ADJUDICATION

This is an appeal by Christi L. Ricci challenging her removal from regular Park Ranger 1 employment with the Department of Conservation and Natural Resources. A hearing was held April 30, 2018, at the State Civil Service Commission’s Strawberry Square Complex in Harrisburg, Pennsylvania, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issues before the Commission are: 1) whether the appointing authority had cause sufficient, under the Civil Service Act, to remove appellant from her position; and 2) whether the decision to remove appellant was affected by discrimination violative of the Civil Service Act’s prohibition of discrimination.
FINDINGS OF FACT


2. The May 31 letter included the following statement:
   The reasons for your removal are as follows:
   1) Violation of DCNR Work Rule #11, Unauthorized or unexcused absence or lateness.
      *    *    *
   2) Violation of DCNR Work Rule #2, failure to follow instruction, policy or procedure and insubordination.
      *    *    *
   3) Inability to perform all the essential job functions of your position as a Park Ranger 1.

3. The appeal was properly raised before this Commission and was scheduled to be heard under Sections 951(a) and 951(b) of the Civil Service Act, as amended. Comm. Exs. B, C-F.


5. The Hickory Run State Park Complex (hereinafter “the Complex”) is comprised of Hickory Run State Park, Nescspeck State Park and Lehigh Gorge State Park—a total of more than 25,000 acres with facilities for various outdoor activities. Park Rangers employed at the Complex can be assigned to any location as needed. N.T. pp. 115-121.

6. At the Complex, seasonal employees are employed for a period beginning in spring of each year until sometime in fall; at the conclusion of the work period, seasonal employees are placed on leave of

7. Since at least May 3, 2014, appellant’s position description has listed the following as the essential functions of her position:

   a) Learn to apply rules/regulations/policies;
   b) Able to stand full day and direct traffic;
   c) Follow oral/written instructions and effect oral/written communications in English;
   d) Weekend and Holiday work required;
   e) Compile/complete accurate work;
   f) Able to open and close gates;
   g) Negotiate rough, uneven terrain in all weather, and work in varying climate conditions;
   h) Able to lift a minimum of 30 pounds;
   i) Collect fees accurately, use computer;
   j) Administer First Aid and CPR in emergency.

8. By letter dated September 29, 2015, appellant was advised her leave of absence from her seasonal position as a Park Ranger 1 at the Complex for that year would begin on October 12, 2015. Appellant was assigned an anticipated return to work date of April 8, 2016. N.T. pp. 46-47; AA Ex. 4; Comm. Ex. G, Joint Stipulations of Fact, No. 5.


11. By letter dated February 22, 2016, appellant was advised her return from leave of absence from seasonal Park Ranger 1 employment at the Complex was to start on April 8, 2016. N.T. pp. 47-48, 169; AA Ex. 5.

12. Appellant reported for duty at the complex on April 16, 2016; appellant was not allowed to work. N.T. pp. 346, 394-395. Appellant was advised she would not be permitted to work until she brought a doctor’s note releasing her for full duty to DHS. N.T. pp. 346-350, 395; Ap. Ex. 10, p. 1. Appellant also reported to work April 23, April 30, May 7, May 14 and May 21 with the same result. N.T. pp. 349, 394-397; Ap. Ex. 10, pp. 2-6.

13. At some point, appellant was advised that a release to work at DHS would not be required. N.T. p. 397. Appellant returned to duty on some date during May of 2016. N.T. pp. 350-351, 397. After reporting she “had a hard time” and was experiencing “difficulty,” appellant was placed on leave of absence. N.T. p. 398.

14. Appointing authority records indicate appellant’s leave of absence began on May 29, 2016. N.T. p. 54. From May 29, 2016 through August 1, 2016,
appellant was absent from her Park Ranger 1 position with the appointing authority. N.T. p. 54; Comm. Ex. G, Joint Stipulations of Fact, No. 9.

15. By letter dated July 20, 2016, the Commonwealth of Pennsylvania’s Office of Administration (hereinafter “OA”), acting on behalf of the appointing authority, notified the appellant her request for leave under the Family and Medical Leave Act (hereinafter “FMLA”) had been denied. Appellant was not eligible for FMLA because she had not met the 1250 hours of work as required under the FMLA. N.T. pp. 49-54, 398-399; AA Ex. 6; Ap. Ex. 1.

16. By letter dated August 1, 2016, the appointing authority requested that appellant submit documentation in support of her request for accommodation under the Americans with Disabilities Act (hereinafter “ADA”). N.T. pp. 55, 204-205; AA Ex. 7. Appellant’s accommodation request was denied by letter dated August 16, 2016. N.T. pp. 55-56, 209-210; AA Ex. 8.
17. By letter dated August 19, 2016, appellant was directed to report to work “immediately or by no later than 8:00 a.m. on Tuesday, August 23, 2016.” N.T. pp. 56, 172-174, 225-227, 400; AA Ex. 9; Ap. Ex. 2.

18. By letter dated September 9, 2016, appellant was offered the opportunity to continue her unpaid leave status by being placed on Leave Without Pay (hereinafter “LWOP”) for the rest of season. N.T. pp. 222, 276-277; AA Ex. 10; Ap. Ex. 3, p. 1. The September 9 letter advised appellant: “[i]t should be noted that [LWOP for the remainder of the season] is only available for one season and cannot be used again.” N.T. pp. 277, 399; AA Ex. 10; Ap. Ex. 3.

19. By letter dated October 7, 2016, appellant was placed on LWOP, effective October 15, 2016; the letter designated April 17, 2017 as her anticipated date of return. N.T. pp. 58, 175; AA Ex. 11; Comm. Ex. G, Joint Stipulations of Fact, Nos. 11, 12.
20. By letter dated February 23, 2017, appellant was advised her return from leave of absence from seasonal Park Ranger 1 employment at the Complex was to start on April 14, 2017. N.T. pp. 59-60, 228; AA Ex. 12.

21. On or about April 13, 2017, appellant contacted the appointing authority to request a work accommodation under the ADA. Appellant’s request for accommodation included the following limitations:

   a) no strenuous activity such as lifting, climbing, running, vigorously walking, loudly speaking, or reaching above the waist level;

   b) appellant cannot be around cigarette/cigar smoke, exhaust fumes, dust, fragrances, perfumes, scented candles, or bathroom sprays;

   c) appellant must have access to air-conditioned building and work vehicles to prevent exacerbation of her condition.


23. By letter dated April 18, 2017, appellant was directed to report for work “immediately or by no later than April 22, 2017 . . .” The letter further directed appellant to bring medical documentation clearing her to return to work full duty; without the documentation, appellant would be considered to be on an unauthorized, unexcused absence status. N.T. pp. 61-62, 141-142, 408-409; AA Ex. 14; Ap. Ex. 7; Comm. Ex. G, Joint Stipulations of Fact, No. 22.


25. By letter dated May 2, 2017, appellant was notified a pre-disciplinary conference (hereinafter “PDC”) would be conducted on May 5, 2017; the allegations to be reviewed were violations of the

**DISCUSSION**

The current action was brought before this Commission as a challenge to the appointing authority’s decision to remove appellant from regular status seasonal Park Ranger 1 employment. The challenge was brought as an appeal under Sections 951(a) and 951(b) of the Civil Service Act (71 P.S. §§ 741.951(a),

\(^1\) Appellant, by signature dated September 15, 2011, had previously acknowledged she had received a copy of the appointing authority’s “Work Rules.” N.T. pp. 42-43, 66; AA Ex. 2; Comm. Ex. G, Joint Stipulations of Fact, No. 23. The relevant provisions of the “Work Rules” state:

The following work rules are not all inclusive; they are in addition to other [appointing authority] or Commonwealth policies such as the Governor’s Code of Conduct, and the Non-Discrimination, Prohibition of Sexual Harassment, Internet and Email Usage and Workplace Violence policies.

Questions concerning the applicability or interpretation of the Work Rules should be referred to appropriate supervisors. Supervisors may establish additional rules when deemed necessary for operational reasons.

An employee who fails to comply with or who violates the Work Rules may be subject to appropriate disciplinary action.

The following acts or conduct are specifically prohibited:

\begin{itemize}
  \item 2) Failure to follow instruction, policy or procedure.
  \item 11) Unauthorized or unexcused absence or lateness.
\end{itemize}

AA Ex. 2, pp. 2, 3.
741.951(b)). Comm. Exs. B, D. In an appeal brought under Section 951(a), the burden of proof is placed on the appointing authority to present evidence establishing that the adverse personnel action was imposed for cause sufficient under the Civil Service Act; under Section 807 of the Act, a regular status employee may only be removed for “just” cause. *Pennsylvania Department of Corrections v. State Civil Service Commission (Clapper)*, 842 A.2d 526, 531 n. 8 (Pa. Commw. 2004) citing *State Correctional Institution at Graterford, Department of Corrections v. State Civil Service Commission (Terra)*, 718 A.2d 403 n. 4 (Pa. Commw. 1998); 71 P.S. § 741.807; 4 Pa. Code § 105.15. Accordingly, the initial matter before the Commission is to determine whether the removal was for just cause.

To meet its burden, an appointing authority is expected to introduce evidence sufficient to prove the charges stated in the written notice provided the appellant, as bases for its action. *Long v. Commonwealth, Pennsylvania Liquor Control Board*, 112 Pa. Commw. 572, 535 A.2d 1233 (1988). The written notice received by the current appellant states:

The reasons for your removal are as follows:

1). **Violation of DCNR Work Rule #11, Unauthorized or unexcused absence or lateness.** Specifically, on Saturday, April 22, 2017, you reported to work without medical documentation clearing you to return to work, full duty consistent with the recent Independent Medical Evaluation results, and are currently considered to be in an unauthorized, unexcused absence status. You are being charged absent without approved leave (AW).

2). **Violation of DCNR Work Rule #2, failure to follow instruction, policy or procedure and insubordination.** Specifically, you failed to follow a direct order when on Saturday, April 22, 2017, you reported to work without medical documentation clearing you to return to work full duty.
3). **Inability to perform all the essential job functions of your position as a Park Ranger 1.** Specifically, on Saturday, April 22, 2017, you reported to work without medical documentation clearing you to return to work full duty. Based on medical documentation you previously submitted, you were informed that your request for an accommodation under the Americans with Disabilities Act was denied. Consequently, you are unable to perform all the essential functions of your position as a Park Ranger 1.

Comm. Ex. A. The appointing authority presented five witnesses in support of its action—Patricia Hunsberger, Rex Bradish, Sarah Chapel, Elizabeth Martinec and William Corbett. Appellant introduced David Fry and testified on her own behalf.

Patricia Hunsberger is a Human Resource Analyst employed by the Office of Administration and assigned responsibility for the appointing authority’s labor relations function. N.T. pp. 28-29, 32-33. Hunsberger testified that she consulted with appointing authority managers regarding the process which led to the removal of appellant. Her involvement was part of an effort to bring consistency to the appointing authority’s disciplinary matters. N.T. pp. 32-34. She attended the pre-disciplinary conference examining the charges assessed against appellant. N.T. pp. 32, 65.

Hunsberger testified, during the PDC, appellant stated she was not able to perform all the essential functions of her seasonal Park Ranger 1 position at that time. N.T. pp. 66-67. Hunsberger further testified after the PDC, in response to a request from appellant’s union representative, she discussed whether appellant could be furloughed from her position; Hunsberger later advised the union representative furlough could not be used. N.T. pp. 67-70.
On cross-examination, Hunsberger acknowledged that appellant, in response to the April 18 letter, reported for work on April 22, 2017, but was sent home because she did not bring the required medical documentation. N.T. pp. 85-86, 88. According to Hunsberger, appellant acknowledged that failure during the PDC. N.T. pp. 93-94. Hunsberger indicated that appellant acknowledged she was unable to do the essential functions of her position. N.T. p. 96.

Rex Bradish, the Park Operations Manager at the Hickory Run State Park Complex, testified the Complex manages extensive and varied terrains and uses requiring Park Rangers be capable of aiding in rescues, crowd control, complaint resolution, security and other sometimes strenuous physical functions in summertime conditions ranging from wet to dry and dusty. N.T. pp. 121-128; AA Ex. 1. Bradish noted that Park Rangers are expected to work alone “quite a bit of time.” N.T. p. 129. Bradish testified that the restrictions upon appellant, as stated in a physician’s statement—“[n]o strenuous activity such as lifting, climbing, running, vigorous walking, loudly speaking or reaching above the waist level. She cannot be around cigarette/cigar smoke, exhaust fumes, dust, fragrances, perfumes, scented candles or bathroom sprays”—were not compatible with the essential activities assigned to Park Ranger 1 employment. N.T. pp. 136-141; AA Ex. 13, p. 3.

Bradish testified that after the denial of her request for disability accommodation, he, by letter dated April 18, 2017, ordered her to report to work. N.T. pp. 142-143; AA Ex. 14. The letter required appellant “be able to perform all of her essential job functions of [her] position as a Park Ranger 1.” N.T. p. 143;
Bradish further testified “[appellant] reported to work, but she didn’t have the documentation.” N.T. p. 144. Appellant was not permitted to work that day. N.T. p. 144.

On cross-examination, Bradish acknowledged that because he began employment at the Complex in February 2017, he was not familiar with events regarding appellant which occurred during 2016. N.T. pp. 145-146. Bradish testified appellant’s direct supervisor in 2017 would have been Daniel Fry, a Ranger Supervisor. N.T. p. 146. Bradish indicated he was aware appellant had reported to work each weekend in April 2017 but was not permitted to resume working. N.T. pp. 147-148. Bradish further indicated appellant’s failure to provide a medical note releasing her to full duty when she reported on April 22, constituted insubordination. N.T. pp. 150, 152.

Sarah Chapel, an Administrative Officer, testified she is responsible for discipline in the appointing authority’s Eastern Region; the Hickory Run State Park Complex is in that region. N.T. pp. 164-165. Chapel noted appellant had been unable to return to duty during the 2016 season due to medical restrictions. Appellant was permitted the one-time use of unpaid administrative leave. N.T. p. 165. Chapel further testified, “when [appellant] was unable to return in 2017, [the appointing authority] pursued discipline for not reporting to work among other items.” N.T. pp. 165-166.

When asked to state her understanding of the one-time administrative leave, Chapel explained:

it’s been our practice to allow employees who either have not yet earned paid leave, haven’t worked long enough
with us or haven’t had a long enough season yet to earn a paid leave or who have exhausted their paid leave due to medical reasons to remain on leave without pay but still [remain] employed with the department for up to one full season.

N.T. p. 166. During that leave, the appointing authority is not able to hire another employee to fill that position. N.T. p. 167. The appointing authority, in her experience, has not allowed anyone to use the leave twice. N.T. pp. 167-168. Chapel noted appellant had not been deemed eligible for FMLA during 2016. N.T. pp. 169-170; AA Ex. 6.

On cross-examination, when questioned about the authority to grant an additional leave of absence, Chapel stated, “[t]hat is above my ability to make that decision, and I don’t believe the Department should set that precedent.” N.T. p. 184. She further stated “[the appointing authority’s] operational needs would have precluded us from offering that as an option. We need someone in that position.” N.T. p. 185. Chapel testified she was not involved in the decision regarding whether appellant’s work restrictions could be accommodated. N.T. p. 185.

Elizabeth Martinec is a Human Resource Analyst employed by the Office of Administration and assigned to receive requests for accommodation under the ADA. N.T. p. 198. Martinec testified she was contacted by appellant on or about August 1, 2016 to discuss the possibility of her placement on unpaid authorized leave or light duty. N.T. pp. 200-201. Martinec indicated, to her understanding, appellant was not entitled to a light duty Park Ranger assignment. N.T. p. 202. Martinec testified her August 16, 2016 letter advising appellant her request for
accommodation had been denied included an instruction on how to obtain a reconsideration of the denial; to her knowledge, appellant did not seek a reconsideration. N.T. pp. 210-212; AA Ex. 8.

Martinec noted that in 2017, after appellant again requested an accommodation, she again advised appellant her request had been denied. N.T. p. 282; AA Ex. 13. The written denial (AA Ex. 13, p. 1) again included an instruction on how to obtain a reconsideration of her request; no request for reconsideration was received. N.T. pp. 282-283.

Martinec also testified that during 2017, appellant asked whether she could exchange jobs with another Park Ranger 1 employed at a different park. N.T. p. 283. According to Martinec, appellant believed the other employee “just took money at the swimming pool;” Martinec testified, even if the duties were as described by appellant, those duties would exceed the restrictions imposed by appellant’s physician. N.T. pp. 284-285. Martinec stated in her opinion, based on her understanding of a Park Ranger 1 and the restrictions imposed by the physician, appellant was unable to perform the essential functions of that position. N.T. p. 286.

On cross-examination, Martinec acknowledged she did not consider granting appellant an additional leave of absence for 2017; she testified appellant had already used the one permitted leave of absence. N.T. pp. 291-292. She testified she was not involved in making the decision regarding appellant’s request to move to a different Park Ranger 1 position. N.T. p. 292. She also was not involved in either the decision to not allow appellant to return or the decision to remove appellant. N.T. pp. 293-294.
William Corbett, a Human Resource Analyst with the Office of Administration, testified he supervises Hunsberger and others involved in providing consultative services to the appointing authority’s managers. N.T. pp. 300-301. He explained that, with regard to disciplinary matters:

> [o]ur role is to maintain consistency, to review the actions and the recommendations that are being made at the individual park level and the regional level, to make sure that all of the appropriate elements have been considered before making an ultimate decision.

To make sure that we're handling situations appropriately in accordance with Commonwealth policies, with DCNR policies, with DCNR practices and procedures. And to make sure that we're maintaining a general overall level of consistency in the way we respond to the situation.

N.T. p. 306. Corbett testified he reviewed and approved the removal. N.T. pp. 316-317. He further stated:

> We have had similarly situated employees who have utilized all of their available leave. Have utilized the one season additional or the up to, excuse me, one season of additional leave without pay that have been in this similar situation, were unable to return to work and were subsequently terminated by the department.

N.T. pp. 317-318. Corbett testified that he is aware of no employee who has exceeded the one season of leave of absence. N.T. p. 318.

David Fry served as the Chief Ranger at Hickory Run State Park; he was appellant’s supervisor throughout her Park Ranger 1 employment at that facility. N.T. pp. 341-343. Appellant was one of three seasonal employees in that classification. N.T. p. 341. When asked about appellant’s job duties, Fry responded:

> A big part of being a ranger one is doing the check-outs of the two group camps, assisting in the contact station of the
campground, both inside with customers and outside with traffic, doing traffic at the Route 4 access on whitewater releases.

And then as assigned, posting bulletin boards for no hunting zones. Delivering packages. It could be 100 different things. But those are probably the big ones.

N.T. p. 343.

Fry indicated that before she came to work in 2016, he became aware appellant had suffered a work injury while employed by DHS. He testified that he was told by his supervisor, (Tara Kruger, the Park’s Assistant Manager):

that [appellant] would not be able to return to work until she had been cleared for duty at DHS. So if she showed up, I was to ask for that documentation that she was cleared to return to DHS. And then she would be permitted to work.

N.T. p. 346. Fry acknowledged that appellant reported to work—on the following dates: April 16, 2016, April 23, 2016, April 30, 2016, May 7, 2016, May 14, 2016, May 21, 2016—but, due to her failure to present a doctor’s note releasing her to full duty at DHS, was not permitted to work. N.T. pp. 347-349; Ap. Ex. 10. Fry testified that in 2017, due to her failure to present a doctor’s note, appellant was again not permitted to work after reporting for work on April 15, April 22, and April 30, 2017. N.T. pp. 353-356; Ap. Ex. 11.

Fry indicated he was not consulted regarding whether appellant’s restrictions could have been accommodated. N.T. p. 362. At hearing, based upon his review of the restrictions, Fry concluded he thinks they could have been accommodated. N.T. p. 362. Fry was not involved in the preparation of the letter sent by Bradish (AA Ex. 14) directing she return to work “without any medical
restrictions.” N.T. pp. 362-363. Fry was not consulted regarding the discipline of appellant. N.T. pp. 365-368. On cross-examination, Fry acknowledged numerous direct conflicts between the essential functions of appellant’s Park Ranger 1 position and her accommodation request and that the decision to grant or deny an accommodation was not within his authority. N.T. pp. 371-381. Fry conceded it would be “difficult” to provide “a couple” of the accommodations requested by appellant. N.T. p. 381.

Appellant indicated the duties she was assigned each day at the Complex varied and noted it was common for co-workers to assist each other in performing their duties. N.T. pp. 390-392. Appellant indicated when she attempted to return to work in April 2016, she was notified she would not be allowed to return to work until she was fully released to DHS. N.T. p. 394. Appellant repeated her attempts to return to work each week until May 21, 2016 and was similarly turned away each time. N.T. pp. 395-396. Appellant testified she was advised that she would have to be released to work at DHS to return to the appointing authority. The situation continued until “[Tara Kruger2] notified me that upon review that wasn’t the case.” N.T. pp. 396-397. Appellant testified she subsequently was allowed to return to work. N.T. p. 397

Appellant testified that on her return to duty in May 2016, she “had a hard time during that shift.” N.T. p. 398. The next day, appellant notified Kruger she was having difficulty. N.T. p. 398. Appellant was subsequently placed on a leave of absence. N.T. p. 398. Appellant acknowledged continuing correspondence with the appointing authority which included the September 9, 2016 letter in which

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2 Tara Kruger was identified as an Assistant Park Manager who served as Fry’s immediate supervisor. N.T. pp. 349, 394.
she was offered the opportunity “to continue [her] unpaid leave status by being placed on Leave Without Pay (LWOP) for the rest of season, . . .” N.T. pp. 399-401; Ap. Ex. 3. At hearing, appellant noted that the September 9 letter further advised her that, if she still required it, an accommodation request could be made and would be evaluated when she returned in 2017. N.T. p. 401; Ap. Ex. 3.

Appellant acknowledged receiving a September 13, 2016 letter from Chapel which enclosed, for appellant’s signature, a letter requesting that she be allowed “to remain on voluntary leave for the remainder of the 2016 season, . . .” N.T. p. 402; Ap. Ex. 4. Appellant did not sign and return the enclosed letter; she explained:

I did not write this letter and I did not agree with this letter, the contents of it.


Appellant acknowledged receiving the April 18, 2017 letter sent by Bradish ordering her to report to work “with medical documentation clearing [her] to return to work full duty . . .” N.T. pp. 408-409; Ap. Ex. 7. At hearing, she indicated she did not have the necessary documentation and was unable to comply with the order. N.T. p. 409. Appellant also acknowledged receiving an April 17, 2017 letter sent by Martinec denying her recent request for accommodation. N.T. pp. 410-411; Ap. Ex. 6. Appellant acknowledged that the April 17 letter stated she
could request reconsideration of the denial within twenty days; appellant further noted that within twenty days following her receipt of the letter she received notice of a pre-disciplinary hearing. N.T. p. 411.

Appellant testified she was shocked when she received written notice scheduling a PDC.3 N.T. p. 413. Appellant contends she had no intention of being insubordinate when she reported to work without a doctor’s note. N.T. p. 413. Appellant indicated she could not follow the order to return with a note releasing her with no restrictions. N.T. p. 213. Appellant testified the focus of the PDC was not insubordination, it was “[m]ore the disability or the accommodation.” N.T. pp. 415-416. Written notice of removal was issued within a week following the PDC. N.T. p. 417.

Appellant next discussed the fact that in 2016 she had been interviewed for a Park Ranger 1 position with the Lackawanna State Park Complex. N.T. p. 418. Appellant noted a position description provided at the time of her interview noted job duties which were more sedentary than those at the Complex. N.T. p. 419; Ap. Ex. 18. Although appellant was not hired for that position in 2016, she, again, in 2017 received an availability survey for the same position; she was not interviewed. N.T. p. 420; Ap. Ex. 12. She also was not interviewed for the position she had been removed from. N.T. p. 422.

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3 Appellant later clarified the PDC was originally scheduled for the beginning of May (AA Ex. 15); the written PDC notice she placed on record (Ap. Ex. 8) was a revised version stating a rescheduled date. N.T. p. 414. She testified she “might have” received the original notice “at the end of April, . . .” N.T. p. 414.
Appellant testified she was aware of another Park Ranger 1 whose physical restrictions were accommodated by the appointing authority. N.T. p. 422. According to appellant, the noted individual had received leg and hip injuries due to a severe motor-vehicle accident. N.T. p. 423. Appellant also discussed another park ranger who worked one shift every two weeks; appellant was not offered a similar reduced schedule. N.T. pp. 423-424.

On cross-examination, when asked to discuss her duties as an Energy Assistance Worker, appellant testified:

[i]t was working at an office building, processing applications for heating assistance for low income families.

N.T. pp. 427-428. Appellant has been on leave without pay from DHS since November 18, 2015. N.T. pp. 428-429. Appellant acknowledged the doctors involved in her medical claims do not all share the same opinion regarding her condition. N.T. pp. 435-436. Appellant acknowledged that at the time of the PDC, she could not perform the essential functions of her Park Ranger 1 position on her own. N.T. p. 458.

Section 807 of the Civil Service Act states “No regular employee in the classified service shall be removed except for just cause.” 71 P.S. § 741.807. In Perry v. State Civil Service Commission (Department of Labor and Industry), 38 A.3d 942 (Pa. Commw. 2011), the Commonwealth Court of Pennsylvania advised:

[t]he term "just cause" is not defined in the Act. Just cause must be merit-related, and the criteria for determining whether an appointing authority had just cause for removal must touch upon the employee’s competency and ability in some rational and logical manner.
What constitutes just cause for removal is largely a matter of discretion on the part of the head of the department. However, to be sufficient, the cause should be personal to the employee and such as to render the employee unfit for his or her position, thus making dismissal justifiable and for the good of the service.


In support of our conclusion, we first note that both parties have acknowledged appellant ended her 2016 seasonal employment with the appointing authority on a leave of absence without pay preceded by extensive medical absence. The testimony of Bradish, established appellant was directed to provide medical documentation releasing her to work full duty “by no later than Saturday, April 22, 2017, at 10:00 a.m.” N.T. pp. 142-143; Ap. Ex. 14. He testified although appellant reported for duty on April 22, she did not have the requested documentation. N.T. p. 144. We have received no evidence establishing his request was beyond his authority, unreasonable or impermissible. Bradish’s directive must therefore be deemed a valid order issued from appellant’s organizational superior.

The charges asserted as the reasons for appellant’s removal—violation of Work Rules #11 and #2 and inability to perform all essential job functions of a Park Ranger 1—all are reasonably derived from appellant’s actions following receipt
of Bradish’s directive. Her failure to provide the requested medical clearance rendered her absence unauthorized or unexcused; a violation of Work Rule # 11. Her failure to provide medical clearance, as instructed, was contrary to Bradish’s directive; a violation of Work Rule #2. Appellant, during the PDC, acknowledged she was unable to perform essential Park Ranger 1 duties. The appointing authority’s evidence was sufficient to establish the required *prima facie* case in support of its action. 4 Pa. Code § 105.15(a).

In opposition to the appointing authority’s presentation, appellant has acknowledged receiving the order requiring her to report to work with medical documentation; appellant also acknowledged that when she reported on April 22, 2017, she did not have the medical documentation she had been ordered to bring. N.T. pp. 408-410. Appellant’s only witness corroborated the events of April 22 and further noted that April 22, 2017 was only one of several dates on which she came to the worksite without the requested medical certification. N.T. pp. 347-349, 353-356. Having thereby largely accepted the appointing authority’s evidence establishing the conduct underlying the charges asserted as the bases for removal, appellant has instead opposed her removal by alleging the appointing authority’s decision to remove her lacked just cause and should be voided as a decision premised solely upon her disability. Ap. Bf. pp. 9, 11. Appellant’s arguments have been neither persuasive as a challenge to the claim of just cause nor supportive of her claim of discrimination.

The Commission’s decision to affirm the appointing authority’s claim of just cause for removal is initially premised on our acceptance of the appointing authority’s decision to deny appellant’s request for ADA accommodation. The
Commonwealth Court in *Allen v. State Civil Service Commission (Pennsylvania Board of Probation and Parole)*, 992 A.2d 924 (Pa. Commw. 2010) noted:

in order for a plaintiff to establish a *prima facie* case of discrimination under the ADA, the plaintiff must show: (1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an otherwise adverse employment decision as a result of discrimination.

992 A.2d at 932 (citing to the opinion of the U.S. Court of Appeals for the Third Circuit in *Taylor v. Phoenixville School District*, 184 F.3d 296 (3d Cir. 1999)). The decision to grant or deny appellant’s ADA claim resided with the appointing authority; appellant has presented nothing which would lead this Commission to conclude that that decision was in any way improperly rendered. Without some credible, affirmative evidence disputing the legitimacy of the denial of that ADA claim, the Commission must presume that the appointing authority acted properly; we will not second-guess that decision.

Appellant has presented nothing which would lead the Commission to conclude the appointing authority’s requirement that appellant produce a medical certification prior to returning to duty after a medical absence was either improper or unreasonable. Instead, the Commission will recall that the Commonwealth Court, in *Florian v. State Civil Service Commission (Department of Military and Veterans Affairs)*, 832 A.2d 1171 (Pa. Commw. 2003) stated:

An employer may condition an employee's return to work after an absence if the job is physically demanding in nature. See *City of Philadelphia v. Com.*, Pennsylvania Labor Relations Board, American Federation of State,
832 A.2d at 1176. Unrefuted, credible testimony at hearing indicated positions in the Park Ranger 1 classification are physically demanding. The Commission finds nothing in the record before us which would lead us to conclude that appellant’s failure to comply with the appointing authority’s written request for medical clearance was improper; appellant’s failure, whether due to unwillingness or inability to establish her ability to perform the duties of that position, constitutes a just cause for her removal.

Having rejected appellant’s arguments in opposition to the appointing authority’s charges, we will again note that appellant has also presented allegations of discrimination due to her disability and/or in retaliation for her complaints of harassment and discriminatory treatment. Ap. Bf. pp. 8-14. Appellant’s claims having been brought under Section 951(b) of the Civil Service Act, the initial burden was placed upon appellant to present evidence that, if believed and otherwise left unexplained, indicates that more likely than not discrimination has occurred. Moore v. State Civil Service Commission (Department of Corrections), 922 A.2d 80, 85 (Pa. Commw. 2007), citing Henderson v. Commonwealth, Office of the Budget, 126 Pa. Commw. 607, 614, 560 A.2d 859, 863 (1989). A presumption of discrimination would thereby be established. The appointing authority would then need to introduce evidence of a “non-discriminatory explanation” for the challenged personnel action. Once that is done, it would be left to this Commission, in its role

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as the trier of fact, to determine which party’s explanation of the appointing authority’s motivation it believes. *Henderson*, 126 Pa. Commw. at 615, 560 A.2d at 863. Appellant’s assertions of discrimination have been reviewed; those claims will be dismissed.

Appellant’s claim of discrimination is premised on two arguments: 1) that under the ADA, the appointing authority was obligated to devise a “reasonable accommodation” and its failure to do so and thereby maintain her in employment status is evidence of discrimination; and 2) that she was treated differently than at least two other employees. Neither argument has been supported by evidence sufficient to establish the required *prima facie* case. 4 Pa. Code § 105.16(a).

The evidence introduced by appellant in support of her reasonable accommodation assertions consists of: 1) Fry’s testimony “that her medical restrictions could have been accommodated” (Ap.Bf. p. 11); 2) her claim that the appointing authority, by failing to consult with either her or her immediate superior at the Complex (Fry), failed to implement an adequate process to determine whether an appropriate accommodation could be implemented (Ap.Bf. pp. 11-12); and 3) her assertion that the appointing authority’s decision not to allow a further leave of absence was either improper or constituted an unreasonable rejection of a potential accommodation (Ap.Bf. pp. 13-14). As noted previously, the Commission has received no credible, affirmative evidence demonstrating that the appointing authority’s denial of appellant’s ADA accommodation request was made either improperly (*i.e.* , in a manner contrary to the appointing authority’s policies or
procedures) or discriminatorily. Based on the evidence of record, the Commission cannot rule that appellant was entitled to an accommodation or that the appointing authority acted improperly in not granting her an accommodation.

Appellant’s argument that she was treated differently than two other individuals also fails. Appellant’s claim is supported only by her own testimony; that testimony is, at worst, self-serving and, at best, can only be deemed anecdotal and incomplete. Under neither circumstance, can it be deemed sufficient as credible evidence of disparate treatment. The first employee cited by appellant was allegedly “accommodated” following a serious injury, but appellant does not say how she was accommodated, only that she is still employed. The second employee works only one shift every two weeks and has done this for years; appellant, however, has not shown that the employee’s unique work pattern is the result of an accommodation that was requested and received. Neither employee has been shown by this evidence to have been similarly situated to appellant. Appellant’s claim that she was treated differently than other similarly situated individuals has therefore been dismissed; the appointing authority’s Motion to Dismiss appellant’s claim of discrimination (N.T. pp. 469-470) has been granted due to appellant’s failure to establish a *prima facie* claim. Accordingly, we enter the following:
CONCLUSIONS OF LAW

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

2. Appellant has failed to present evidence establishing discrimination violative of Section 905.1 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its three members, dismisses the appeal of Christi L. Ricci challenging her removal from regular Park Ranger 1 employment with the Department of Conservation and Natural Resources and sustains the action of the Department of Conservation and Natural Resources in the removal of Christi L. Ricci from regular Park Ranger 1 employment effective close of business June 2, 2017.

State Civil Service Commission

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Gregory M. Lane
Commissioner

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Bryan R. Lentz
Commissioner

Mailed: January 16, 2020

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