

COMMONWEALTH OF PENNSYLVANIA

Natasha D. Townes : State Civil Service Commission  
 :  
 v. :  
 :  
 Bucks County Assistance Office, :  
 Department of Human Services : Appeal No. 29801

Natasha D. Townes : Peter J. Garcia  
*Pro Se* : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Natasha D. Townes challenging her Level-One Alternative Discipline in Lieu of Suspension from regular Income Maintenance Caseworker employment with Bucks County Assistance Office, Department of Human Services. A hearing was held on March 20, 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, as well as the Briefs submitted by the parties. The issues before the Commission are whether there is good cause for appellant's Alternative Discipline in Lieu of Suspension (hereinafter "ADLS")<sup>1</sup> and whether appellant has established her ADLS was the result of discrimination.

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<sup>1</sup> Under the ADLS, there was no effect on appellant's pay, seniority, or other benefits. The ADLS carries the same weight as if appellant served a one-day suspension. Comm. Ex. A. Consequently, the present appeal will be considered by the Commission as an appeal of a one-day suspension.

## FINDINGS OF FACT

1. By letter dated March 22, 2017, appellant was notified she received a Level-One ADLS from regular Income Maintenance Caseworker employment with the appointing authority. Comm. Ex. A.
  
2. The March 22, 2017, Level-One ADLS letter provides:
  - Specifically, Wednesday, September 27, 2017, while Carmantha Rogers, Income Maintenance Casework Supervisor (IMCWS) was in conference with a Caucasian co-worker, you entered the office and made a comment to the effect of, **“Why are you spending so much time with a Number 5”** in a manner to reflect that you were referencing race/ethnicity.Comm. Ex. A. (emphasis in original).
  
3. The appeal was properly raised before this Commission and was heard under Sections 951(a) and 951(b) of the Civil Service Act, as amended.

4. Appellant is employed by the appointing authority as an Income Maintenance Caseworker and is also a member of the union known as SEIU.<sup>2</sup> Comm. Ex. A; N.T. p. 85; Ap. Ex. 2.
5. On September 27, 2017, Income Maintenance Caseworker Susan Gravez was in a meeting with Income Maintenance Caseworker Supervisor Carmantha Rogers in Rogers' office. N.T. pp. 16, 27-28.
6. During the meeting, appellant walked into Rogers' office and angrily asked Rogers, "Why are you spending so much time with a Number 5?" N.T. pp. 17-18, 27, 29, 32.
7. The appointing authority's application utilizes the number five to designate the Caucasian race. N.T. pp. 17-18, 27, 29, 32.
8. Gravez was the only Caucasian female and Rogers and appellant were the only African American females in Rogers' office when appellant entered Rogers' office and made the comment identifying Gravez. N.T. pp. 17-18, 27, 29, 32; Ap. Ex. 1.

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<sup>2</sup> The union's acronym "SEIU" was not defined during the hearing.

9. After hearing appellant's comment identifying her, Gravez initially was shocked but then became angry, offended, and upset. N.T. p. 19.
10. Being very offended, Gravez walked out of Rogers' office and ran into Lynette Hunter, who was one of Gravez's friends and a supervisor for the appointing authority. Gravez described appellant's conduct to Hunter and Hunter explained to Gravez that she was mandated to report the incident. N.T. pp. 19-20.
11. Hunter reported the incident to Field Human Resource Officer Wilhelmina Terry. N.T. pp. 20-21, 28, 36-37, 42, 57-58.
12. After receiving the report from Hunter, Terry informed Income Maintenance Administrator 1 Cheryl Cole about appellant's conduct. N.T. pp. 36-37.
13. After being informed by Terry, Cole spoke to Rogers, where Rogers described how appellant entered her office while meeting with Gravez and how appellant made the comment. Rogers also provided Cole a witness statement. N.T. pp. 37-38.

14. Cole conducted an investigation into appellant's conduct. N.T. pp. 38-40, 42, 43-44; AA Ex. 1.
15. At the conclusion of the investigation and after reviewing its findings, Cole determined appellant made the comment regarding Gravez's race in Rogers' office and everyone in the office understood what the term number five meant. Cole brought her findings to Executive Director Janice Schlagnhauser. N.T. pp. 45-46.
16. Terry reviewed the appointing authority's 7174 policy in relation to appellant's conduct. N.T. p. 59; AA Ex. 2.
17. Terry determined appellant's conduct fell within the policy's prohibition against inappropriate conduct and sent Executive Director Schlagnhauser's recommendation for appellant's one-day suspension to the appointing authority's labor relations coordinator within the Division of Labor Relations.
18. The Division of Labor Relations advised appellant's discipline should be a Level-One ADLS. N.T. pp. 59, 62.

## DISCUSSION

The issues in the present appeal are whether the appointing authority established good cause for appellant's Level-One Alternative Discipline in Lieu of Suspension (hereinafter "ADLS") and whether appellant has established that her ADLS was the result of discrimination. The appointing authority charged appellant with inappropriate conduct in violation of Department Policy 7174. Comm. Ex. A.

The Commission will first consider whether the appointing authority had good cause to suspend appellant. In an appeal challenging the suspension of a regular status employee, the appointing authority bears the burden of establishing good cause for the personnel action. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1986); 71 P.S. §§ 741.803, 741.951(a); 4 Pa. Code § 105.15. Good cause must be based upon meritorious criteria and be related to one's competency and ability to execute job duties properly. *White*, 110 Pa. Commw. at 498, 532 A.2d at 951.

In support of its charge, the appointing authority presented the testimony of Income Maintenance Caseworker Susan Gravez, Income Maintenance Caseworker Supervisor Carmantha Rogers, Income Maintenance Administrator 1 Cheryl Cole, and Field Human Resource Officer Wilhelmina Terry.

As an Income Maintenance Caseworker, Gravez interviews claimants, collects claimants' income data, and determines their eligibility. As an Income Maintenance Caseworker Supervisor, Rogers assigns work to the caseworkers,

monitors the dashboard, and ensures assignments are completed. Rogers is Gravez's supervisor and used to supervise appellant in September 2017. N.T. pp. 15, 26. Rogers explained that Cole is her supervising manager. N.T. p. 28.

Rogers and Gravez described appellant's conduct on the day in question. On September 27, 2017, Gravez was meeting with Rogers in Rogers' office. Rogers was showing Gravez samples of narratives and suggesting improvements for Gravez to write larger narratives for her cases. Gravez testified appellant was not participating in this meeting. N.T. pp. 16, 27-28. During the meeting, appellant abruptly walked into Rogers' office and angrily asked Rogers, "Why are you spending so much time with a Number 5?" Appellant was identifying Gravez by referring to the appointing authority's application, which uses the number five to designate the Caucasian race. Gravez was the only Caucasian female, and Rogers and appellant were the only African American females in Rogers' office when appellant entered. N.T. pp. 17-18, 27, 29, 32; Ap. Ex. 1. Gravez did not provoke appellant into asking the question. After hearing appellant's question, Gravez was shocked and stunned at first; then, she became angry because "it was like walking in and saying, why are you spending so much time with a white person?" Being very offended, Gravez did not know what to say or think, and just walked out of Rogers' office. N.T. p. 19.

After leaving Rogers' office, Gravez took her break at two o'clock with her friend, where she ran into Lynette Hunter, a supervisor and one of Gravez's friends. Gravez told Hunter about appellant's comment and how she was very upset and angry about appellant's conduct in Rogers' office. N.T. p. 19. Hunter told Gravez she was going to report the incident. Gravez asked her not to report the incident; however, Hunter told her she was mandated to report the incident. N.T.

p. 20. When Gravez returned from her break, Rogers was standing outside of her office. When Gravez explained to Rogers how she could not believe appellant said the comment, Rogers asked Gravez if she wanted to file a complaint. N.T. p. 21. Gravez did not want to report the incident because she was afraid of repercussions, dirty looks, and “just didn’t want to go there.” N.T. p. 20. According to Gravez, Hunter reported appellant’s conduct. N.T. pp. 20-21, 28. Once Hunter reported appellant’s conduct, an investigation began and Gravez provided a witness statement describing appellant’s conduct. N.T. pp. 21-22, 42.

As an Income Maintenance Administrator 1, Cole supervises five Income Maintenance Caseworker Supervisors, including Rogers, and conducts investigations. N.T. pp. 36, 38. Cole was informed about appellant’s conduct on September 27, 2017, when Terry told her how Hunter reported the incident. N.T. pp. 36-37. After being informed, Cole spoke to Rogers, where Rogers described how appellant made the comment in her office. Rogers also provided Cole a witness statement. N.T. pp. 37-38.

As a result, Cole conducted an investigation into appellant’s conduct. As part of the investigation, Cole spoke to Gravez. Gravez described the incident and how she felt offended by appellant’s comment. Cole discussed with Gravez what they should do next, but Gravez told Cole that she did not want to file a formal complaint because she feared appellant would retaliate and cause a problem with their working relationship. N.T. pp. 38-39, 48. Since Gravez indicated she did not want to file a formal complaint, Cole had a conference with Executive Director Janice Schlaghauser. They discussed that once an issue was reported to them, they had an obligation to conduct an investigation to determine whether something improper happened. N.T. p. 39. As a result, Cole had Gravez return to Cole’s office

and explained they were following through with the investigation. Cole also provided the appointing authority's 7174 policy to Gravez. N.T. pp. 39-40; AA Ex. 1. The appointing authority's 7174 policy regarding "Refusal to Answer Appropriate Questions from Appropriate Officials, or the Deliberate Concealment or Misrepresentation of Information in the Answering of Such Questions" required Gravez to cooperate in the ongoing investigation. N.T. pp. 40-41; AA Ex. 1. As such, Gravez provided a witness statement, which was consistent with what Gravez previously told Cole and with Rogers' recollection of the incident. N.T. p. 42.

As part of the investigation, Cole received and reviewed witness statements from Terry and Hunter. Cole confirmed Hunter reported the incident to management. N.T. p. 42. Cole also conducted an investigatory interview with appellant. During the investigatory interview, appellant denied making the comment and was unable to provide an answer to what the term number five means within the appointing authority because she considered the question confusing. N.T. pp. 43-44. Appellant asked Cole if she could provide a written statement, where "[appellant] posited the idea that this was some sort of a retaliatory situation; that perhaps Sue, perhaps Ms. Rogers were being coerced into making this statement." N.T. p. 44. Appellant also alleged in her witness statement that the reported incident was retaliatory for complaining about Gravez's narratives. In response to appellant's allegations, Cole questioned Rogers and Gravez if there were any reasons why they would be acting in a retaliatory manner or from coercion. Rogers and Gravez not only denied acting in a retaliatory manner, but also denied being coerced. N.T. pp. 44-45.

At the conclusion of the investigation and after reviewing its findings, Cole determined appellant made the comment regarding Gravez's race in Rogers' office and everyone in the office understood what the term number five meant. N.T. pp. 45-46. Cole found appellant's conduct violated the appointing authority's disciplinary rules and brought her findings to Executive Director Schlaghauser. Cole did not have any participation regarding appellant's level of discipline. N.T. p. 46.

As a Field Human Resource Officer, Terry acts as the liaison for management and employees within the appointing authority's Office of Income Maintenance. N.T. pp. 53-54. Terry explained when she works with the appointing authority's Division of Labor Relations, she deals with disciplinary policies and employee conduct. N.T. p. 55.

Terry explained Hunter reported to her how Gravez was upset and crying because appellant made the comment of "why are you wasting your time or spending your time with this number five." Initially, Terry did not understand what the term number five meant for Income Maintenance Caseworkers but Hunter informed Terry how the number five in the appointing authority's application was used as a designation for the Caucasian race. N.T. pp. 57-58. After receiving Hunter's report, Terry reported the incident to Cole and assisted Cole by approving appellant's investigative interview questions. N.T. pp. 58-59. Terry also reviewed the appointing authority's 7174 policy regarding "Inappropriate Conduct" in relation to appellant's conduct. N.T. p. 59; AA Ex. 2.

Specifically, the appointing authority's 7174 policy regarding "Inappropriate Conduct" defines the charge as "[b]ehavior, conduct, and/or speech that are not befitting or in alignment with an employee's position, duties, or acceptable standards of behavior/speech/conduct that are committed either at the workplace or off premises if the issue is work-related." AA Ex. 2. The elements to substantiate the "Inappropriate Behavior" charge are provided as follows:

Some examples of inappropriate conduct include, but are not limited to: the use of profanity; abusive or offensive language; quarreling and creating a disturbance; making demeaning, defamatory or inflammatory comments; engaging in horseplay; bullying another person; or creating a disturbance with another person where such conduct did, or had the potential to adversely affect, the worksite.

AA Ex. 2. Based upon her review of the policy and appellant's conduct, Terry determined appellant's conduct fell within the policy's prohibition against inappropriate conduct and sent Executive Director Schlagnhauer's recommendation for appellant's one-day suspension to the appointing authority's labor relations coordinator within the Division of Labor Relations. N.T. p. 59. The Division of Labor Relations agreed appellant should receive a one-day suspension but advised it should be a Level-One ADLS pursuant to the appointing authority's agreement with the union, which allows for an ADLS to be administered. N.T. p. 62.

In response to the appointing authority's presentation for good cause, appellant testified on her own behalf. Appellant asserted she never made the comment regarding Gravez's race in Rogers' office on September 27, 2017. N.T. pp. 75-77; 117; Ap. Ex. 1. According to appellant, on September 27, 2017, Rogers appeared very agitated and had an attitude the entire day. N.T. p. 75. Appellant admitted to entering Rogers' office but noticed Gravez in Rogers' office and excused

herself. Appellant contended she asked Rogers questions about her overtime and work before leaving Rogers' office. N.T. p. 76. Appellant further denied making the racial comment in Rogers' office in her witness statement.<sup>3</sup> N.T. p. 83; Ap. Ex. 1.

Having carefully reviewed the record, the Commission finds the appointing authority presented good cause to suspend appellant. In support of our conclusion, we find credible the testimonies of Susan Gravez, Carmantha Rogers, Cheryl Cole, and Wilhelmina Terry to support the charge of appellant's inappropriate conduct on September 27, 2017.<sup>4</sup>

The appointing authority credibly established appellant interrupted a meeting between Gravez and Rogers and asked Rogers "Why are you spending so much time with a Number 5?" Rogers, Gravez, and appellant understood the term number five was a designation for the Caucasian race within the appointing authority's application, and appellant used the term specifically to identify Gravez's race. Consequently, appellant's comment made Gravez, shocked, angry, and upset, and she immediately left Rogers' office. Appellant's offensive comment regarding Gravez's race clearly constitutes conduct that is unacceptable and not befitting for the duties of an Income Maintenance Caseworker. Such conduct negatively reflects upon appellant's competency and ability to perform her job duties. *White, supra*.

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<sup>3</sup> While appellant presented her witness statement regarding the incident on September 27, 2017, appellant's exhibit also contains the witness statements from Gravez, Rogers, and Hunter, which all indicate appellant made the comment regarding Gravez's race to Rogers while Gravez was inside Rogers' office. Ap. Ex. 1.

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

The Commission now turns to appellant's discrimination claims. Specifically, appellant has alleged discrimination based upon race and labor union affiliations. Comm. Ex. B. In an appeal alleging discrimination, appellant bears the burden of establishing 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 discrimination<sup>5</sup> 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 more likely than not 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 that 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.

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<sup>5</sup> 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 noncompliance 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.

In support of her discrimination claims, appellant testified on her own behalf and presented the testimony of Jennifer Hardy-Williams. Appellant believed the reported incident contained coerced false allegations about her conduct due to her race and because she was a very active union member for SEIU. N.T. pp. 85, 119; Ap. Exs. 1, 2. To support her belief, appellant contended she had a private conversation with Gravez, where, according to appellant, Gravez expressed how she was confused as to why Rogers wanted a complaint to be filed against appellant and how she begged Hunter to not report appellant. N.T. pp. 92-94. Appellant also asserted that during her investigative interview on October 12, 2017, where Cole, Terry, and appellant's union representative were present, the six questions asked were confusing and coercive in nature. N.T. pp. 77, 79, 81, 114-115; Ap. Ex. 1.

Hardy-Williams explained how she received a one-day suspension in 2015 due to her inappropriate conduct. N.T. pp. 129-130. Hardy-Williams clarified that her discipline was a one-day suspension and not a Level-One ADLS like appellant. Hardy-Williams did not make a racial comment to a coworker but made a motion to tell a child to ignore Gravez, which resulted in her disciplinary action. N.T. pp. 22, 130, 139. Hardy-Williams acknowledged she was not present in Rogers' office on September 27, 2017 at the time of the incident. Hardy-Williams acknowledged she did not have firsthand knowledge regarding appellant's conduct on September 27, 2017. N.T. p. 147.

Concerning appellant's discrimination claims, appellant has failed to persuade us her Level-One ADLS was the result of discrimination.<sup>6</sup> Appellant argued the reported incident contained false allegations about her conduct due to her race and her active union membership in SEIU. Appellant asserted a private conversation with Gravez took place, where she explains how Gravez was confused as to why Rogers wanted to file a complaint against appellant and how Gravez begged Hunter to not file the report. Additionally, appellant contended the investigative interview itself was coercive against her because of her race and union affiliations due to the nature of the interview questions.

The Commission is not persuaded by appellant's arguments. We find Gravez's and Rogers' testimonies credible that appellant made the comment while she was in a meeting with Rogers on September 27, 2017. After appellant made the comment, Gravez immediately left Rogers' office and described to Hunter what occurred. The appointing authority credibly emphasized once an issue was reported, there is an obligation to conduct an investigation to determine whether something improper occurred. Once she learned of the incident, Hunter was obligated to report appellant's conduct, where Hunter informed Terry about what occurred in Rogers' office. Furthermore, during the investigation, Rogers and Gravez not only denied acting in a retaliatory manner, but also denied being coerced to cooperate with the investigation. The appointing authority presented credible testimonies concerning the legitimate, non-discriminatory reasons for why appellant received a Level-One ADLS, and appellant has failed to present how these reasons

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<sup>6</sup> Appellant's Brief raised arguments regarding the appointing authority's "PA 600" forms and referring to another employee's "racist statement about Asians." Ap. Bf. The Commission will not consider these arguments because there was no evidence presented at the hearing in support of these arguments.

were merely pretextual. These reasons, detailed above, were merit-related deficiencies in appellant's performance, and clearly supported a decision to suspend appellant. *Henderson, supra*.

Based on the foregoing, the Commission finds the appointing authority had good cause to issue appellant a Level-One ADLS due to appellant's offensive, racial comment. The Commission also finds appellant has failed to prove how her Level-One ADLS was the result of discrimination. Accordingly, we enter the following:

#### CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing good cause for suspension under Section 803 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 members,<sup>7</sup> dismisses the appeal of Natasha D. Townes challenging her Level-One Alternative Discipline in Lieu of Suspension from regular Income Maintenance Caseworker employment with the Bucks County Assistance Office, Department of Human Services and sustains the action of the Bucks County Assistance Office,

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<sup>7</sup> Commission Chairman Teresa Osborne, who took office March 22, 2019, did not participate in the discussion of or decision for this appeal.

Department of Human Services in the Level-One Alternative Discipline in Lieu of Suspension of Natasha D. Townes from regular Income Maintenance Caseworker employment.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: September 3, 2019