

COMMONWEALTH OF PENNSYLVANIA

Marie A. Engelbrecht	:	State Civil Service Commission
	:	
v.	:	
	:	
State Correctional Institution at	:	
Benner Township, Department of	:	
Corrections	:	Appeal No. 29886
Peter D. Lyle		Lisa M. Hughes Gabler
Attorney for Appellant		Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Marie A. Engelbrecht challenging her removal from regular Corrections Officer 1 employment with the State Correctional Institution at Benner Township, Department of Corrections. A hearing was held on May 24, 2018, at the State Civil Service Commission's Western Regional Office, in Pittsburgh, Pennsylvania before Commissioner Odelfa Smith Preston.¹

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether there is just cause for the removal.

¹ Commissioner Odelfa Smith Preston resigned from the Commission effective March 21, 2019, before this adjudication was issued.

FINDINGS OF FACT

1. By letter dated March 13, 2018, appellant was notified of her removal from her position as a regular Corrections Officer 1 with the State Correctional Institution at Benner Township, Department of Corrections, effective March 13, 2018. Comm. Ex. A.

2. The appointing authority charged appellant with violations against the appointing authority's "Offender Contact and Relationship Reporting Requirements" Policy 1.1.14, Section 1 "Responsibilities and Training;" Section 2 "Prohibited Activities;" and Code of Ethics Sections B6, B10, B14, and B23. The letter stated:

Specifically, you admitted to creating a GTL account under a fictitious name[,] Veronica Toby. You then corresponded through the account with two different inmates. You shared personal information and your conversations were sexual in nature. You also held private relationships with the inmate's family members. Additionally, you admitted that you received other notes from inmates while at work but did not report this until several weeks after it occurred. You also admitted to giving a third

inmate a list of songs on purple paper. This unprofessional conduct cannot be tolerated[,] and dismissal is warranted.²

Comm. Ex. A.

3. The appeal was properly raised before this Commission and was heard under Section 951(a) of the Civil Service Act, as amended.³
4. Appellant began employment with the appointing authority as a Corrections Officer 1 on July 27, 2015. N.T. p. 56.
5. On July 27, 2015, appellant acknowledged that she received and reviewed the appointing authority's Policy 1.1.14, "Offender Contact and Relationship Reporting Requirements." N.T. p. 50; AA Ex. 8.

² GTL is the acronym for Global Tel-Link, a contract service provider for the Department of Corrections. N.T. p. 23.

³ Appellant's request for a hearing under Section 951(b) was denied.

6. The appointing authority's "Offender Contact and Relationship Reporting Requirements" Policy 1.1.14, Section 1 "Responsibilities and Training" provides:

1. General

a. All employees are expected to maintain professional relationships with offenders and the public.

b. No employee shall engage in any activity nor fraternize with an offender, their friends, relatives, or representatives, on or off duty, not authorized within the performance of the employee's assigned duties or otherwise approved by the Facility Manager/Bureau designee.

* * *

e. All employee-offender contact and relationships, as defined in this policy shall be reported as soon as any employee becomes aware of the situation.

* * *

3. Employee

* * *

b. Each employee shall promptly report incidents of fraternization or prohibited/ unauthorized activity they become involved with or witness, immediately upon discovery. Reporting requirements are outlined in Section 3 of this procedures manual.

Comm. Ex. A; AA Ex. 7.

7. The appointing authority’s “Offender Contact and Relationship Reporting Requirements” Policy

1.1.14, Section 2 “Prohibited Activities” provides:

The following activities are prohibited with the above unless conducted within the performance of the employee’s assigned duties or otherwise approved in writing by the Faculty Manager /Bureau Director/designee:

3. supplying personal information of any type, either directly or indirectly, in verbal or written format to include electronic correspondence;

* * *

8. delivering or sending messages in verbal or written format to include electronic correspondence;

9. establishing or continuing a personal relationship;

10. engaging in personal contact;

* * *

12. engaging in contact through email, social media, electronic devices and/or other internet activities;

* * *

18. engaging in any activity which might compromise the safety and security of employees, offenders and/or the public; and/or

19. engaging in any activity which might compromise the ability of the employee to perform job duties in an efficient, unbiased and professional manner.

AA Ex. 7.

8. The appointing authority's Code of Ethics B6 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. 6.

9. The appointing authority's Code of Ethics B10 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. 6.

10. The appointing authority's Code of Ethics B14 provides:

Employees will promptly report to their supervisor any information which comes to their attention and indicates violation of the 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. 6.

11. The appointing authority's Code of Ethics B23 provides:

During off-duty hours, employees will conduct themselves in such a manner so as to demonstrate the public's trust and confidence inherent in their position as a public servant. Any conduct which brings discredit to their profession, responsibilities, the Department of Corrections, or public service at large shall be subject to immediate discipline.

AA Ex. 6.

12. Appellant reported to the security office and turned in four letters from inmates that she received over the previous weeks.⁴ N.T. p. 17; AA Ex. 1.
13. After appellant relinquished the four letters, the security lieutenant began an investigation and conducted an initial interview with appellant. During the initial interview, appellant did not identify the inmates who sent the letters. However,

⁴ The witness could not recall the date this event occurred. N.T. p. 17.

at the end of her shift, appellant returned to the security lieutenant and identified three inmates who sent her the four letters. N.T. pp. 17-18; AA Ex. 1.

14. The security lieutenant proceeded to interview the three identified inmates individually. One of the three inmates [Inmate A] admitted to writing letters and receiving letters from appellant.⁵ N.T. p. 20.
15. Through the course of the investigation, the security lieutenant discovered that an inmate had letters from appellant in his possession, which contained song lyrics on purple pieces of paper. N.T. pp. 20-21, 40; AA Ex. 2.

16. As part of this investigation, the security lieutenant also interviewed several inmates throughout State Correctional Institution (hereinafter “SCI”) Benner. The security lieutenant discovered that the inmates knew there was an “extreme closeness between [appellant] as well as another inmate.” As a result, the security lieutenant investigated Inmate X’s correspondences.⁶ N.T. pp. 21-22.

⁵ For purposes of this adjudication, the Commission identifies this inmate as Inmate A.

⁶ The appointing authority referred to this inmate as Inmate X to protect his identity. Inmate X was not one of the three inmates whose four letters led to the initiation of this investigation. N.T. p. 22.

17. The security lieutenant reviewed Inmate X's GTL emails, U.S. postal mail, visitor's list, and other related forms of communication. N.T. pp. 22-23.
 18. GTL is the server that provides an email system for inmates to communicate with their family and friends. N.T. p. 23.
 19. The security lieutenant found that within Inmate X's GTL email correspondence, he was communicating with a "Veronica Toby," who had no other types of communications or connections with Inmate X. N.T. pp. 22-23.
 20. The security lieutenant compared the shift schedules of each officer at the institution to the dates and times of the communications between "Veronica Toby" and Inmate X. Each GTL email correspondence from "Veronica Toby" occurred outside of appellant's regularly scheduled working hours. N.T. pp. 24-25.
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21. Through performing a username search in the GTL system, the security lieutenant discovered that another inmate, identified as Inmate Y, also corresponded with the “Veronica Toby” username. N.T. p. 25.
22. The security lieutenant interviewed Inmate Y. During the interview, Inmate Y identified “Veronica Toby” as appellant. N.T. p. 25.
23. Throughout the course of the investigation between May and June 2017, the security lieutenant reviewed the appointing authority’s video surveillance footage and the CCTV system. Video surveillance and the CCTV system recorded appellant in close proximity to and spending large quantities of time with Inmate Y. N.T. pp. 27-28.
24. After reviewing the investigation’s results, the security lieutenant requested the Office of Special Investigation and Intelligence for their assistance because more data was required. N.T. pp. 28, 38, 43.
25. The criminal investigator supervisor, on behalf of the Office of Special Investigation and Intelligence, began investigating appellant’s conduct. She

reviewed a multitude of GTL email correspondence between appellant and Inmates X and Y. N.T. pp. 38-39, 40; AA Exs. 3, 4.

26. As part of the Office of Special Investigation and Intelligence's investigation, the criminal investigator supervisor interviewed appellant. Appellant admitted to providing one inmate a handwritten purple letter containing song lyrics. Appellant further admitted to creating a fictitious GTL account under the username "Veronica Toby" to communicate with Inmates X and Y. N.T. pp. 40, 41; AA Exs. 3, 4.

27. As part of the Office of Special Investigation and Intelligence's investigation, appellant submitted a written statement, where appellant wrote "I was interviewed today on allegations of messaging two inmates on the GTL tablets. I had a lapse of judgment on this matter." Appellant acknowledged sending "about a dozen" emails to one inmate and "a couple" to the other. AA Ex. 5.

28. At the conclusion of the its investigation in late 2017, the Office of Special Investigation and Intelligence submitted the investigation's findings to SCI Benner Township to determine policy and procedural violations. N.T. pp. 42, 43.
29. On December 19, 2017, a "suspension pending hearing" was held regarding appellant's alleged fraternization with two inmates. Comm. Ex. B.
30. On December 21, 2017, appellant received written confirmation of the verbal notification that she would be suspended pending the completion of the investigation into the allegations that she was fraternizing with inmates, effective December 20, 2017. Comm. Ex. B.
31. On January 30, 2018, a Pre-Disciplinary Conference (hereinafter "PDC") was scheduled regarding the allegations against appellant and appellant received written notice of her PDC. Appellant attended the scheduled PDC. N.T. pp. 50-51, 52; AA Ex. 9.
32. During the PDC, appellant admitted to the violations charged against her. N.T. p. 52.

33. Afterwards, the PDC panel found that the charges were substantiated based upon appellant's admissions that she fraternized with inmates and created a fictitious GTL account under a different name. N.T. pp. 41, 52-53.
34. Superintendent Ferguson determined appellant's removal March 13, 2018. N.T. p. 53.

DISCUSSION

The issue in the present appeal is whether there is just cause for appellant's removal. The appellant is challenging her removal from regular Corrections Officer 1 employment with the appointing authority. The appointing authority charges appellant with violations against the appointing authority's "Offender Contact and Relationship Reporting Requirements" Policy 1.1.14, Section 1 "Responsibilities and Training"; Policy 1.1.14, Section 2 "Prohibited Activities"; and Code of Ethic Sections B6, B10, B14, and B23. Comm. Ex. A.

The appointing authority bears the burden of proving just cause for removal of a regular employee and must prove the substance of the charges underlying the removal. *Long v. Commonwealth of Pennsylvania Liquor Control Board*, 112 Pa. Commw. 572, 535 A.2d 1233 (Pa. Commw. 1988). Factors supporting the just cause removal of a civil service employee must be related to the

employee's job performance and touch in some logical manner upon the employee's competency and ability to perform his job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

In support of its action, the appointing authority presented the testimony of Lieutenant Douglas Kauffman, Suzanne Hobart, and Mandy Confer. In response, appellant testified on her own behalf.

Lieutenant Douglas Kauffman is employed by the appointing authority as an intelligence lieutenant at SCI Benner Township and has held the position since January 2018. N.T. pp. 14, 16. Prior to January 2018, Lieutenant Kauffman was a security lieutenant at SCI Benner. N.T. p. 16. As a security lieutenant, Kauffman conducted staff and inmate investigations that occurred within SCI Benner Township. N.T. p. 16. Lieutenant Kauffman did not have any role in determining whether charges against appellant were substantiated. N.T. p. 28. Lieutenant Kauffman had no role in determining appellant's disciplinary action. N.T. p. 28.

Lieutenant Kauffman investigated appellant's conduct. N.T. p. 17. Lieutenant Kauffman testified appellant reported to the security office and turned in four letters from inmates that she received over the previous weeks. N.T. p. 17; AA Ex. 1. After receiving the four letters, Lieutenant Kauffman conducted an initial interview with appellant. N.T. p. 18. Lieutenant Kauffman explained although appellant did not identify the inmates who sent her the letters during her initial interview, appellant returned to Lieutenant Kauffman at the end of her shift and identified three inmates who sent her the four letters. N.T. p. 18.

Once appellant identified the three inmates, Lieutenant Kauffman conducted preliminary interviews with each inmate individually. N.T. p. 19. One of the three inmates (Inmate A) admitted to writing letters and in exchange, receiving letters from appellant. N.T. p. 20. Lieutenant Kauffman testified one of the inmates had letters within his property. N.T. p. 20; AA Ex. 2. The inmate's letters were confiscated from his property, which Lieutenant Kauffman described as "purple pieces of paper." N.T. pp. 20-21; AA Ex. 2. After preliminarily interviewing each inmate, Lieutenant Kauffman suspected that "[t]here was a lot of [allusion] that there was something more going on. And there was extreme concern for the safety of [appellant] inside the institution because inmates felt this was okay." N.T. p. 21. As a result, Lieutenant Kauffman interviewed several inmates throughout the institution to investigate if there were more interactions between appellant and the inmates. N.T. p. 21. According to Lieutenant Kauffman, "a lot of the inmates that I spoke to had reported an extreme closeness between [appellant] as well as another inmate. Because of that, it prompted me to look into this other inmate [Inmate X] that was not involved in the letter exchange." N.T. pp. 21-22.

Lieutenant Kauffman testified he investigated Inmate X. N.T. p. 22. Lieutenant Kauffman investigated Inmate X's telephone calls, GTL emails, U.S. postal mail, visitor's list, and other related forms of communication. N.T. pp. 22-23. GTL is the contracted service that provides an email system for inmates to communicate with their family and friends. N.T. p. 23. Lieutenant Kauffman explained "[w]hile looking at the GTL emails, there was a name listed as Veronica Toby. And the name struck me as odd because on all of the other communications that he had, there was no Veronica Toby." N.T. pp. 22-23. During his investigation, Lieutenant Kauffman compared the shift schedules of each officer at the institution to the dates and times of the communications between "Veronica Toby" and

Inmate X. N.T. p. 24. Lieutenant Kaufman testified “all of these emails that were sent by Veronica Toby were outside the regular working hours that [appellant] was present inside the institution.” N.T. pp. 24-25.

The GTL system also allowed Lieutenant Kaufman to search email correspondence by a username. N.T. p. 25. When he performed a search for the username “Veronica Toby,” Lieutenant Kaufmann discovered that Inmate Y was communicating with the same username. N.T. p. 25. Lieutenant Kauffman interviewed Inmate Y regarding the GTL email correspondence. N.T. p. 25. During the interview, Inmate Y identified “Veronica Toby” as appellant. N.T. p. 25.

During the investigation between May and June 2017, Lieutenant Kauffman reviewed the appointing authority’s video surveillance and the CCTV system. N.T. pp. 27, 33. The video surveillance and the CCTV system captured appellant in close proximity with Inmate Y when she worked on Inmate Y’s housing unit. N.T. p. 27. Lieutenant Kauffman explained appellant would be observed leaving her assigned post to visit and communicate with Inmate Y. N.T. pp. 27-28. After reviewing the investigation’s findings, Lieutenant Kauffman determined that more data was required and requested the Office of Special Investigation and Intelligence for their assistance. N.T. p. 28. Lieutenant Kauffman emphasized the consequences of appellant’s conduct as follows:

Any form of fraternization creates a threat to the security of the institution. There’s a threat to the safety of that officer. There’s a threat to the safety and well-being of the inmates around. And additionally, there’s a threat to the

safety of the other staff members working inside that institution.

N.T. pp. 28-29. Suzanne Hobart is employed by the appointing authority as a staff assistant for the regional deputy secretaries and has held the position for two months. N.T. p. 26. Prior to being a staff assistant, Hobart was a criminal investigator supervisor with the Office of Special Investigations and Intelligence. N.T. p. 37. As a criminal investigator supervisor, Hobart oversaw the criminal investigations within the Office of Special Investigations and Intelligence. N.T. p. 37. Hobart did not have any role in determining whether charges against appellant were substantiated. N.T. p. 42. Hobart did not have a role in determining appellant's disciplinary action. N.T. p. 42.

Hobart testified in between March and June 2017, the Office of Special Investigations and Intelligence received a request to assist with the investigation into appellant's conduct. N.T. pp. 38, 43. As part of the investigation, Hobart reviewed GTL email communications. N.T. pp. 38-39; AA Exs. 3, 4. Hobart explained the communications were from two separate inmates. N.T. p. 40; AA Exs. 3, 4. The first GTL email correspondence set illustrated that appellant and one inmate exchanged messages from September 2016 to February 2017.⁷ AA Ex. 3. The second GTL email correspondence set illustrated that appellant and another inmate exchanged messages during March 2017.⁸ AA Ex. 4.

⁷ We note that appellant's email correspondence to an inmate from September 2016 to February 2017 include appellant's personal information and include messages that are sexual in nature. AA Ex. 3.

⁸ We note that appellant's email correspondence to an inmate throughout March 2017 include appellant's personal information and include messages that are sexual in nature. AA Ex. 4.

As part of the investigation, Hobart interviewed appellant. N.T. p. 40. According to Hobart, appellant admitted to providing one inmate a handwritten purple letter containing song lyrics. N.T. p. 40; AA Ex. 2. Hobart testified “[appellant] admitted to creating a fictitious GTL account to communicate with these two inmates.” N.T. p. 41; AA Exs. 3, 4. As part of the investigation, appellant submitted a written statement. N.T. p. 41; AA Ex. 5. Appellant’s wrote, “I was interviewed today on allegations of messaging two inmates on the GTL tablets. I had a lapse of judgment on this matter.” AA Ex. 5. At the conclusion of the investigation in late 2017, the Office of Special Investigations and Intelligence submitted its findings to SCI Benner Township to determine policy and procedure violations. N.T. pp. 42, 43.

Mandy Confer is employed by the appointing authority as a Human Resource Analyst 3 and has held the position for five years. N.T. pp. 46-47. As a Human Resource Analyst 3, Confer is responsible for the appointing authority’s disciplinary process and labor relations for SCI Benner Township and SCI Rockview. N.T. p. 47. Confer explained the appointing authority’s disciplinary process. First, an allegation is investigated. N.T. p. 50. Second, a report is written and sent to the superintendent. N.T. p. 50. Third, a PDC is requested and at the PDC, the appointing authority provides an opportunity for the employee to respond to the charges brought against her. N.T. pp. 50, 52.

On January 30, 2018, a PDC was scheduled regarding the allegations against appellant N.T. pp. 50-51; AA Ex. 9. Confer was a member on the panel along with Major Kleinfelder and Captain Hoffman. N.T. p. 52. According to Confer, appellant admitted to the violations charged against her. N.T. p. 52.

Confer testified the PDC panel found that the appointing authority's charges were substantiated based upon appellant's admittance that she fraternized with inmates and created a GTL account. N.T. pp. 52-53. Afterwards, the superintendent determined that removal was appropriate. N.T. p. 53. Confer testified appellant was terminated from her position as a Corrections Officer 1 because she violated the appointing authority's Code of Ethics and Policy 1.1.14 policy regarding the offender contact and relationship reporting requirements.⁹ Comm Ex. A; N.T. pp. 47-48; AA Exs. 6, 7.

In response to the appointing authority's presentation, appellant testified on her own behalf. N.T. p. 57. Appellant was previously employed with the appointing authority as a Corrections Officer 1 from July 27, 2015 to March 13, 2018. Comm. Ex. A; N.T. p. 56. On July 27, 2015, appellant received the appointing authority's Policy 1.1.14. N.T. p. 50; AA Ex. 8. Appellant asserted that since April 2017, she has not had any written communications with Inmates X or Y from SCI Benner Township. N.T. p. 57. Appellant stated she started to gain a conscience and realized that she needs mental help. N.T. p. 57. Appellant testified to communicating "face to face" with Inmates X and Y between April 2017 to March 13, 2018. N.T. p. 58. Appellant explained she was first disciplined for her conduct on December 19, 2017 with a suspension pending the completion of the investigation of her conduct. N.T. p. 58. Appellant confirmed that she was removed from her employment with the appointing authority. N.T. pp. 58-59.

⁹ The appointing authority's Code of Ethics and Policy 1.1.14 are described in further detail in Findings of Fact 29, 30, 31, 32, 33, 34.

Having carefully reviewed the record, the Commission finds that the appointing authority met its burden to show just cause to remove appellant. In support of our conclusion, we find credible the testimonies of Lieutenant Douglas Kauffman, Suzanne Hobart, and Mandy Confer, including especially the numerous references to admissions to the truth of the charges against her made to them by appellant while she was under investigation.¹⁰

The appointing authority established how any form of fraternization creates a threat to the correctional institution's security, the officer's safety, the inmates' safety, and other staff members' safety. We find that the appointing authority successfully met its burden to show just cause to remove appellant based on appellant's admitted fraternization and failure to report said fraternization. Appellant's demonstrated inability to abide by the appointing authority's Policy 1.1.14 Sections 1 and 2 regarding fraternization also support the additional charges of violations of four of the appointing authority's Code of Ethics provisions. Appellant's fraternization and failure to report said fraternization negatively reflect upon her job performance and her competency and ability to perform her job duties. *Woods, supra*. Accordingly, we enter the following:

¹⁰ 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).

CONCLUSION OF LAW

The appointing authority has presented evidence establishing just cause for removal under Section 803 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its members,¹¹ dismisses the appeal of Marie A. Engelbrecht challenging her removal from regular Corrections Officer 1 employment with the State Correctional Institution at Benner Township, Department of Corrections and sustains the action of the State Correctional Institution at Benner Township, Department of Corrections in the removal of Marie A. Engelbrecht from regular Corrections Officer 1 employment effective March 13, 2018.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Officially Mailed: July 24, 2019

¹¹ Commission Chairman Teresa Osborne, who took office March 22, 2019, did not participate in the discussion of or decision for this appeal.