

COMMONWEALTH OF PENNSYLVANIA

Janet F. Lambert	:	State Civil Service Commission
	:	
v.	:	
	:	
State Correctional Institution at	:	
Graterford, Department of	:	
Corrections	:	Appeal No. 29773
Janet F. Lambert		Suzanne M. Oppman
<i>Pro Se</i>		Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Janet F. Lambert challenging her removal from probationary Corrections Officer Trainee employment with the State Correctional Institution at Graterford, Department of Corrections. A hearing was held on March 13, 2018, at the State Civil Service Commission's Eastern Regional Office, in Philadelphia, Pennsylvania, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority's determination to remove appellant was the result of discrimination.

FINDINGS OF FACT

1. By letter dated October 18, 2017, appellant was notified of her removal from probationary Corrections Officer Trainee employment with the appointing authority, effective October 18, 2017. Comm. Ex. A.
2. The appointing authority charged appellant with violating the appointing authority's Code of Ethics provisions A-4, B-6, B-10, B-14, and B-19. The letter provided:

On August 23, 2017, you were assigned to the J Treatment Door. At approximately 10:22 A.M. an inmate approached the podium and gave you several pages of paper. You are seen on video flipping through pages. At one point the inmate drops a piece of paper on the floor. After he picks up the paper he then continues to walk down the hall. You are left in possession of some of the pages. At approximately 11:16 A.M. Deputy's Ondrejka and Meintel walk past the podium. Deputy Meintel stops when he see the pages on the podium. The pages had crossword puzzles and pictures from a coloring book printed on them. One of the pages was a partially completed crossword puzzle in pink highlighter. Video demonstrates you were in possession of a pink highlighter. During the fact

finding you were asked where you got the materials from. You stated “from an inmate.” You were further asked if you found them or they were given to you. You stated, “They were given to me.” You were also asked if you completed the word search. You replied, “Yes.” You were further asked if any inmates were present while you were completing the puzzle(s). You stated, “there were no inmates present.” However, video of your post shows numerous inmates walking by the podium after you received the pages. Lastly, you failed to notify your supervisor that an inmate gave you something. Further, rather than report that you were given non-job-related material by an inmate you completed a puzzle which left you inattentive in your duties.

Comm. Ex. A.

3. The appeal was properly raised before this Commission and was heard under Section 951(b) of the Civil Service Act, as amended.
4. Appellant was employed by the appointing authority as a Corrections Officer Trainee. Comm. Exs. A, B.

5. On November 7, 2016, appellant signed, acknowledged, and agreed to abide by the appointing authority's Code of Ethics. N.T. p. 50; AA Ex. 2.

6. The appointing authority's Code of Ethics Section A-4 provides:

Employees and their families shall not directly or indirectly solicit, accept, or agree to accept any gift of money or goods, loans or services for personal benefit which would influence the performance of their work duties or decision making. Correctional employees shall not accept or perform favors or accept or distribute any gifts, money, or loans to or from inmates or members of an inmate's family.

AA Ex. 3

7. The appointing authority's Code of Ethics Section B-6 provides:

There shall be no fraternization or private relationship of staff with inmates, parolees, or members of their families. This includes, but is not limited to, trading, bartering or receiving gifts, money, and favors from the inmate or the inmate's friends, relatives, or representative.

Moreover, employees are not to deliver gifts or money to inmates' friends, relatives, or representatives.

AA Ex. 3

8. The appointing authority's Code of Ethics Section B-10 provides:

Employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated.

AA Ex. 3

9. The appointing authority's Code of Ethics Section B-14 provides:

Employees will promptly report to their supervisor any information which comes to their attention and indicates violation of law, rules, and/or regulations of the Department of Corrections by either an employee or an inmate and will maintain reasonable familiarity with the provisions of such directives.

AA Ex. 3

10. The appointing authority's Code of Ethics Section B-19 provides:

Employees shall not read books, magazines, newspapers, or other non-job-related printed material while on official duty. Employees are required to remain alert while on duty; inattentiveness, sleeping or the appearance thereof is prohibited.

AA Ex. 3

11. On August 23, 2017, appellant received coloring materials and a crossword puzzle book from an inmate while on duty at the J Treatment Door post. N.T. pp. 27, 43-44; AA Exs. 1, 2.
12. After receiving the coloring materials and crossword puzzle book, appellant began completing one of the puzzles at her assigned post. N.T. pp. 13-14, 43-44; AA Exs. 1, 2.
13. While appellant was completing a puzzle, Deputy Superintendent James A. Meintel and Deputy Superintendent George Ondrejka approached appellant. N.T. pp. 24-25, 56-57; AA Ex. 2.

14. Meintel noticed appellant completing the crossword puzzle book with a pink highlighter in her hand. N.T. pp. 24-25; AA Exs. 1, 2.
15. When Meintel asked appellant if she was bored, appellant did not respond while completing the crossword puzzle book. After not receiving a response from appellant, Meintel confiscated appellant's crossword puzzle book. N.T. pp. 13-14, 25, 27-28; AA Exs. 1, 2.
16. Meintel provided appellant's crossword puzzle book to the shift commander, completed a DC-121 Employee Report of Incident Form, and ordered a fact-finding investigation into appellant's conduct. N.T. p. 29; AA Exs. 1, 2.
17. Ondrejka oversaw the fact-finding investigation into appellant's conduct. N.T. pp. 35, 42.

DISCUSSION

The issue in the present appeal is whether the appointing authority's decision to remove appellant from probationary Corrections Officer Trainee employment was the result of discrimination. Before this Commission, appellant could only bring this challenge through Section 951(b) of the Civil Service Act, as amended, based upon an allegation that the decision to remove her from the position was due to discrimination in violation of Section 905.1 of the Civil Service Act. 71 P.S. §§ 741.905(a), 741.951(b).

At the time of her removal, appellant was a probationary status employee with the appointing authority. A probationary civil service employee does not enjoy the job security afforded to an employee with regular status who can be removed only for just cause. *Norristown State Hospital v. Bruce*, 69 Pa. Commw. 298, 450 A.2d 1093 (1982).

In an appeal alleging discrimination, appellant bears the burden of establishing that the personnel action was due to discrimination. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990). In analyzing claims of discrimination¹ under Section 905.1 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence that, if believed and otherwise unexplained, indicates that more likely than not

¹ The Act addresses both "traditional" and "procedural" discrimination. "Traditional discrimination" encompasses only those claims of discrimination based on race, sex, national origin or other non-merit factors. "Procedural discrimination" refers to a technical violation of the Act. In a case where an employee alleges a technical violation, no showing of intent is required. There must be evidence, however, to show that the employee was harmed by the technical non-compliance or that because of the peculiar nature of procedural impropriety that he or she could have been harmed, but there is no way to prove that for certain. *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 439, 539 A.2d 456, 462 (1988); 71 P.S. § 741.905a.

discrimination has occurred. 71 P.S. § 741.951(b); 4 Pa. Code § 105.16; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864.

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate the proffered merit reason for the personnel action is merely pretext. *Id.* at 614-615. In particular, an employee claiming disparate treatment must demonstrate he or she was treated differently than others. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851.

In support of her appeal, appellant testified on her own behalf. In response, the appointing authority presented the testimonies of Deputy Superintendent James A. Meintel and Deputy Superintendent George Ondrejka.

Appellant was employed by the appointing authority as a Corrections Officer Trainee. Comm. Ex. A. Appellant admitted to being caught completing a crossword puzzle book while working at the J Treatment Door post. N.T. pp. 13-14. Nevertheless, in support of her appeal, appellant contended a similarly situated Corrections Officer Trainee was not provided discipline for his inattentiveness. Appellant testified a male Corrections Officer Trainee fell asleep at his assigned housing unit post, received a Pre-Disciplinary Conference (hereinafter “PDC”), but did not receive discipline. N.T. p. 14. Appellant also asserted an officer stationed at the single standing post possessed a crossword puzzle book with his name written

on it. N.T. pp. 14-15. Appellant testified Deputy Superintendent Meintel stopped at her podium and said to her, “[i]f you need something to do, I have something for you to do” as he looked down at his penis. N.T. p. 15. Meintel then snatched the papers and walked away. N.T. p. 15.²

Once appellant establishes a *prima facie* case of discrimination, the burden of proof shifts to the appointing authority to present legitimate, non-discriminatory reasons for the personnel action. *Henderson, supra*.

As Deputy Superintendent for Facilities Management, Meintel oversees the guard force, the maintenance staff, the safety office, the unit management teams, unit managers, and counselors. On August 23, 2017, Meintel approached appellant’s podium at the J Treatment Door post and saw appellant completing a crossword puzzle book. N.T. pp. 24-25; AA Ex. 1. Meintel asked appellant if she was bored when he saw her completing the crossword puzzle book with a pink highlighter in her hand. Appellant did not respond to Meintel’s question. When he did not receive a response, Meintel confiscated appellant’s crossword puzzle book. N.T. pp. 25, 27-28; AA Ex. 1. Appellant was on duty when Meintel confiscated appellant’s crossword puzzle book. N.T. p. 27.

At the J Treatment Door post, there is a metal detector. Every inmate that enters the area must walk through the metal detector. As a Corrections Officer Trainee, appellant had a responsibility to ensure everyone walked through the metal detector and to prevent inmates from possessing contraband. Additionally, appellant

² At the close of appellant’s presentation, the appointing authority entered a motion to dismiss for failure of appellant to establish a *prima facie* case of discrimination. N.T. pp. 16-17. Ruling on the motion was deferred at the hearing. N.T. pp. 17-18. The Commission hereby denies the appointing authority’s motion to dismiss.

had a responsibility to remain alert at her assigned post. Meintel emphasized a Corrections Officer Trainee cannot remain alert while completing a crossword puzzle book. N.T. p. 28.

After confiscating appellant's crossword puzzle book, Meintel gave it to the shift commander, completed a DC-121 Employee Report of Incident Form (hereinafter "DC-121 Form"), and ordered a fact-finding investigation into appellant's conduct. N.T. p. 29; AA Ex. 2. A DC-121 Form is created when an incident occurs. It is forwarded through the chain of command until it reaches the superintendent. Meintel recorded his interaction with appellant on the DC-121 Form. N.T. p. 31; AA Ex. 2. Meintel testified he was not aware of any information or evidence that appellant's gender played a role in her removal. N.T. p. 35.

As Deputy Superintendent of Internal Security, Ondrejka oversees all investigations occurring inside State Correctional Institution at Graterford. N.T. pp. 41-42. Ondrejka oversaw the fact-finding investigation into appellant's conduct on August 23, 2017. N.T. pp. 35, 42. During the fact-finding investigation, appellant was interviewed. During the interview, appellant admitted to receiving coloring materials and a crossword puzzle book from an inmate. Appellant further admitted to completing one of the crossword puzzles within the book while on duty at her assigned post. N.T. pp. 43-44; AA Ex. 2. During the fact-finding investigation, appellant provided an employee witness statement, where she admitted to possessing the coloring materials and crossword puzzle book provided by an inmate. N.T. pp. 44-45; AA Ex. 2. Ondrejka explained puzzle books have been confiscated from officers in the past, which initiated investigations. N.T. p. 49.

Ondrejka identified the appointing authority's Code of Ethics. A Corrections Officer Trainee must adhere to the appointing authority's Code of Ethics' standards. N.T. pp. 49-50; AA Ex. 3. Specifically, appellant was charged with violating the appointing authority's Code of Ethics provisions A-4, B-6, B-10, B-14, and B-16.³ Comm. Ex. A; N.T. pp. 52-53; AA Ex. 3. Appellant signed, acknowledged, and agreed to abide by the appointing authority's Code of Ethics on November 7, 2016. N.T. p. 50; AA Ex. 2.

In response to appellant's allegation that Meintel sexually harassed her before confiscating the crossword puzzle book, Meintel denied looking at his penis while speaking to appellant. Meintel testified he only heard appellant's allegation for the first time when appellant filed her appeal. N.T. p. 29. Ondrejka also testified Meintel did not engage in any inappropriate conduct when he spoke to appellant before confiscating the crossword puzzle book. N.T. pp. 47-48.

Meintel testified it was inappropriate for appellant to accept the crossword puzzle book from an inmate because appellant was responsible for watching the metal detector and by completing the crossword puzzle book while on duty, appellant was inattentive to her duties at her assigned post. N.T. p. 34. In response to appellant's assertion that a male Corrections Officer Trainee fell asleep on the job but did not receive discipline, Meintel testified the male Corrections Officer Trainee received a PDC and was in fact disciplined although not removed. N.T. pp. 32-33.

³ These sections of the appointing authority's Code of Ethics are described in further detail in Findings of Fact 6, 7, 8, 9, and 10.

Ondrejka explained the difference between a sleeping Corrections Officer Trainee and a Corrections Officer Trainee who accepts items from an inmate. Ondrejka emphasized when appellant accepted items from an inmate, she did so willingly. When a Corrections Officer Trainee receives items from an inmate, the Corrections Officer Trainee's position is impaired due to being treated differently than other officers in the institution. N.T. pp. 53-54. In contrast, a sleeping Corrections Officer Trainee may have fallen asleep unintentionally. N.T. pp. 55-56.

Having reviewed the record, the Commission finds that although appellant presented a *prima facie* case of discrimination, she has failed to demonstrate how the appointing authority's proffered merit-related reasons for removing her were merely pretextual. In support of our conclusion, we find credible⁴ the testimonies of James A. Meintel and George Ondrejka, including especially their testimonies concerning appellant's admissions to the truth of the charges against her while she was under investigation.

Although appellant initially presented evidence asserting how a Corrections Officer Trainee, who fell asleep at his post, was considered inattentive but not removed, the appointing authority clearly differentiated how appellant's intentional conduct is not similarity situated to the sleeping Corrections Officer Trainee due to appellant's apparent fraternization with an inmate. The appointing authority credibly established how a Corrections Officer Trainee accepting a crossword puzzle book and coloring materials from an inmate and proceeding to complete the crossword puzzle book while on duty results in unacceptable inattentiveness and fraternization. Appellant's admission to accepting a crossword

⁴ 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*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986).

puzzle book and coloring materials from an inmate and to completing a crossword puzzle book while on duty compromised her position as a Corrections Officer Trainee and impaired her ability to remain alert or attentive at her assigned post. Appellant also alleged Meintel sexually harassed her before confiscating the crossword puzzle book. We find appellant's allegation without credence since Meintel and Ondrejka credibly denied the alleged inappropriate conduct took place.

Appellant's conduct of accepting coloring materials and a crossword puzzle book from an inmate, completing the received crossword puzzle book while on duty, and failing to notify her supervisor that an inmate provided her the crossword puzzle book and coloring materials all support the multiple violations of the appointing authority's Code of Ethics. Therefore, the appointing authority has presented credible, legitimate, non-discriminatory reasons for removing appellant. *Henderson, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

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 members,⁵ dismisses the appeal of Janet F. Lambert challenging her removal from probationary Corrections Officer Trainee employment with the State

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

Correctional Institution at Graterford, Department of Corrections and sustains the action of the State Correctional Institution at Graterford, Department of Corrections in the removal of Janet F. Lambert from probationary Corrections Officer Trainee employment effective October 18, 2017.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: September 3, 2019