COMMONWEALTH OF PENNSYLVANIA

Eileen Rush : State Civil Service Commission
v. :

Pennsylvania Liquor Control Board : Appeal No. 30122

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ADJUDICATION

This is an appeal by Eileen Rush challenging her Level-Two Alternative Discipline in Lieu of Suspension from regular Liquor Store Assistant Manager 1 employment with the Pennsylvania Liquor Control Board. A hearing was held on April 9, 2019, at the State Civil Service Commission’s Eastern Regional Office in Philadelphia, Pennsylvania, before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether there is good cause for appellant’s Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”).

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1 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; AA Ex. 11. Consequently, the present appeal will be considered by the Commission as an appeal of a three-day suspension.
FINDINGS OF FACT

1. On January 9, 2019, appellant was notified she received a Level-Two ADLS from her regular Liquor Store Assistant Manager 1 employment with the appointing authority. Comm. Ex. A; AA Ex. 11.

2. The January 9, 2019, Level-Two ADLS letter provides the following charges:
   
   1) Falsification of an official PLCB document/record in Store #4626 despite prior related instruction; in that:
      
      A) On December 3, 2018 you falsified the PLCB-703 (Time and Attendance Record) by recording an inaccurate start time for yourself.
      
      B) On December 13, 2018 you falsified the PLCB-2405 (Tardiness and Absentee Memo) for December 3, 2018 by recording an inaccurate start time for yourself and incorrectly notating that the store opened on time.

   2) Failure to properly discharge the duties and responsibilities incumbent upon a Liquor Store Assistant Manager 1 in Store #4626 despite prior related instruction and training; in that you failed to open
the store at the prescribed time on December 3, 2018.

3) Undependability in Store #4626 despite prior related instruction and training; in that you were tardy on December 3, 2018.

Comm. Ex. A; AA Ex. 11.

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 is a Liquor Store Assistant Manager 1 employed by the appointing authority. N.T. pp. 14-15, 42.

5. As a Liquor Store Assistant Manager 1, appellant is in charge of running the shift at Store #4626, opening Store #4626 pursuant to the assigned schedule, and supervising personnel. N.T. pp. 15, 16, 18, 42; AA Ex. 1.

On December 3, 2018, Retail Operations District Manager James Surine received a phone call at 8:30 a.m. from Assistant Manager John Raiwe, who reported that Store #4626 was not open and there was no manager inside. N.T. p. 16.

After his conversation with Raiwe, Surine reviewed the PLCB-293 Work Schedule and found Store #4626 was scheduled to open at 9:00 a.m. and appellant was scheduled to begin her shift at the Store #4626 at 8:00 a.m. N.T. pp. 16, 18; AA Ex. 1.

Surine called appellant around 8:35 a.m. According to Surine, appellant explained she overslept and would arrive at Store #4626 as soon as she could. N.T. p. 16.

Appellant did not arrive for her shift at Store #4626 until after 9:02 a.m. and Store #4626 was not open at 9:00 a.m. N.T. pp. 27, 30; AA Ex. 3.

Appellant falsely entered into her PLCB-2405 Tardiness and Absentee Memo that she arrived at Store #4626 at 8:45 a.m. and that Store #4626 was open on time. N.T. pp. 29-30, 39; AA Ex. 4.
12. Appellant also falsely entered into her PLCB-703 Time and Attendance Record that she arrived for her shift at Store #4626 on December 3, 2018, at 8:00 a.m. and ended her shift at 3:30 p.m. N.T. pp. 22, 39-40; AA Ex. 2.


14. After completing the investigation and reviewing all the findings, Human Resource Analyst Danae Smith determined a Level-Two ADLS would be the most appropriate level of disciplinary action for appellant’s conduct. Comm. Ex. A; N.T. pp. 42, 44-45; AA Ex. 11.

DISCUSSION

The issue in the present appeal is whether the appointing authority established good cause for appellant’s Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”). The appointing authority charged appellant with falsification of documents and records, failure to properly discharge her duties as a Liquor Store Assistant Manager 1, and undependability due to her tardiness. Comm. Ex. A; AA Ex. 11.
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 Retail Operations District Manager James Surine and Human Resource Analyst Danae Smith. In response, appellant testified on her own behalf.

As a Retail Operations District Manager, Surine conducts investigations into employee misconduct for the appointing authority’s retail stores within his district. N.T. pp. 13-14. Surine explained during investigations he provides memos, conducts interviews with employees, and reviews videos if necessary. Surine testified Store #4626 is within his district. N.T. p. 14. Surine stated appellant works as a Liquor Store Assistant Manager 1 under the supervision of the general manager at Store #4626. N.T. pp. 14-15. Surine explained appellant is responsible for running the shift at the store where she counts money, checks the lottery, makes shipments, and supervises personnel. N.T. p. 15.

Surine described his role during the investigation of appellant’s conduct on December 3, 2018. N.T. p. 15. On that day, Surine received a phone call from Assistant Manager John Raiwe, who is a part-time employee in Store #4626, at 8:30 a.m. N.T. pp. 15-16. According to Surine, Raiwe entered into the store for the opening shift but realized there was no manager present inside. N.T. p. 16. Surine
testified Store #4626 normally opens around 8:00 a.m. N.T. p. 17. After speaking with Raiwe, Surine checked the PLCB-293 Work Schedule (hereinafter “schedule”) to see who was scheduled to open Store #4626 and discovered appellant was scheduled to open the store. N.T. pp. 16, 18; AA Ex. 1. Specifically, the schedule noted appellant was scheduled to begin her shift at 8:00 a.m. and Store #4626 was scheduled to open at 9:00 a.m. N.T. p. 18; AA Ex. 1. Surine emphasized appellant was responsible for performing tasks such as counting money and reconciling the lottery before the store opened. N.T. p. 17.

Surine testified he called appellant around 8:35 a.m. Appellant told Surine she overslept, and she would be at the store as soon as she could. N.T. p. 16. Surine explained when appellant was late to work, she was responsible to fill out a PLCB-2405 Tardiness and Absentee Memo (hereinafter “tardiness memo”) by entering the date, her arrival time, and her signature. N.T. p. 19. All the appointing authority’s employees, including appellant, are trained on how to complete a tardiness memo. N.T. p. 19. Surine testified appellant did not file a tardiness memo until Surine’s secretary told appellant to submit it. N.T. pp. 20, 28; AA Ex. 4. When appellant finally submitted her tardiness memo on December 13, 2018, Surine noticed appellant entered she arrived at Store #4626 at 8:45 a.m. and that Store #4626 was open on time. N.T. pp. 29-30; AA Ex. 4. Surine testified appellant’s tardiness memo is inaccurate because appellant did not arrive for her shift at Store #4626 until after 8:45 a.m. and the store was not open at 9:00 a.m. N.T. p. 30.

Surine further explained appellant was responsible for accurately completing a PLCB-703 Time and Attendance Record (hereinafter “time record”). N.T. p. 21; AA Ex. 2. Appellant was responsible for recording her arrival time, her
lunch break, and the end of her shift. N.T. p. 21. Surine testified according to appellant’s time record, appellant entered that she arrived for her shift at Store #4626 on December 3, 2018, at 8:00 a.m. and ended her shift at 3:30 p.m. N.T. p. 22; AA Ex. 2. Surine noted appellant’s time record also has columns for appellant to record lateness, which is shown as a code “58.” N.T. p. 23. Surine testified appellant did not indicate on her time record that she was late on December 3, 2018. N.T. p. 23; AA Ex. 2.

Surine reviewed video footage to ascertain appellant’s accurate arrival time for her shift. N.T. p. 28; AA Ex. 3. Surine explained according to the video footage, on December 3, 2019, appellant approached Store #4626’s entrance door at 9:02 and 31 seconds. N.T. p. 27; AA Ex. 3. After reviewing appellant’s schedule, tardiness memo, and time record along with Store #4626’s video surveillance footage, Surine sent a memorandum summarizing his investigation’s findings to his supervisor, Regional Manager Christina Handly. N.T. p. 31; AA Ex. 5. On December 20, 2018, Surine hand delivered appellant’s fact-finding meeting notice, which scheduled the meeting for January 4, 2019. N.T. p. 32; AA Ex. 6. Surine did not have any further involvement in the disciplinary process related to appellant’s conduct. N.T. p. 32.

As a Human Resource Analyst, Smith reviews investigations, conducts interviews, and recommends disciplinary actions. N.T. p. 34. Pursuant to the investigation, Smith reviewed appellant’s tardiness memo, appellant’s time record, Store #4626’s video surveillance footage, and Surine’s investigation memorandum. N.T. p. 35; AA Exs. 2, 3, 4, 5. Smith also received and reviewed a December 20, 2018, memorandum from Handly to Director Joseph F. Puhalla preliminarily recommending appellant receive a “Level-Two Letter of discipline” based on
Surine’s investigation memorandum. N.T. p. 36; AA Ex. 7. Smith testified appellant attended her fact-finding meeting on January 4, 2019. N.T. p. 36. After appellant’s fact-finding meeting, Smith also reviewed appellant’s fact-finding meeting notes. N.T. p. 37; AA Ex. 8.

Smith contended appellant violated several subsections of the appointing authority’s Work Rules and Guide to Better Service (hereinafter “Work Rules”). N.T. pp. 38-40; AA Ex. 9. First, the appointing authority’s Work Rules include “falsification of records and reports, including falsification of time records (PLCB-703)” as a specific violation of its rules. N.T. pp. 38-39; AA Ex. 9, p. 15, #6. Smith explained appellant violated the Work Rules’ prohibition against falsification of records when appellant inaccurately recorded her start time on her time record. N.T. p. 39. Furthermore, Smith noted appellant inaccurately recorded her start time and Store #4626’s opening time on her tardiness memo. N.T. p. 39. Second, Smith testified the appointing authority’s Work Rules include “tardiness or absenteeism” as a specific violation of its rules. N.T. p. 39; AA Ex. 9, p. 15, #8. Smith asserted appellant violated the Work Rule’s prohibition against tardiness when appellant was late for the start of her shift at Store #4626 in which she failed to open the store on time as a result. N.T. pp. 39-40. Smith confirmed appellant signed, acknowledged, and agreed to abide by the appointing authority’s Work Rules on March 13, 2014. N.T. p. 41; AA Ex. 10. After completing her investigation and reviewing all the findings, Smith determined a Level-Two ADLS would be the most appropriate level of disciplinary action for appellant’s misconduct. Comm. Ex. A; N.T. pp. 42, 44-45; AA Ex. 11. Smith emphasized “[f]alsification, in particular from the agency’s perspective, is an extremely serious infraction, especially somebody at [appellant’s] level as assistant manager. She’s in charge of the store.” N.T. p. 42.
In response, appellant testified on her own behalf. Appellant has worked for the appointing authority for over twelve years. N.T. p. 53. Appellant admitted she made a mistake by not promptly filling out her tardiness memo or time record. N.T. p. 49. Appellant testified she submitted her tardiness memo on December 13, 2018 and knew that she was late arriving to her shift on December 3, 2018. N.T. pp. 58, 61. Appellant confirmed she was instructed by Surine’s secretary to submit her tardiness memo. N.T. p. 59. Regarding her time record, appellant testified she completed it at the end of the week of December 3, 2018. Appellant admitted she was the closing manager on Saturday, December 8, 2018, and was able to amend her time record before submitting it. N.T. pp. 62-63. However, appellant asserted “when I check final time and attendance, I just basically take the schedule that’s in front of me because in our store, if we make changes, we put them on the schedule.” N.T. p. 63. Appellant acknowledged she arrived late for her shift on December 3, 2018 and that Store #4626 opened late. N.T. p. 56. Appellant also argued she believed she arrived at 8:45 a.m. but soon realized after reviewing the video surveillance footage that she did not arrive at 8:45 a.m. N.T. p. 56. Appellant contended she worked later on December 3, 2018, to make up for the time that she missed by arriving late to the store. N.T. pp. 50-51. She further emphasized “my goal today was to try and get kind of lowered a little bit so that I’m not ---this is the first time that this has ever happened. And I can guarantee you it will not happen again.” N.T. p. 52.
Having carefully reviewed the record, the Commission finds the appointing authority met its burden to show good cause for appellant’s Level-Two ADLS. In support of our conclusion, we find credible the testimony of James Surine and Danae Smith.²

As a Liquor Store Assistant Manager 1, appellant was clearly responsible for submitting an accurate time record of when she began and ended her shift at Store #4626. Yet, Surine and Smith credibly testified, and appellant admitted, she falsified her time record for when she began her shift at Store #4626 on December 3, 2018. Additionally, Surine credibly showed appellant did not indicate on her time record that she was late for her shift, which, according to appellant’s schedule, began at 8:00 a.m. Although appellant articulated she initially believed she arrived at the store around 8:45 a.m., Surine credibly confirmed with video surveillance footage that appellant did not arrive at Store #4626’s front entrance until 9:02 a.m.

Furthermore, appellant was responsible for accurately entering her start time for her shift and the store’s opening time on her tardiness memo. Again, Surine and Smith credibly explained appellant falsified her tardiness memo by entering she arrived at Store #4626 at 8:45 a.m., when she did not arrive for her shift until after 9:02 a.m. Appellant further acknowledges she did not arrive on time for her shift and that she did not submit her tardiness memo (PLCB-2405) until she was instructed to do so by Surine’s secretary on December 13, 2018.

Appellant’s duty as a Liquor Store Assistant Manager 1 was to open Store #4626 on time. Surine credibly presented how appellant had numerous tasks awaiting her when appellant arrived at the store in order for the store to open on time. Nevertheless, Surine and Smith credibly testified, and appellant does not dispute, she was tardy for her shift on December 3, 2018, and that she failed to open Store #4626 at the prescribed time of 9:00 a.m. In order to perform one’s work duties, one must be available for work. Zielinski v. Luzerne County Assistance Office, Department of Public Welfare, 107 Pa. Comww 414, 528 A.2d 1028 (1986). The Commonwealth has the right to have employees present at work and on time to perform needed services. Id.

Additionally, as a Liquor Store Assistant Manager 1, appellant is considered a managerial employee in charge of Store #4626. An appointing authority can require its managerial employees be held to the highest level of conduct. Woodbridge v. Commonwealth, Department of Revenue, 435 A.2d 300, 302 (Pa. Comww. 1981). A management employee must strictly adhere to standards and set an example for her subordinates. Id. Therefore, appellant’s tardiness, failure to open Store #4626 at the appropriate time, and falsification of her tardiness memo and time record negatively reflect upon her competence and ability to perform her job duties. 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 its members, dismisses the appeal of Eileen Rush challenging her Level-Two Alternative Discipline in Lieu of Suspension from regular Liquor Store Assistant Manager 1 employment with the Pennsylvania Liquor Control Board and sustains the action of the Pennsylvania Liquor Control Board in the Level-Two Alternative Discipline in Lieu of Suspension of Eileen Rush from regular Liquor Store Assistant Manager 1 employment.

State Civil Service Commission

__________________________________________
Teresa Osborne
Chairman

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Gregory M. Lane
Commissioner

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Bryan R. Lentz
Commissioner

Mailed: January 16, 2020