

COMMONWEALTH OF PENNSYLVANIA

Lora A. Stumpf-Marzean : State Civil Service Commission
v. :
Department of Human Services : Appeal No. 30042

Lora A. Stumpf-Marzean : Jonathan L. Curtis
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Lora A. Stumpf-Marzean challenging her Level-Two Alternative Discipline in Lieu of Suspension from regular Income Maintenance Administrator 1 employment with the Department of Human Services. A hearing was held on December 14, 2018, at the 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 Brief submitted by appellant and the closing statement by the appointing authority.¹ The issue before the Commission is whether the appointing authority has established good cause for a suspension.²

¹ Appellant elected to close the record through filing a Brief. N.T. p. 157. The appointing authority elected to close the record through providing a closing statement. N.T. p. 157.

² Under the Alternative Discipline in Lieu of Suspension there was no effect on appellant's pay, seniority, or other benefits. The Level Two Alternative Discipline in Lieu of Suspension carries the same weight as if appellant served a three-day suspension. Comm. Ex. A. Consequently, the present appeal will be considered by the Commission as an appeal of a three-day suspension.

FINDINGS OF FACT

1. By letter dated September 12, 2018, appellant was advised that she received a Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from regular status Income Maintenance Administrator 1 employment with the Department of Human Services. Comm. Ex. A.

2. The September 12, 2018 ADLS letter provided the following reasons supporting the discipline:

The reason for this suspension is for:

1) Failure to Follow General Instructions or Procedures as defined by DHS HR Policy 7174; Specifically, on May 14, 2018, you obtained twenty-five (25) vouchers for Lancaster Barnstormer tickets (total retail value of \$312.50). Your actions were not consistent with Executive Order 2015-01, Executive Branch Employee Gift Ban. In addition, you obtained the vouchers despite having two separate conversations with your direct supervisor in which you were advised not to do so.³

2) Unreported Absence as defined by DHS HR Policy 7173; Specifically, on June 27, 2018, you had Annual leave

³ The appointing authority declared in their closing statement that whether appellant violated the Gift Ban is a “red herring.” N.T. p. 163. Based upon the appointing authority’s classification of the Gift Ban element to the “Failure to Follow General Instructions or Procedures” charge as a “red herring,” the appointing authority has waived the Executive Order 2015-01, Executive Branch Employee Gift Ban element from the charge. Consequently, the only violation asserted by the appointing authority to support the “Failure to Follow General Instructions or Procedures” charge is whether appellant failed to abide by her direct supervisor’s instruction. Comm. Ex. A.

entered from 3:00 p.m. to 3:45 p.m. but left the Lancaster Customer Service Center at 2:47 p.m.⁴

Comm. Ex. A (emphasis in original).

3. The appeal was properly raised before this Commission and was heard under Section 951(a) of the Civil Service Act, as amended.
4. Appellant worked as an Income Maintenance Administrator 1 for the appointing authority and has worked for the appointing authority for a total of fifteen years. N.T. pp. 90-91.
5. Appellant held responsibilities as a manager while being Income Maintenance Administrator 1 for the appointing authority. N.T. p. 137.
6. On April 27, 2018, appellant received an email from the Lancaster Customer Service Center's building receptionist advertising Lancaster Barnstormer ticket vouchers (hereinafter "vouchers"). Ap. Ex. 2.

⁴ The appointing authority withdrew the "Unreported Absence" charge. Comm. Ex. A; N.T. p. 12.

7. After receiving the building receptionist's email, appellant approached her direct supervisor, Executive Director Ryan Robertson, and asked whether she could accept the vouchers. N.T. p. 50.
8. In response, Executive Director Robertson told appellant "no" and explicitly instructed appellant to not accept the vouchers. N.T. p. 50; Ap. Exs. 8, 9.
9. On May 14, 2018, appellant received a second email from the Lancaster Customer Service Center's building receptionist advertising the vouchers. Ap. Ex. 3.
10. On May 14, 2018, Appellant accepted the vouchers from the building receptionist. N.T. pp. 121-122, 150.
11. After accepting the vouchers, appellant approached Executive Director Robertson again asking if he reconsidered his instruction on whether [appellant] could accept the vouchers. N.T. p. 50.
12. Executive Director Robertson said "no" for the second time and reiterated his instruction for appellant to not accept the vouchers. N.T. p. 50; Ap. Exs. 8, 9.

13. Upon receiving Executive Director Robertson's instruction for the second time, appellant left the vouchers on her desk from May 14, 2018 to July 6, 2018. N.T. p. 133.
14. On July 6, 2018, Field Human Resources (hereinafter "HR") Officer 1 Staci Bender was permitted to work within appellant's office to preserve her work's privacy when appellant was out of the office. N.T. pp. 19-20, 49.
15. While working inside appellant's office, Field HR Officer Bender discovered the vouchers in an unsealed envelope laying on appellant's desk. N.T. p. 20; AA Ex. 1.
16. After discovering the vouchers, Field HR Officer Bender immediately reported her findings to Executive Director Robertson. N.T. p. 23.
17. Shortly thereafter, Field HR Officer Bender conducted an initial investigation into appellant's possession of the vouchers. N.T. p. 23.

18. After she completed the initial investigation, Field HR Officer Bender ceased involvement with appellant's disciplinary determination until Executive Director Robertson contacted her regarding appellant's discipline. N.T. p. 23.
19. Appellant participated in her Pre-Disciplinary Conference (hereinafter "PDC") on August 15, 2018. Comm. Ex. A; N.T. p. 62.
20. Area Seven Manager Mitch Lengel reviewed the investigation and the PDC reports. It was Lengel who recommended appellant's charge of failing to follow instructions. N.T. pp. 80, 81, 82.
21. After being informed of Lengel's recommended charge, Field HR Officer Bender examined whether the charge was appropriate by using DHS HR Policy 7174. N.T. pp. 23-24; AA Ex. 2.
22. According to the DHS HR Policy 7174, the elements required for the charge of failure to follow general instructions or procedures are: Employee was aware of, or could reasonably have expected to have been aware of, the general instruction(s) or procedure(s) in question; and Employee failed to

properly comply with or follow the general instruction or procedure (either by act or omission).” AA Ex. 2.

23. An employee’s previous disciplinary actions may be considered for a current charge. N.T. p. 28.
24. Appellant’s “[p]rior related discipline that was considered in establishing this level of penalty includes a Written Reprimand for Malfeasance of Duty issued on February 13, 2017, and a Level-Two ADLS with Final Warning for Inappropriate Conduct issued on May 3, 2016.” Comm. Ex. A; N.T. pp. 23-24.
25. Field HR Officer Bender concluded that according to the DHS HR Policy 7174, a Level-Two ADLS was appropriate because it was appellant’s first offense after her probationary period as a regular Income Maintenance Administrator 1. N.T. pp. 25-26; AA Ex. 2.

DISCUSSION

The issue before the Commission is whether the appointing authority established good cause to impose the challenged Level-Two ADLS. Appellant challenges her Level-Two ADLS from regular Income Maintenance Administrator 1 employment with the appointing authority. The appointing authority charges appellant with her failure to follow general instructions or procedures as defined by DHS HR policy 7174. Comm. Ex. A; *See* Finding of Fact 2.

Under Section 803 of the Act, a regular status employee may only be suspended for good cause. *Hargrove v. Pennsylvania State Civil Service Commission (Department of Corrections)*, 851 A.2d 257, 260 (Pa. Commw. 2004); 71 P.S. § 741.803; 4 Pa. Code §§ 101.21, 105.15. 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 addition, the criteria must be job-related and in some rational and logical manner touch upon competence and ability. *Shade v. Pennsylvania State Civil Service Commission (Pennsylvania Department of Transportation)*, 749 A.2d 1054, 1057 (Pa. Commw. 2000).

In support of its charges, the appointing authority presented the testimony of Staci Bender, Ryan Robertson, and Mitch Lengel. In response, appellant testified on her own behalf and presented the testimony of Ryan Robertson.

Staci Bender is employed by the appointing authority as a Field HR Officer 1 and has held the position for six years. N.T. pp. 15-16. As a Field HR Officer 1, Bender conducts investigations into employee misconduct, convenes Pre-Disciplinary Conferences (hereinafter “PDC”), and issues disciplinary action. N.T. p. 17. Although Bender works at the Berks County Assistance Office, she occasionally visits the Lancaster Customer Service Center but does not have an office within the building. N.T. pp. 17-18. When she visits the Lancaster Customer Service Center, Bender is permitted to work from an Executive Director’s or Manager’s office to preserve her privacy. N.T. pp. 18-19. It is normal operational procedure for a HR Officer to use another manager’s office. N.T. p. 49.

On July 6, 2018, Bender conducted business inside appellant’s office at the Lancaster Customer Service Center when appellant was out of the office for the day. N.T. pp. 19-20, 49. While inside appellant’s office, Bender noticed an unsealed envelope full of twenty-five vouchers. N.T. p. 20; AA Ex. 1. Bender immediately reported her discovery to Executive Director Ryan Robertson. N.T. p. 22. Bender conducted an initial investigation into appellant’s possession of the vouchers. N.T. p. 23. After the completion of appellant’s initial investigation, Bender ceased involvement with appellant’s discipline until Robertson contacted her regarding appellant’s discipline. N.T. p. 23.

Bender participated in appellant’s previous disciplinary actions with the appointing authority, as well. N.T. p. 23. On May 3, 2016, appellant received a Level-Two ADLS Suspension with final warning for inappropriate conduct during her probationary period. N.T. p. 23. On February 13, 2017, appellant received a written reprimand for malfeasance of her duties. N.T. pp. 23-24.

Ryan Robertson is employed by the appointing authority as an Executive Director and has held the position for almost eleven years. N.T. pp. 46, 48. Robertson works within the Lancaster Customer Service Center. N.T. p. 48. As Executive Director, Robertson ensures efficient operations at the Lancaster Customer Service Center. N.T. p. 48. As Executive Director, Robertson supervises appellant. N.T. p. 49.

On April 27, 2018, the Lancaster Customer Service Center's building receptionist sent an email advertising the vouchers to multiple employees of the appointing authority, including appellant. Ap. Ex. 2. On April 27, 2018, appellant approached Robertson and asked whether she could accept the vouchers. N.T. pp. 49-50. Robertson testified that he told appellant that "in my professional opinion, that they would be in violation of the gift ban and that we should not. And I was very explicit that we should not accept these vouchers." N.T. p. 50.

On May 14, 2018, the Lancaster Customer Service Center's building receptionist sent a second email advertising the vouchers. Ap. Ex 3. On May 14, 2018, appellant approached Robertson again asking if he reconsidered his position on whether she could accept the vouchers since it was "last call." N.T. p. 50. Robertson explained appellant told him she wanted to accept the vouchers to give them to the active staff committee in order to boost the office's morale. N.T. p. 61. Appellant also asserted her prior director did not agree with Robertson's determination that accepting the vouchers would violate the gift ban. N.T. pp. 56-57. Robertson told appellant he did not reconsider his position because in his professional opinion, accepting the vouchers violated the gift ban. N.T. p. 50. When Bender notified him about appellant's possession of the vouchers, Robertson found the vouchers on appellant's desk. N.T. p. 60.

During the investigation process, Robertson discovered that appellant accepted the vouchers from the building receptionist on May 14, 2018 before asking him to reconsider the instructions given to her. N.T. pp. 51, 60. Robertson testified that as a manager, appellant has a duty to understand any and all items, including the gift ban, would affect any employee in the appointing authority's performance. N.T. p. 67. Robertson explained during appellant's PDC, appellant cited to the vouchers being found in plain view as a mitigating factor for her discipline. N.T. p. 62. Although he took the vouchers being found in plain view into consideration, Robertson did not give any weight to mitigate his disciplinary determination. N.T. p. 62. Robertson explained that appellant was charged with failure to follow instructions. N.T. p. 73. Robertson gave appellant explicit instructions to not accept the vouchers. N.T. p. 73. Robertson determined appellant accepted the vouchers in derogation of his instructions. N.T. p. 74.

Mitch Lengel is employed by the appointing authority as an Area Seven Manager and has held the position for almost fifteen years. N.T. pp. 77-78. As an Area Seven Manager, Lengel oversees that operation and meeting goals and operations of a customer service center. N.T. p. 79. In the course of performing his duties, Lengel became aware of appellant's conduct when the investigation began. N.T. p. 80. From the investigation, Lengel learned appellant was given instructions by her direct supervisor to not accept the vouchers and the vouchers were subsequently found in appellant's possession. N.T. p. 80. Lengel reviewed the PDC report. N.T. p. 82. Lengel stated that although appellant's charge was failure to follow instructions, during the PDC, appellant argued that she did not feel accepting the vouchers violated the gift ban. N.T. pp. 82-83, 84-85. Lengel explained that appellant's reasons for denying that she violated the gift ban were not considered

mitigating factors toward appellant's discipline because she was not charged with violating the gift ban. She was disciplined for accepting the vouchers after being told by her direct supervisor to not accept the vouchers. N.T. p. 83.

Lengel recommended appellant's charge of failing to follow instructions because appellant received a direct instruction from her immediate supervisor and did not follow what her supervisor asked her to do. N.T. pp. 80-81. Lengel explained that appellant should have followed this instruction because obeying the instruction did not place appellant in any danger, and the instruction was reasonable since it did not ask appellant to break any policy. N.T. p. 81

Bender reviewed whether appellant's discipline was appropriate by using DHS HR Policy 7174 after Robertson contacted her regarding appellant's discipline. N.T. pp. 23-24; AA Ex. 2. Bender explained that the DHS HR Policy 7174 illustrates a discipline table for a failure to follow general instructions or procedures. N.T. p. 25; AA Ex. 2. According to the DHS HR Policy 7174, the elements required for the charge of failure to follow general instructions or procedures are as follows: "Employee was aware of or could reasonably have expected to have been aware of, the general instruction(s) or procedure(s) in question. Employee failed to properly comply with or follow the general instruction or procedure (either by act or omission)." AA Ex. 2. An employee's previous disciplinary actions may be considered for a current charge. N.T. p. 28. Appellant's previous disciplinary actions were considered prior to imposing the ADLS. Comm. Ex. A. Bender explained that according to the DHS HR Policy 7174, appellant's Level-Two ADLS was appropriate because it was appellant's first offense after her probationary period as a regular status Income Maintenance Administrator 1. N.T. pp. 25-26; AA Ex. 2. Bender testified that management employees are held to a

higher level of responsibility because they are expected to lead others by being a positive role model. N.T. p. 40. Bender emphasized “how do we expect our subordinate employees to follow instructions and follow rules if our management staff cannot do that.” N.T. p. 40.

In response to the appointing authority’s presentation, appellant testified on her own behalf. Appellant is employed by the appointing authority as an Income Maintenance Administrator 1 and has worked for the appointing authority for a total of fifteen years. N.T. pp. 90, 91. Appellant admitted that she held responsibilities as a manager. N.T. p. 137. Appellant stated that during the investigation, she created two versions of her witness statement relating to her conduct because she was instructed to amend her first witness statement. N.T. pp. 115-116, 118. According to appellant’s first witness statement, appellant acknowledged that on April 27, 2018, when she asked her supervisor if she could accept the vouchers, “Ryan initially said no.” N.T. p. 119; Ap. Ex. 8. Appellant also admitted that she nevertheless acquired the vouchers “before they were gone.” N.T. p. 119; Ap. Ex. 8. Appellant acknowledged that on May 14, 2018, “[d]uring our last conversation, Ryan was a firm no.” N.T. p. 119; Ap. Ex. 8. Appellant acknowledged that on May 14, 2018, she understood completely that Executive Director Robertson told her to not accept the vouchers. N.T. p. 131. Appellant asserts that she was instructed to write “Ryan initially said no due to the gift ban,” onto her second witness statement. N.T. p. 120; Ap. Ex. 9. Appellant admitted “my judgment erred in getting those tickets before revisiting it with Ryan.”⁵ N.T. p. 121. Appellant admitted to signing both witness statements. N.T. p. 148.

⁵ Appellant’s reference to tickets are the vouchers. AA Ex. 1.

Appellant admitted to accepting the vouchers on May 14, 2018 before speaking with Executive Director Robertson for the second time. N.T. pp. 121-122, 150. Appellant asserted that she never intended to defy Executive Director Robertson by accepting the vouchers because she erred in her judgment by possessing the vouchers. N.T. p. 122. Appellant acknowledged that the vouchers laid on her desk from May 14, 2018 to July 6, 2018. N.T. p. 133. Appellant admitted she did not tell Executive Director Robertson she had accepted the vouchers. N.T. p. 150.⁶

Having carefully reviewed the record, the Commission finds that the appointing authority met its burden to show good cause to provide appellant with an ADLS. In support of our conclusion, we find credible the testimonies of Bender, Robertson, and Lengel⁷ to support the charge of a failure to follow general instructions or procedures as defined by DHS HR Policy 7174. Appellant failed to follow Executive Director Robertson's clear and reasonable instruction to not accept the vouchers, which he gave her both on April 27 and on May 14, 2018. Appellant's failure to follow her supervisor's instruction to not accept the vouchers constitutes as a violation of her job duties, which negatively reflects upon her competency and ability to execute her job duties properly. *White, supra*. Accordingly, we enter the following:

⁶ Appellant also advanced several arguments in defense of her conduct, including: 1. accepting the vouchers did not actually violate the gift ban; 2. she did not intend to personally benefit from the vouchers; 3. accepting the vouchers did not cause harm because they were never used; and 4. her years of service should have been given more consideration. The Commission does not find any of these arguments to be persuasive as reasons to modify appellant's ADLS.

⁷ 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 good cause for suspension under Section 803 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its members⁸, dismisses the appeal of Lora A. Stumpf-Marzean challenging her Level-Two Alternative Discipline in Lieu of Suspension from regular Income Maintenance Administrator 1 employment with the Department of Human Services and sustains the action of the Department of Human Services in the Level-Two Alternative Discipline in Lieu of Suspension of Lora A. Stumpf-Marzean from regular Income Maintenance Administrator 1 employment on September 12, 2018.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

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

⁸ Commission Chairman Teresa Osborne, who took office March 22, 2019, did not participate in the discussion of or decision for this appeal.