By email dated June 8, 2016, appellant forwarded a work-related email to a non-Commonwealth email address, along with the following text:

A BITCH Is [sic] going IN!

AA Exs. 8, 12.

12. By email dated June 10, 2016, appellant forwarded work-related emails to three non-Commonwealth email addresses. Appellant included the following text with the forwarded emails:

It's on at 2p. [sic] [The Assistant Director Administrator] has all of my work in his office...reviewing it...i'm [sic] about to tell him that he is impeding my work and creating additional work for me....Bitch!

AA Exs. 5, 8, 12.

13. By email dated June 10, 2016, appellant sent the following to three non-Commonwealth email addresses:

A nigga is hungry, they have made me miss my breakfast. . .you know what, I'm going to take care of that right now!

This email also contained appellant's work signature block, which affiliates appellant with BBVS. N.T. p. 113; AA Ex. 8, 12.

14. The persons to whom appellant forwarded the work-related emails were not authorized to receive them. N.T. p. 96.
  
15. By memorandum dated July 27, 2016, appellant was notified that a fact-finding meeting was scheduled for July 29, 2016 at 1:30 p.m. The memorandum further notified appellant that he would be afforded an opportunity to respond to the following charges at the fact-finding meeting:
  - Misuse of Commonwealth IT resources, including email and equipment
    - Violations of Management Directive 205.34 *Amended*, Commonwealth of Pennsylvania Acceptable Use Policy
    - Violations of the Computer Resources User Agreement
  - Violations of the terms and conditions of your Supplemental Employment approval
    - Violations of Executive Order 1980-18 *Amended*, Governor's Code of Conduct; Part 1, *Restricted Activities; Conflicts of Interest*; Section 5, *Misuse of office facilities and equipment*; and Section 6, *Supplementary employment*
    - Violations of Management Directive 205.14 *Amended*,

Prohibition of Activities Not  
Specifically or Directly  
Connected with the Official  
Business of the Commonwealth  
on Commonwealth Property

- Inappropriate release of personal identifiable OVR client information
- Inappropriate workplace behavior

AA Ex. 6 (emphasis in original).

16. The fact-finding meeting was held on July 29, 2016, at which time appellant was provided an opportunity to respond to the charges. N.T. pp. 97-98; AA Ex. 7.
17. At the July 29, 2016 fact-finding meeting, appellant acknowledged that he had supplemental employment working for Uber and Lanier Management, LLC. AA Ex. 7.
18. Appellant was prohibited from forwarding work-related emails to persons outside the Commonwealth who should not be viewing the emails. N.T. p. 96.

19. Management Directive 205.34 Amended, Commonwealth of Pennsylvania Internet Technology Acceptable Use Policy (hereinafter “IT Acceptable Use Policy”) prohibits employees from using IT resources to engage in personal, for profit transactions or business outside the scope of employment. N.T. p. 94; AA Ex. 11 (p. 2).
20. The IT Acceptable Use Policy prohibits employees from transmitting “material that is generally considered to be inappropriate or personally offensive or which may be construed as discriminatory....” AA Ex. 11 (p. 2).
21. The IT Acceptable Use Policy requires employees to maintain professionalism when sending electronic communications. AA Ex. 11 (p. 7).
22. The IT Acceptable Use Policy states “that each email message sent, received, deleted, or stored has the potential to be retrieved, seen, and reviewed by audiences, including the general public, who were not the intended recipients of the message.” AA Ex. 11 (p. 7).

23. Emails sent from appellant's Commonwealth email address may be obtained by the public via the Right to Know Law. N.T. p. 113.
24. On December 22, 2014, appellant electronically signed an acknowledgement indicating that he received the IT Acceptable Use Policy. By this acknowledgement, appellant also confirmed that he was responsible for reading and understanding the policy and that he agreed to adhere to its provisions. AA Ex. 11.
25. The IT Acceptable Use Policy is explained during orientation and at ongoing trainings. Employees may access this policy online. N.T. pp. 114-115.
26. Appellant is required to follow the IT Acceptable Use Policy when using Commonwealth IT resources. N.T. pp. 110, 114.

### DISCUSSION

The issue in the present appeal is whether the appointing authority established just cause for appellant's removal from regular Social Worker 2 employment. The appellant was charged with the following misconduct: (1) forwarding work-related emails, which contained personal identifiable OVR

customer information to non-Commonwealth email addresses; (2) using Commonwealth IT equipment and resources to engage in activities related to supplemental employment; and (3) sending correspondence from his Commonwealth email account, which contained profane and inappropriate language. Comm. Ex. A.

In an appeal challenging the removal of a regular status employee, the appointing authority has the burden of establishing just cause for the personnel action. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992); 71 P.S. §§ 741.807, 741.951(a); 4 Pa. Code § 105.15. Just cause must be job related and, in some manner, rationally and logically touch upon the employee's competency and ability to perform. *Mihok*, 147 Pa. Commw. at 348, 607 A.2d at 848.

In support of its charges, the appointing authority presented the testimony of Lynn Heitz and Darren Heffner. Appellant testified on his own behalf.

Lynn Heitz is the District Administrator for the Philadelphia Office of BBVS. N.T. p. 24. Heitz has been in this role for three years. N.T. p. 26. Previously, Heitz worked as the Assistant District Administrator for two years; and, prior to that, she worked for eighteen months as a Social Worker 2 in the Harrisburg Office of BBVS. N.T. p. 26.

Heitz testified BBVS provides services to children and adults who are blind or visually impaired. N.T. p. 25. These services include vocational rehabilitation, independent living support for blind persons who are fifty-five years

of age and older, support services to parents of children who are blind or visually impaired, and a limited program for persons who are blind or visually impaired and are unable to obtain integrated employment. N.T. p. 25.

Heitz testified appellant was employed as a Social Worker 2 in the Philadelphia Office of BBVS. N.T. p. 28. Heitz stated appellant's duties included: intakes; reviewing completed applications; determining eligibility for financial and visual services; creating service authorization to purchase devices; providing information and referrals to other agencies that may be able to help the individual; and conducting outreach regarding blindness and visual services. N.T. pp. 28-29.

Heitz testified Social Worker 2 employees are provided the following equipment to complete their work assignments: laptop computers, MiFi hotspots, and iPhones. N.T. p. 51. Heitz explained that Social Worker 2 employees may use this equipment inside of the office as well as outside of the office when they visit clients. N.T. p. 51. Heitz further indicated that, as a Social Worker 2, appellant also had access to the appointing authority's computer system, which is called CWDS. N.T. p. 29. Heitz testified through CWDS, appellant had access to contact information, Social Security numbers, dates of birth, medical health records, and next-of-kin information. N.T. p. 29.

Heitz testified there are three levels of case review by which Social Worker 2 employees are monitored. N.T. p. 30. Heitz stated level one case reviews are done twice a year by the social worker's supervisor. Level two case reviews are conducted by her because she is the District Administrator; and level three case reviews are conducted by BBVS's Harrisburg Central Office. N.T. p. 30. Heitz stated for each level, the reviewer randomly selects five open and three closed cases.

N.T. pp. 30-31. Heitz explained that the reviewer evaluates: (1) the timeliness of the service; (2) whether the customers were informed of all the programs for which they qualify; and (3) whether the customers were given a choice as to where they could procure services or purchase equipment. N.T. p. 31. Heitz further explained that, since BBVS's program is voluntary, and not an entitlement, customers need to be an active part of the program for the services to proceed. N.T. p. 31.

Heitz testified there are two reports that Social Worker 2 employees are required to maintain—a weekly itinerary and daily activity report (hereinafter “DAR”). N.T. pp. 31-32. Heitz stated the weekly itinerary is provided to the employee's supervisor a week in advance and details the employee's scheduled appointments, including the date and times of the appointments as well as the names of the people with whom the employee will be meeting. N.T. pp. 31-32. Heitz stated the DAR is a record of what the employee did that day, including appointments, telephone conversations, and entries of case progress notes into the system. N.T. p. 32. Employees can also process expense reimbursements through the DAR, thereby allowing the supervisor to check the expense reimbursement against the employee's daily activity for accuracy. N.T. p. 32.

Heitz testified every time there is contact with a customer, the employee is required to put a case progress note into the system. Heitz explained that the progress notes tell the story of the case, starting from the initial intake through every service that is authorized and provided to the customer. N.T. p. 33. The progress notes also detail every item that has been purchased. N.T. p. 33.

Heitz testified upon meeting with a customer, the social worker may determine that the customer is in need of services such as learning to travel with white canes or learning to use non-visual techniques in his/her home. N.T. p. 37. Heitz explained that when this kind of service is needed, the social worker creates a referral in the CWDS system, which prompts the instructional staff to do an assessment and create a plan. N.T. p. 37. This plan is called an instructional service plan. N.T. p. 37. The instructional service plan is provided to the social worker or other staff person who is responsible for the customer's main case so that he/she knows the status of the services being provided to the customer. N.T. p. 38.

Heitz stated that, when the case is closed, a closure note is added, indicating everything that has been done for the customer and noting that the customer is in agreement with the case closure. N.T. p. 33. Additionally, prior to closing the case, the social worker needs to meet with the customer to verify that the customer is in agreement. N.T. p. 41. If the customer cannot be reached, the social worker must attempt to reach the customer three times before closing the case. N.T. p. 41. If the customer still cannot be reached, the social worker completes a closure report in the CWDS system and does a comprehensive progress note indicating all of the steps taken. N.T. p. 41.

Heitz testified once a case is closed, the social worker gives the file to the clerk typist with a clerical instruction form directing the clerk typist to send the closure letter and file the case appropriately. N.T. p. 41. At that point, the clerk typist takes the case, labels it, and files it in the closed case file room. N.T. pp. 41-42.

Heitz testified there are three Clerk Typist 2 employees who work in the Philadelphia Office of BBVS and assist Social Worker 2 employees with filing and data entry. N.T. pp. 35-36, 40. Heitz explained that the clerical instruction form lists all of the basic duties performed by the Clerk Typist 2 and is utilized by the staff to indicate what work they need the Clerk Typist 2 to complete. N.T. p. 36.

Regarding data entry, Heitz testified that for the first six months of employment social workers are responsible for doing their own data entry so that the supervisor can ensure that everything is being done appropriately according to policy and procedure. N.T. p. 40. Heitz stated once the social worker has passed the six-month probationary period, he or she can hand-write everything and give the manila folder to the Clerk Typist 2, who will do all of the data entry. N.T. p. 40. Once the data entry is complete, the case is put in a brown folder, which means that the case is now viable, and it is filed in the social worker's cabinet. N.T. p. 40.

Heitz testified in June of 2016, appellant was notified via email that he was not completing certain job duties, to include providing customer filings to clerical staff, completing instructional service plans, moving manila folders to brown folder status, and moving files from plan status to brown folder status. N.T. pp. 38-39, 43-44; AA Ex. 1. Heitz stated these tasks were part of appellant's work as a Social Worker 2. N.T. p. 47.

Heitz testified while appellant was intermittently out of the office on SPF leave, customers were calling and inquiring as to what happened with their services. N.T. p. 34. In March or April of 2016, at least two desk audits were completed, and it was determined that appellant had not completed many tasks. N.T. pp. 34, 82. With Labor Relations' help, a task list was compiled, and appellant was

directed to complete the listed tasks when he was in the office. N.T. pp. 34-35, 74-75. Heitz stated “time after time” appellant failed to complete the assigned tasks. N.T. p. 35. Heitz testified by June of 2016, appellant had completed very few of the tasks. N.T. pp. 42, 75.

Heitz testified a fact-finding meeting was held on June 14, 2016. N.T. pp. 47-48; AA Ex. 2. During that meeting, appellant was provided an opportunity to explain why the assigned tasks were not completed. N.T. p. 47; AA Ex. 2. Heitz stated, during the fact-finding meeting, appellant did not provide any information as to why the tasks were not completed. N.T. pp. 47-48. Heitz testified that as a result of the fact-finding, a three-day suspension was issued to appellant. N.T. pp. 49-50; AA Ex. 3.

Heitz testified appellant was subsequently terminated. N.T. p. 52. Heitz explained that before she went out on medical leave, she asked Darren Heffner if there was a way to check appellant’s voicemail and Commonwealth email because appellant was out of the office and they needed to continue to provide services to the customers assigned to appellant. N.T. pp. 52-53, 72-74; AA Ex. 4. Heitz explained that customers send emails to social workers and contact the social workers by telephone. N.T. p. 52. Heitz also noted that some of BBVS’s providers send invoices via email, and without access to appellant’s email, they would not know if such invoices had been received or needed to be paid. N.T. pp. 52-53.

Heitz testified Heffner was able to reset the password to appellant’s voicemail so they could access the messages left by customers. N.T. p. 53. Heitz stated Heffner also provided her information from emails sent by providers. N.T. p. 53. Heitz further stated that, when Heffner reviewed appellant’s emails, he

discovered that appellant had sent confidential information about three customers to individuals who were not related to the Commonwealth. N.T. p. 54. Heitz stated Heffner also found information regarding appellant's supplemental employment as an Uber driver, that was on his computer and had been transmitted through a Commonwealth server. N.T. pp. 54-55.

Heitz testified she did not participate in the fact-finding regarding the charges for which appellant was terminated. N.T. p. 55. Heitz stated Heffner and Joe Strechay, who is the Director of BBVS, conducted that fact-finding. N.T. p. 55. Heitz also noted that appellant's union representative may also have been present at the fact-finding. N.T. p. 55.

On cross-examination, appellant asked Heitz about the following matters which were not addressed during Heffner's direct examination: (1) appellant's first performance review (hereinafter "EPR"); and (2) a conversation that occurred on January 29, 2016, with Ms. Fields.<sup>2</sup> Regarding the performance review, Heitz explained that the employee's supervisor rates the employee on the EPR, and she merely reviews it. N.T. p. 65. Heitz stated she believes appellant's rating on his first EPR was satisfactory; however, she noted that this was over a year ago. N.T. pp. 64-65.

Regarding the January 29, 2016 conversation, Heitz recalled appellant coming to her about a conversation that occurred in Fields' office. N.T. p. 70. Heitz stated she does not remember appellant telling her that a threat was made during the conversation in Fields' office. N.T. p. 70. Heitz also recalled appellant coming to

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<sup>2</sup> Appellant noted during his testimony that Fields was his former supervisor. N.T. p. 154.

her office one day when Fields was present, at which time appellant said that he was going to report Fields to the workplace violence office. N.T. p. 76. Heitz stated appellant did make such a complaint, but she is not aware of the results. N.T. p. 76. Heitz did not indicate whether she had any knowledge as to the substance of appellant's complaint.

Darren Heffner is currently employed with the Governor's Office of Administration, Bureau of Labor Relations, as a Labor Relations Specialist. N.T. pp. 89, 141. In June of 2016, Heffner was employed as a Labor Relations Analyst with the Department of Labor and Industry, Bureau of Human Resources, Labor Relations Division. N.T. p. 89. Heffner indicated that, as of June 2016, he had worked in Labor Relations Division for approximately two and a half years. N.T. p. 90.

Heffner testified he provided labor relations support to his assigned program areas in his role as a Labor Relations Analyst. N.T. p. 89. To that end, Heffner conducted investigations involving employee behavioral issues, became involved in disciplinary actions when appropriate, responded to grievances filed by the unions, and provided general assistance to management regarding Commonwealth policies and management directives. N.T. p. 90.

Heffner testified he provided assistance to Heitz regarding issues that she was having with appellant. N.T. p. 91. Heffner explained that some of these issues were a continuation of matters that the prior Labor Relations Analyst, Terry Luciano, was handling. N.T. pp. 91, 128. Heffner stated he also assisted Heitz by capturing emails from appellant's Commonwealth email account. N.T. pp. 91-92.

Heffner testified he received an email from Heitz explaining that she could not access invoices that were sent to appellant's Commonwealth email account because he was out of the office. N.T. p. 92. Heitz asked Heffner if it would be possible to capture these emails for continuity of operation purposes. N.T. p. 92. Heffner explained that email captures are part of Labor Relations duties. N.T. p. 92. Heffner stated Heitz request was granted and they captured appellant's emails. N.T. p. 92.

Heffner testified that, when he reviewed the captured emails, he not only found the items requested by Heitz, but he also found that appellant had violated the IT Acceptable Use Policy, the Governor's Code of Conduct, and the Supplemental Employment Policy. N.T. pp. 92-93. Heffner testified Management Directive 205.34 Amended is the IT Acceptable Use Policy. N.T. p. 110; AA Ex. 11. Heffner stated employees, including appellant, are required to follow this policy when they are using Commonwealth IT resources. N.T. pp. 110, 114. Heffner also noted that the policy is explained during orientation and ongoing trainings; and employees may access it online. N.T. pp. 114-115.

Heffner testified the IT Acceptable Use Policy prohibits employees from using IT equipment in matters related to supplemental employment and personal business outside the scope of employment. N.T. p. 94. This policy also prohibits employees from using internet resources in any way that is discriminating, inappropriate, or harassing. N.T. p. 94. Any personal use of the internet must be of a limited amount and incidental. N.T. p. 94.

Heffner noted that the Commonwealth's IT Acceptable Use policy is referenced in the Mobile Device User Agreement. N.T. pp. 110, 115; AA Ex. 10. Heffner testified the Mobile Device User Agreement applies to Commonwealth employees who are issued mobile devices, such as cell phones and laptops. N.T. pp. 108-109, 115; AA Ex. 10. Heffner stated the Mobile Device User Agreement describes the proper use of such items and references additional management directives and policies that govern the use of IT resources. N.T. pp. 109-110; AA Ex. 10.

Heffner testified he found a series of emails that appellant forwarded to multiple individuals outside of the Commonwealth network. N.T. pp. 95-96; AA Ex. 5. Heffner explained that within the body of the forwarded emails were multiple work-related emails. N.T. p. 96; AA Ex. 5. Heffner stated employees are prohibited from forwarding work-related emails to persons outside the Commonwealth who should not be viewing the emails. N.T. p. 96. Heffner stated the persons to whom appellant forwarded the work-related emails were not authorized to view them. N.T. p. 96.

Heffner testified, as a result of finding the emails, a fact-finding meeting was conducted on July 29, 2016. N.T. pp. 97-98; AA Ex. 7. Heffner stated present at the fact-finding meeting were appellant, Strechay, and two union representatives who represented appellant. N.T. p. 98. Heffner testified multiple issues regarding appellant's use of IT resources were discussed at the fact-finding meeting, including appellant's failure to acknowledge the IT resource popup as well as the forwarding of emails containing client information. N.T. pp. 101-102.

Heffner testified there is an IT resource popup that appears on a Commonwealth employee's computer. N.T. p. 101. Heffner stated appellant was directed to acknowledge the popup so that he could continue his work, but he did not do so. N.T. pp. 101, 137. Heffner stated that, because appellant did not acknowledge the popup as directed, he was given a direct order to acknowledge it. N.T. p. 102. Heffner stated that, later in the day, appellant eventually got into his email so that he could continue working; however, this did not occur until after 2:00 p.m. N.T. pp. 101-102.

Heffner testified that, during the fact-finding, he discussed the emails he found during his review of appellant's emails and appellant was provided an opportunity to give an explanation. N.T. pp. 102, 116. Heffner stated there were emails containing the first and last names of clients, as well as another client's information. N.T. pp. 102, 120-121; AA Exs. 5, 12. Heffner also noted that two of the clients were minors and one was a senior citizen. N.T. p. 102. Heffner stated these emails were forwarded to non-Commonwealth email addresses. N.T. pp. 102-103; AA Exs. 5, 12.

Heffner testified there were also emails sent by appellant, which related to outside business endeavors. N.T. pp. 106-107, 111-112; AA Exs. 9, 12. Heffner testified appellant sent an email placing an order for the creation of business cards listing services such as real estate and travel/cruise specialist, which are not related to his job duties with the appointing authority. N.T. pp. 111-112; AA Ex. 12. Heffner testified appellant also sent emails with attached documents related to real estate endeavors. N.T. p. 112; AA Ex. 12.

In addition to the above emails, Heffner testified appellant sent emails containing profanity and inappropriate language to non-Commonwealth email addresses. N.T. p. 112. Heffner stated on June 8, 2016, at 1:34 p.m., appellant sent an email containing the following inappropriate language: “bitch is going in.” N.T. pp. 112-113; AA Ex. 12. Heffner stated appellant also sent an email containing the word “N-I-G-G-A” from his Commonwealth email account to outside email accounts. N.T. p. 113; AA Ex. 12. Heffner noted that this email contained appellant’s work signature block. N.T. p. 113; AA Ex. 12. Heffner explained that this email was particularly concerning because: (1) it is racially inappropriate; (2) the recipient is unknown; (3) the signature block affiliates appellant with BBVS; and (4) the public could obtain this email via the Right to Know Law. N.T. p. 113.

Heffner testified that, when given the opportunity at the fact-finding meeting to provide an explanation regarding the emails, appellant responded a vast majority of the time that he did not know or did not remember. N.T. pp. 115, 119; AA Exs. 7, 13. Heffner noted that at the time appellant gave these responses, the documents were present in front of him. N.T. p. 115. Heffner also noted that appellant failed to provide an explanation regarding his computer usage. N.T. pp. 118-119.

Heffner testified after the fact-finding meeting, he discussed the matter with his chain of command, and then discussed their recommendation with Strechay. N.T. pp. 117, 139-140. Heffner stated that, at that point, a decision was made to terminate appellant. N.T. pp. 118-119; AA Ex. 13.

On cross-examination, appellant asked Heffner about the following matters which were not addressed during Heffner's direct examination: (1) the progressive discipline process; (2) SPF leave; (3) appellant's supplemental employment approvals; and (4) a conversation that occurred on January 29, 2016.

Regarding the progressive discipline process, Heffner explained that appellant's position is covered by a union contract, which contains an article requiring that discipline be progressive and corrective in nature, except for circumstances that warrant immediate suspension or removal from the workplace. N.T. pp. 122-123. Heffner stated appellant's situation was a circumstance that merited removal. N.T. p. 123.

Regarding SPF leave, Heffner testified SPF is an acronym for Sick, Parental and Family leave. N.T. p. 125. Heffner explained that SPF leave stems from the FMLA. N.T. p. 125. Heffner stated employees who meet certain medical conditions are eligible to use SPF leave. N.T. pp. 125-126.

Regarding appellant's supplemental employment, Heffner explained that Commonwealth employees may receive approval to work jobs unrelated to their Commonwealth employment, provided that the job does not conflict with their Commonwealth job. N.T. p. 129. Heffner noted that appellant had approval for supplemental employment with Uber and for "some type of real estate activity." N.T. pp. 129-130.

Regarding the January 29, 2016 conversation, Heffner recalled that, on that date, appellant met with Fields and Yolanda Crouch, who was an employee at the Philadelphia BBVS office. N.T. pp. 132-133. Heffner stated Crouch also had a

function with the union and may have been a union steward; however, Crouch is no longer employed with BBVS. N.T. p. 133. Heffner believed that Fields asked Crouch to be present during the meeting to facilitate the conversation between Fields and appellant. N.T. p. 137. Heffner believed that the purpose of the meeting was to help Fields and appellant work in a more compatible manner. N.T. p. 137.

Appellant testified he began employment with BBVS on December 22, 2014. N.T. p. 153. Appellant stated five weeks after he started employment with BBVS, Fields called him into her office and showed him her cell phone. N.T. p. 153. Appellant testified what Fields showed him on her phone was not work related. N.T. p. 153. Appellant did not state what Fields showed him.

Appellant testified that on January 12, 2016, Fields came to his cubicle to help him enter a new address for a customer. N.T. p. 162. Appellant explained that because he was unable to enter the address he was “locked out” and needed to enter the customer’s Social Security number. N.T. pp. 162-163. Appellant stated the customer’s Social Security number was not on file. N.T. p. 163. Appellant stated, at this point, Fields removed him from his cubicle and inappropriately entered a person’s Social Security number. N.T. p. 163.

Appellant testified on January 29, 2016, he caught Fields doctoring his time form, and she tried to explain her way out of it. N.T. p. 158. Appellant testified that, very soon after January 29, 2016, he made Heitz aware of Fields’ behavior, and Heitz told him that he needed to document. N.T. pp. 154-155. Appellant responded that he had been documenting “by keeping stuff in notebooks,” to which Heitz replied, “You’re probably one of the first.” N.T. p. 155.

Appellant testified that, prior to January 29, 2016, there was no issue with his performance. N.T. pp. 150-151. Appellant stated “[his] stuff was in tip-top condition” and he was “running out of people to see in the field.” N.T. pp. 161-162. Appellant argued that everything that happened to him after January 29, 2016, was an attempt to identify him as something that he is not and to “dismantle him as a professional.” N.T. pp. 160, 162. Appellant testified he made the following comment to Heffner on the day after the fact-finding meeting: “I will fight you to death, because you’re toying with my name. My name is everything to me, and I’m not dead.” Appellant further testified “[his] stuff was toyed with, manipulated, [and] used;” therefore, appellant claims that it is possible someone else created the emails, which are the subject of the instant discipline. N.T. p. 163.

Additionally, appellant argued that he did not like the recording that plays when someone calls Human Resources and stated he wanted a paper copy of the “Computer User Resource Agreement” prior to signing it because he is “tactile” and likes to hold papers when reading. N.T. pp. 164-165. Appellant also testified during orientation no one explained the “ins and outs” or “fine points” of the documents. N.T. p. 165.

Having fully reviewed the record compiled in this appeal, we find that the appointing authority has presented sufficient evidence to establish just cause for appellant’s removal. In support of our conclusion, we find credible<sup>3</sup> the testimony provided by Heitz and Heffner that appellant did the following: (1) forwarded work-related emails, which contained personal identifiable OVR customer information, to non-Commonwealth email addresses; (2) used Commonwealth IT equipment and

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<sup>3</sup> It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. 1986).

resources to engage in activities related to supplemental employment; and (3) sent correspondence containing profane and inappropriate language from his Commonwealth email account.

First, the appointing authority presented credible evidence that appellant inappropriately released personal identifiable OVR customer information. Specifically, appellant forwarded work-related emails containing the first and last names of three customers, as well as other customer information, to non-Commonwealth email addresses. N.T. pp. 102-103, 120-121; AA Exs. 5, 12. By emails dated February 11, 2016 and March 25, 2016, appellant forwarded information about minor customers, Y.G. and J.S. respectively, to non-Commonwealth addresses. N.T. p. 102; AA Exs. 7, 12. Additionally, by email dated March 25, 2016, appellant forwarded information about a grief counseling session with a senior citizen customer, V.C., to non-Commonwealth email addresses. N.T. p. 102; AA Exs. 5, 7, 12. The persons to whom appellant forwarded these emails were not authorized to receive them. N.T. p. 96. Furthermore, employees such as appellant are prohibited from forwarding work-related emails to persons outside the Commonwealth who should not be viewing the emails. N.T. p. 96. Thus, appellant's release of this personal customer information to non-Commonwealth email addresses reflects negatively upon his competence and ability to perform his job duties.

The appointing authority also presented credible evidence that appellant used Commonwealth IT equipment and resources to engage in activities related to his supplemental employment. The evidence establishes that appellant used his Commonwealth email to receive and send emails and documents pertaining

to his supplemental employment for Uber and Lanier Management, LLC. N.T. pp. 106-107, 111-112; AA Exs. 9, 12. These emails were dated February 4, March 17, and April 5, 2016. AA Exs. 9, 12.

The February 4, 2016 email was sent from a non-Commonwealth email address to appellant's Commonwealth email address. AA Exs. 9, 12. Attached to this email was a document entitled "Yearly Residential Rental Agreement." AA Exs. 9, 12. This Agreement identified appellant as the landlord and indicated that payment was to be made to appellant. AA Exs. 9, 12.

The March 17, 2016 email was sent by appellant from his Commonwealth email address to a non-Commonwealth email address. The purpose of this email was to place an order for the creation of business cards. N.T. p. 111; AA Exs. 9, 12. The text of the email referenced Lanier Management, LLC, which is one of appellant's supplemental employment endeavors. The text of the email also indicated that services provided by appellant include residential and commercial real estate, travel, and cruise specialist. AA Exs. 9, 12. These services are not related to appellant's job duties with the appointing authority. N.T. pp. 111-112.

The April 5, 2016 email was sent from a non-Commonwealth email address, which contained appellant's last name and first initial, to appellant's Commonwealth email address. AA Exs. 9, 12. Attached to the email was a spreadsheet. AA Exs. 9, 12. In the upper left-hand corner of the spreadsheet, it references rents and Uber, which is one of appellant's supplemental employment endeavors. AA Exs. 9, 12. The remainder of the spreadsheet details monies that were paid or owed. AA Exs. 9, 12.

Appellant's use of his Commonwealth email to conduct activities related to his supplemental employment clearly reflects negatively upon his competence and ability to perform his job duties. It is also a violation of the IT Acceptable Use Policy. The IT Acceptable Use Policy prohibits employees from using IT resources to engage in personal, for profit transactions or business outside the scope of employment. N.T. p. 94; AA Ex. 11 (p. 2). As evidenced by the above emails, appellant was using his Commonwealth email to engage in business outside the scope of his Commonwealth employment; and, with regard to the "Yearly Residential Rental Agreement," appellant was engaging in a personal, for profit transaction as evidenced by the provision that payment was to be made to him directly.

Lastly, the appointing authority presented credible evidence establishing that appellant sent correspondence containing profane and inappropriate language from his Commonwealth email account. N.T. pp. 112-113; AA Exs. 5, 8. By email dated June 7, 2016, appellant forwarded work-related emails to three non-Commonwealth email addresses. Appellant included the following text with the forwarded emails:

A Bitch is going IN!.....YAAAAASSSSSS [sic]

AA Exs. 5, 8. The next day, June 8, 2016, appellant forwarded a work-related email to a non-Commonwealth email address, along with the following text:

A BITCH Is [sic] going IN!

AA Ex. 8, 12.

By email dated June 10, 2016, appellant forwarded work-related emails to three non-Commonwealth email addresses. Appellant included the following text with the forwarded emails:

It's on at 2p. [sic] [The Assistant Director Administrator] has all of my work in his office...reviewing it...i'm [sic] about to tell him that he is impeding my work and creating additional work for me....Bitch!

AA Exs. 5, 8, 12.

By email dated June 10, 2016, appellant sent the following to three non-Commonwealth email addresses:

A nigga is hungry, they have made me miss my breakfast....you know what, I'm going to take care of that right now!

AA Ex. 8, 12. This racially inappropriate email also contained appellant's work signature block, which affiliates appellant with BBVS. N.T. p. 113; AA Exs. 8, 12.

The above profane and inappropriate emails violate the IT Acceptable Use Policy. Pursuant to the IT Acceptable Use Policy, Commonwealth employees are prohibited from transmitting "material that is generally considered to be inappropriate or personally offensive or which may be construed as discriminatory...." AA Ex. 11 (p. 2). The IT Acceptable Use Policy also requires employees to maintain professionalism when sending electronic communications. AA Ex. 11 (p. 7). The above emails violate these provisions of the IT Acceptable Use Policy.

Additionally, it is important to note that Appellant’s emails could be obtained by the public via the Right to Know Law. N.T. p. 113; AA Ex. 12. Indeed, the IT Acceptable Use Policy warns employees “that each email message sent, received, deleted, or stored has the potential to be retrieved, seen, and reviewed by audiences, including the general public, who were not the intended recipients of the message.” AA Ex. 11 (p. 7). Thus, by sending such emails, appellant has engaged in conduct that could bring the Commonwealth into disrepute.

Nevertheless, appellant argues that because of an incident that occurred with his time form on January 29, 2016, the present discipline was issued to “dismantle him as a professional.” N.T. p. 162. Appellant further claims that someone else could have created the emails that are the subject of the instant discipline. N.T. p. 163. There is no credible evidence to substantiate appellant’s speculation. Therefore, we reject appellant’s conjecture that the emails which formed the basis for the removal were fabricated by anyone other than the appellant or that the discipline was prompted by the January 29, 2016 incident. We find that the appointing authority had just cause to remove appellant. Appellant’s misuse of Commonwealth IT resources clearly reflects negatively upon his competence and ability to perform his job duties.<sup>4</sup> *Mihok*, 147 Pa. Commw. at 348, 607 A.2d at 848. Accordingly, we enter the following:

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<sup>4</sup> We note that the appointing authority did not present evidence sufficient to establish that appellant violated the Conditions Statement of his supplementary employment approval or Executive Order 1980-18 Amended, Code of Conduct. Nonetheless, where the appointing authority bases a removal action upon several charges and some, but not all of the charges are proven, the Commission may uphold the removal if there is just cause for removal based upon the charges that are proven. *Lewis v. Commonwealth of Pennsylvania, Department of Health (Lewis II)*, 70 Pa. Commw. 531, 534, 453 A.2d 713, 714 (1982). The appointing authority established the substance of the charge against appellant—misuse of Commonwealth IT resources. Therefore, we find that the appointing authority presented sufficient evidence to demonstrate just cause for removal.

CONCLUSION OF LAW

The appointing authority has presented evidence establishing just cause for removal under Section 807 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its members,<sup>5</sup> dismisses the appeal of Michael A. Lanier challenging his removal from regular Social Worker 2 employment with the Department of Labor and Industry and sustains the action of the Department of Labor and Industry in the removal of Michael A. Lanier from regular Social Worker 2 employment effective August 26, 2016.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Officially Mailed: July 24, 2019  
Emailed: July 24, 2019

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<sup>5</sup> Chairman Teresa Osborne, who took office March 22, 2019, did not participate in the discussion of or decision for this appeal.