

COMMONWEALTH OF PENNSYLVANIA

John R. Lake : State Civil Service Commission
 :
 v. :
 :
 Department of Agriculture :
 :
 : Appeal No. 30061

John R. Lake Marija Kuren
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by John R. Lake challenging his five-day suspension from regular Pesticide Specialist employment with the Department of Agriculture. A hearing was held on January 18, 2019, 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. The issue before the Commission is whether the appointing authority has established good cause for the five-day suspension.

FINDINGS OF FACT

1. By letter dated October 4, 2018, appellant was advised that he would be suspended without pay for a five-day period from regular civil service status

Pesticide Specialist employment with the appointing authority, effective at the start of his shift on October 15, 2018. The letter provided the following reasons supporting the discipline:

This action is being taken as a result of your **Insubordination / Failure to Follow Instruction and Inappropriate / Unprofessional Conduct**

Specifically, August 22, 2018 you did not attend a mandatory meeting scheduled for all Department employees. Additionally, when questioned by your Bureau Director about missing the meeting, you responded you had things to do that were a better use of your time.

On September 6, 2018, you engaged in an email dialogue with the Secretary of the Department of Conservation and Natural Resources and the Chief Information Officer for the Conservation and Environmental Information Technology Delivery Center which was inappropriate and unprofessional as well as a direct violation of the instruction you were given in a counseling session on August 15, 2018.

Note that the first infraction standing alone would warrant this level of discipline.

Comm. Ex. A (emphasis in original).

2. The appeal was properly raised before this Commission and was heard under Section 951(a) of the Civil Service Act, as amended.
3. Appellant had prior discipline with the appointing authority. N.T. pp. 72-73.
4. On July 3, 2018, Division Chief Leonard Brylewski sent an invitation to his staff, including appellant, informing them that there was a mandatory meeting being held on August 22, 2018. N.T. p. 20; AA Ex. 1.
5. The July 3, 2018 invitation for the mandatory meeting stated, “[d]uring the staff meeting yesterday (7/2/2018) we were informed that a mandatory meeting will be held for every employee of Agriculture on August 22, 2018. The meeting will be held in the farm show complex. Please mark your calendars for this event.” AA Ex. 1.
6. Appellant was a required attendee for the mandatory meeting because he was part of the Division of Health and Safety and a full-time employee. N.T. pp. 20-21.

7. On August 15, 2018, appellant received a counseling session regarding email etiquette where appellant was instructed to follow his chain of command. N.T. pp. 46, 51.
8. Appellant did not attend the mandatory meeting on August 22, 2018. N.T. pp. 21, 45, 135-136.
9. After the mandatory meeting concluded, Bureau Director Ruth Welliver went to appellant's office and asked if he went to the meeting. N.T. pp. 45-46.
10. In response to Bureau Director Welliver's question, appellant stated he did not go because he had better things to do. N.T. p. 46.
11. On September 6, 2018, appellant sent email correspondence regarding a broken website link to Sean Crager, who is the Chief Information Officer for the Conservation and Environmental Information Technology Delivery Center, and to Cindy Dunn, who is the Secretary of the Department of Conservation and Natural Resources. N.T. pp. 42, 48-49, 50, 138; AA Exs. 3A, 3B and 3C.

12. Secretary Dunn is not within appellant's chain of command. N.T. pp. 43, 138.
13. After appellant's September 6, 2018 email correspondence, Employee Relations Analyst Melvin McMinn was assigned to investigate appellant's conduct. N.T. p. 69.
14. McMinn conducted an investigation regarding whether appellant attended the mandatory meeting on August 22, 2018, and whether appellant sent inappropriate email correspondence on September 6, 2018. N.T. pp. 69, 70.
15. Division Chief Brylewski issued appellant a Written Notice of Pre-Disciplinary Conference (hereinafter "PDC") to be held on September 20, 2018. N.T. pp. 22-23; AA Ex. 2.
16. During appellant's PDC, McMinn asked appellant why he did not attend the mandatory meeting. Appellant did not provide an excuse for his absence from the mandatory meeting. N.T. p. 72.

17. After the PDC concluded, Welliver personally delivered appellant's five-day suspension letter to appellant on October 4, 2018. Comm. Ex. A; N.T. p. 54.
18. Appellant is currently retired from his regular Pesticide Specialist employment with the appointing authority. Comm. Ex. A; N.T. p. 115.

DISCUSSION

The issue in the present appeal is whether the appointing authority established good cause to suspend appellant under Section 803 of the Civil Service Act, as amended. The appellant challenges his five-day suspension without pay from regular Pesticide Specialist employment with the appointing authority. The appointing authority charges appellant with insubordination, failure to follow instruction, and inappropriate, unprofessional conduct. Comm. Ex. A.

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 action, the appointing authority presented the testimony of Leonard Brylewski, Ruth Welliver, and Melvin McMinn. In response, appellant testified on his own behalf and presented the testimonies of Leonard Brylewski and Ruth Welliver.

Leonard Brylewski is employed by the appointing authority as a Division Chief for Health and Safety within the Bureau of Plant Industry and has held the position for over one year. N.T. pp. 14-15. On July 3, 2018, Brylewski sent an invitation to his staff, including appellant, informing them that there was a mandatory meeting being held on August 22, 2018. N.T. p. 20; AA Ex. 1. Specifically, the invitation for the mandatory meeting stated, “[d]uring the staff meeting yesterday (7/2/2018) we were informed that a mandatory meeting will be held for every employee of Agriculture on August 22, 2018. The meeting will be held in the farm show complex. Please mark your calendars for this event.” AA Ex. 1. The mandatory meeting on August 22, 2018 required appellant's attendance because he was part of the Division of Health and Safety and a full-time employee. N.T. pp. 20-21; AA Ex. 1. Brylewski testified appellant did not attend the mandatory meeting on August 22, 2018. N.T. p. 21.

Ruth Welliver is employed by the appointing authority as the Bureau Director for the Bureau of Plant Industry and has been employed by the Commonwealth since 1990. N.T. p. 39. Welliver explained that she is familiar with appellant's conduct and discipline because she is the supervisor of appellant's supervisor. N.T. p. 40. Welliver testified appellant did not attend the mandatory meeting on August 22, 2018. N.T. p. 45. After she attended the mandatory meeting, Welliver went to appellant's office and asked if he went to the meeting. N.T. pp. 45-46. According to Welliver, appellant responded he did not go because "he decided he had better things to do." N.T. p. 46.

Welliver testified appellant previously received a counseling session regarding email etiquette on August 15, 2018. N.T. p. 46. During appellant's counseling session, appellant was instructed to follow his chain of command. N.T. p. 51. On September 6, 2018, appellant sent email correspondence regarding a broken website link to Crager, and to Dunn. N.T. pp. 42, 48-49, 50; AA Exs. 3A, 3B and 3C. Welliver confirmed that Dunn is not within appellant's chain of command. N.T. p. 43.

McMinn is employed as an Employee Relations Analyst by the Conservation and Environment HR Delivery Center that provides HR services to the appointing authority. N.T. pp. 67-68. McMinn has worked for Commonwealth in human resources for at least eleven years. N.T. pp. 68, 93. McMinn investigated whether appellant attended the mandatory meeting on August 22, 2018 and whether appellant sent inappropriate email correspondence on September 6, 2018. N.T. p. 70.

After the investigation, Brylewski issued appellant a Written Notice of Pre-Disciplinary Conference (hereinafter “PDC”) to be held on September 20, 2018. N.T. pp. 22-23; AA Ex. 2. Brylewski explained that appellant received a PDC notice because he was not present at the mandatory meeting on August 22, 2018 and due to inappropriate, unprofessional email correspondence. N.T. p. 23. McMinn attended and participated in appellant’s PDC. N.T. p. 71.

During appellant’s PDC, McMinn asked appellant why he did not attend the mandatory meeting. N.T. p. 72. During the PDC, appellant “referenced that he had been working on the spotted lanternfly issue as well as a special registration issue.” N.T. p. 72. During the PDC, appellant did not provide an excuse for his absence from the mandatory meeting. N.T. p. 72.

McMinn described appellant’s prior discipline by the appointing authority. McMinn stated appellant’s most recent discipline with the appointing authority was a five-day suspension in January 2014, for failing to follow a management directive. N.T. p. 73. McMinn indicated appellant had previous discipline in February 2005, when he received a five-day suspension with final warning for insubordinate acts toward the Secretary of Agriculture. N.T. p. 73. After the PDC, Welliver personally delivered appellant’s five-day suspension letter to appellant on October 4, 2018. Comm. Ex. A; N.T. p. 54.

In response to the appointing authority’s case in chief, appellant presented the testimony of McMinn and Welliver. N.T. pp. 89, 97. McMinn explained he has participated in many PDCs throughout his time with human resources. N.T. p. 94. Welliver indicated that the mandatory meeting on August 22, 2018 was required for all staff members within the appointing authority. N.T. p. 98.

Welliver stated the counseling session on August 15, 2018, regarding email etiquette, resulted from appellant's previous email exchanges with other appointing authority staff members. N.T. pp. 101-102.

In response to the appointing authority's case in chief, appellant testified also on his own behalf. N.T. p. 111. Appellant was employed by the appointing authority as a Pesticide Specialist. Comm. Ex. A. Appellant is currently retired from his position with the appointing authority. N.T. p. 115. Appellant asserted that his intention in sending the September 6, 2018 email was to provide the broken website link to the appointing authority's invasive species employee in order to schedule a meeting with the Department of Conservation and Natural Resources. N.T. pp. 118-119; Ap. Ex. 1.

Appellant asserted he did not have malicious intent when he sent the September 6, 2018 email correspondence. N.T. p. 120. Appellant presented email correspondence following the August 15, 2018 counseling session. N.T. p. 122; Ap. Ex. 2. Appellant also presented his email correspondence sent to Human Resources Director Deborah Laughman and copied Agriculture Secretary Russell Redding. N.T. p. 133; Ap. Ex. 5. With respect to the August 22, 2019 mandatory meeting, appellant opined that the meeting on August 22, 2018 was not a mandatory meeting. N.T. p. 123.

On cross examination, appellant admitted he did not attend the mandatory meeting on August 22, 2018. N.T. pp. 135-136. Appellant acknowledged sending the September 6, 2018 email correspondence but contended

that the emails were professional and without malicious intent. Appellant further acknowledged that Secretary Dunn, to whom he also directed his email, was not within his chain of command. N.T. p. 138.

Having carefully reviewed the record, the Commission finds that the appointing authority has met its burden to show good cause to suspend appellant for five days. In support of our conclusion, we find credible the testimonies of Leonard Brylewski, Ruth Welliver, and Melvin McMinn¹ to support the charges of insubordination, failure to follow instructions, and inappropriate, unprofessional conduct.

As to the charges of appellant's insubordination, failure to follow instructions, and inappropriate, unprofessional conduct, appellant's admission of his decision to not attend the mandatory meeting on August 22, 2018 supports all of the appointing authority's charges. The appointing authority established that the meeting on August 22, 2018 required appellant's attendance. Furthermore, the appointing authority explained that appellant was required to attend the mandatory meeting on August 22, 2018 because he was part of the Division of Health and Safety and a full-time employee. Appellant admitted to not attending the mandatory meeting.

Additionally, the appointing authority established that appellant was previously provided a counseling session, instructing him to not send email correspondence outside his chain of command. Nonetheless, appellant's

¹ 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).

September 6, 2018 email correspondence was sent to recipients outside his chain of command, further reinforcing the appointing authority's charges of insubordination, failure to follow instructions, and inappropriate and unprofessional conduct.

Appellant argued that there was no malicious intent directed at the recipients of his September 6, 2018 email correspondence. N.T. p. 120. Yet, it is established that “[t]he appointing authority in a Civil Service case has no burden to prove that the employee who has been disciplined for failure to follow an important work rule has done so intentionally or with prurient motive unless it has charged the employee with having such intention or motive.” *Pennsylvania Liquor Control Board v. Smith*, 86 Pa. Commw. 128, 484 A.2d 201, n. 2 (1984). The appointing authority has not charged appellant with having such intention or prurient motive. Comm. Ex. A. Thus, proof of intention or motive is not required, and appellant's argument does not persuade the Commission.

Appellant's failure to attend the mandatory meeting on August 22, 2018 and appellant's September 6, 2018 email correspondence substantiate the appointing authority's charges, which negatively reflect upon appellant's competency and ability to execute his job duties properly. *White, supra*. Accordingly, we enter the following:

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 members,² dismisses the appeal of John R. Lake challenging his five-day suspension from regular Pesticide Specialist employment with the Department of Agriculture and sustains the action of the Department of Agriculture in the five-day suspension of John R. Lake from regular Pesticide Specialist employment effective October 15, 2018.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

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

² Commission Chairman Teresa Osborne, who took office March 22, 2019, did not participate in the discussion of or decision for this appeal.