

COMMONWEALTH OF PENNSYLVANIA

Frank M. Burock : State Civil Service Commission  
 :  
 v. :  
 :  
 Office of the Budget, Executive Offices : Appeal Nos. 30243 and 30289

Frank M. Burock : Brian D. Zweiacher  
*Pro Se* : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Frank M. Burock challenging his Level-Two Alternative Discipline in Lieu of Suspension<sup>1</sup> (hereinafter “ADLS”) and removal from regular Accountant 3 employment with the Office of the Budget, Executive Offices. Hearings were held on October 14, 2020 and November 10, 2020 at the State Civil Service Commission’s 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 post-hearing Briefs submitted by the parties. The issues before the Commission are: 1) whether the appointing authority had good cause sufficient, under the Civil Service Act, to support its decision to suspend appellant from his position; 2) whether the appointing authority

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<sup>1</sup> Under the ADLS, there was no effect on appellant’s pay, seniority, or other benefits. The Level-Two ADLS 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.

had just cause to remove appellant from his position; and 3) whether the decisions to suspend and remove appellant were affected by discrimination violative of the Civil Service Act's prohibition of discrimination.

### FINDINGS OF FACT

1. By letter dated April 22, 2019, appellant was issued a Level-Two Alternative Discipline in Lieu of Suspension (hereinafter "ADLS") with final warning equivalent to a three-day suspension, from his position as an Accountant 3, regular status, with the Office of the Budget (hereinafter "appointing authority").
2. In its April 22, 2019 letter, the appointing authority charged appellant as follows:

The reason for this action is **Unsatisfactory Performance**. Specifically, during your Interim Employee Performance Review period of January 9, 2019 through March 27, 2019, you failed to attain a satisfactory level of performance.

Comm. Ex. A (emphasis in original).

3. By letter dated June 19, 2019, appellant was informed he was removed from regular Accountant 3 employment with the appointing authority, effective June 20, 2019. Comm. Ex. D.

4. The June 19, 2019 letter, provides the following reason for appellant's removal:

The reason for this action is **Unsatisfactory Performance**— Specifically, your performance during your interim rating period from March 28, 2019 through May 30, 2019, has resulted in an overall rating of unsatisfactory, as reflected in the employee performance review provided to you on May 31, 2019.

Comm. Ex. D (emphasis in original).

5. The appeals of the Level-Two ADLS with final warning and removal were properly raised before this Commission and were heard under Sections 3003(7)(i) and (ii) of Act 71 of 2018. Comm. Exs. C, F.

6. In March 2012, appellant began employment as an Accountant 3 with the appointing authority. N.T. p. 172.

7. As an Accountant 3, appellant is responsible for overseeing the fiscal and budgetary affairs of multiple Commonwealth agencies, which includes reconciling and analyzing financial information, preparing financial statements, and forecasting budgetary and cash needs, among other duties. AA Ex. 4.
8. The position of Accountant 3 is considered a senior level accountant, and as such, Accountant 3 employees are expected to provide guidance to other accountants. N.T. p. 45.
9. General Accounting Manager Michelle Baker has supervised appellant since March 2018. N.T. p. 35.
10. On January 9, 2019, appellant was placed on a performance improvement plan (hereinafter "PIP") for the rating period January 9, 2019 through March 27, 2019. The PIP was intended to provide appellant guidance so that he could improve his work performance. N.T. pp. 57-58, 77-79; AA Ex. 6.
11. The January 9, 2019 PIP included a directive for appellant to attend regular meetings to review and discuss his progress. These meetings were held

weekly and were attended by appellant, Baker, Financial Services Manager Jamie Jerosky, and Assistant Director Andy Cameron. N.T. pp. 69-70, 80, 86, 147; AA Exs. 6, 8.

12. The January 9, 2019 PIP informed appellant of the specific standards he was required to meet to obtain satisfactory ratings in the following job categories: job knowledge/skills; work results; communications; initiative/problem solving; and work habits. AA Ex. 6.
13. To obtain a satisfactory evaluation under the PIP, appellant could not have more than two incidents or deviations in any of the identified job categories. Also, one incident where financial statements were not complete within the assigned time frames with minimum revisions could result in less than satisfactory ratings in the job knowledge/skills and work result categories. N.T. pp. 58, 115, 118; AA Ex. 6.
14. Appellant was required to obtain satisfactory ratings in all job categories to achieve an overall satisfactory rating on the Interim Employee

Performance Review (hereinafter “Interim EPR”) for the rating period identified by the PIP. AA Ex. 6.

15. The January 9, 2019 PIP informed appellant that failure to achieve an overall satisfactory rating on the Interim EPR could result in progressive discipline up to and including removal. AA Ex. 6.
16. Baker completed an Interim EPR based on appellant’s progress during the January 9, 2019 PIP. AA Ex. 7.
17. The Interim EPR for rating period January 9, 2019 to March 27, 2019 was presented to appellant on or about April 11, 2019 (hereinafter “April 11, 2019 Interim EPR”). AA Ex. 7.
18. On the April 11, 2019 Interim EPR, appellant received an overall rating of “Unsatisfactory,” along with “Unsatisfactory” ratings in the following categories: job knowledge/skills; work results; communication; and initiative/problem solving. AA Ex. 7.

19. On the April 11, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the job knowledge/skills category based on his continued failure to grasp the basic job skills necessary to complete his assigned tasks. Specifically, appellant displayed a lack of knowledge and understanding in completing unpaid items and in updating the USTIF statement quarterly, which resulted in missed and miscalculated items. Appellant also enlisted another accountant to analyze the “1190000 balancing account,” which was appellant’s responsibility. N.T. pp. 91-92; AA Exs. 7, 8.
  
20. On the April 11, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the work results category based on his failure to independently and correctly complete the USTIF statement and his failure to complete the checklist for the Capital Facility Reports. N.T. p. 92; AA Ex. 7.
  
21. On the April 11, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the communication category based on his inability to explain account reconciliations, the USTIF

statement, and other everyday items, as well as his argumentative behavior with management regarding a Treasury adjustment. N.T. p. 92; AA Ex. 7.

22. On the April 11, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the initiative/problem solving category based on his failure to independently research issues and remove old adjustments from financial statements. N.T. pp. 92-93; AA Ex. 7 (p. 5).
23. Upon failing to attain a satisfactory level of performance during the rating period of the January 9, 2019 PIP, appellant was placed on another PIP for rating period March 28, 2019 through May 30, 2019. This PIP contained the same performance standards and directives as the January 9, 2019 PIP. N.T. pp. 97, 100; AA Ex. 6, 10.
24. Under the March 28, 2019 PIP, appellant continued to meet with Baker, Jerosky, and Cameron on a weekly basis. N.T. pp. 44, 100, 103; AA Exs. 10, 12.

25. Baker completed an Interim EPR based on appellant's progress during the March 28, 2019 PIP. AA Ex. 11.
26. The Interim EPR for rating period March 28, 2019 to May 30, 2019 was signed by appellant on June 7, 2019 (hereinafter "June 7, 2019 Interim EPR"). AA Ex. 11.
27. On the June 7, 2019 Interim EPR, appellant received an overall rating of "Unsatisfactory," along with "Unsatisfactory" ratings in the following categories: job knowledge/skills; work results; communication; and initiative/problem solving. AA Ex. 11.
28. On the June 7, 2019 Interim EPR, appellant received a rating of "Unsatisfactory" in the job knowledge/skills category based on his continued failure to grasp the basic job skills. Specifically, appellant incorrectly completed account reconciliations and failed to independently research reconciliation and unpaid items as directed. Appellant also failed to correctly complete T-accounts, which are a basic accounting function. N.T. pp. 106-107; AA Ex. 11.

29. On the June 7, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the work results category based on his failure to complete and follow-up on a “PPA Taxi transfer” and his failure to research and correctly complete account reconciliations. N.T. p. 107; AA Ex. 11.
  
30. On the June 7, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the communication category based on: 1) his inability to understand and explain unpaid items for account reconciliations; 2) his sarcastic and unprofessional remarks in response to the April 11, 2019 Interim EPR; and 3) erroneously directing an agency to send federal email correspondence to an obsolete federal group email account. N.T. p. 107; AA Ex. 11.
  
31. On the June 7, 2019 Interim EPR, appellant received a rating of “Unsatisfactory” in the initiative/problem solving category because he failed to take initiative when solving problems, and he failed to: 1) independently resolve unpaid items; 2) complete basic accounting functions; 3) confirm an “AM document” was completed; and 4) correctly complete debit and credit for the entries, as well as the “USTIF statement FI recon backup.” N.T. p. 108; AA Ex. 11.

32. Appellant's workload was reduced during the January 9, 2019 and March 28, 2019 PIPs in that appellant was not assigned special projects, which are usually completed by Accountant 3 employees. N.T. p. 152.
33. Prior to the issuance of the April 22, 2019 Level-Two ADLS with final warning and removal, three disciplinary actions were issued to appellant for unsatisfactory performance. N.T. pp. 32-38; AA Exs. 1, 2, 3.
34. A written reprimand, dated February 20, 2018, was issued to appellant for unsatisfactory performance during the Interim EPR period of August 30, 2017 to December 13, 2017. N.T. pp. 32-34; AA Ex. 1.
35. By letter dated July 25, 2018, a Level-One ADLS was issued to appellant for unsatisfactory work performance during the Interim EPR period of February 21, 2018 to May 31, 2018. N.T. pp. 36-37; AA Ex. 3.

36. By letter dated January 11, 2019, a Level-One ADLS was issued to appellant for unsatisfactory work performance during the Interim EPR period of July 25, 2018 to October 12, 2018. N.T. pp. 37-38; AA Ex. 2.
37. The January 11, 2019 Level-One ADLS was not progressed to a Level-Two ADLS because appellant improved in one of the rating categories. N.T. p. 39.

### DISCUSSION

In the present appeals, appellant is challenging the following disciplinary actions: 1) the Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with final warning issued to him for unsatisfactory performance during his Interim Employee Performance Review (hereinafter “Interim EPR”) for rating period January 9, 2019 through March 27, 2019; and 2) the appointing authority’s subsequent decision to remove him from regular status, Accountant 3 employment. Comm. Exs. A, D. Appellant brought these challenges through Sections 3003(7)(i) and 3003(7)(ii) of Act 71 of 2018.<sup>2</sup> 71 Pa.C.S.A. §§ 3003(7)(i), (ii). Thus, the issues before the Commission are: 1) whether the appointing authority established good cause for the Level-Two ADLS with final warning; 2) whether the appointing authority established just cause for the removal; and 3) whether appellant established the Level-Two ADLS with final warning and/or

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<sup>2</sup> Act of June 28, 2018, P.L. 460, No. 71, § 1.

removal were the result of discrimination. Specifically, appellant asserts the Level-Two ADLS with final warning and removal were the result of discrimination based on his age, sex, and retaliation. Comm. Exs. B, E.

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 Pa.C.S.A. §§ 2603(c), 3003(7)(i). 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.

Likewise, in an appeal challenging the removal of a regular status employee, the appointing authority bears the burden of proving just cause for the removal 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 (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).

Concerning the discrimination claim, appellant bears the burden of establishing the Level-Two ADLS with final warning and removal were due to discrimination. *See Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989). In analyzing claims of discrimination under Section 2704 of Act 71 of 2018, appellant bears the burden of establishing a *prima facie* case of

discrimination by producing sufficient evidence that, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred.<sup>3</sup> 71 Pa.C.S.A. § 2704; *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 the proffered merit reason for the personnel action is merely pretext. *Id.* at 614-615. In particular, an employee claiming disparate treatment must demonstrate that he or she was treated differently than others similarly situated. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851.

Here, appellant alleges discrimination based on his age, sex, and retaliation. Comm. Exs. B, E; Ap. Bf. Specifically, appellant alleges he was treated differently based on his age and sex. Ap. Bf. Appellant also alleges the Level-Two ADLS with final warning and removal were the result of retaliation, which spanned two years and began with a disagreement over the USTIF financial statement that he was processing in 2017. Ap. Bf.

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<sup>3</sup> Section 2704 of Act 71 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other nonmerit factors.

71 Pa.C.S.A. § 2704. The prohibition set forth in this section encompasses two general types of discrimination—“traditional discrimination,” which encompasses claims of discrimination based on labor union affiliation, race, sex, national origin or other non-merit factors; and “technical discrimination,” which involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). Here, appellant has alleged a traditional discrimination claim based on his sex, age, and retaliation. Comm. Exs. B, E.

In support of the charges and in rebuttal of appellant's discrimination claims, the appointing authority presented the testimony of Financial Services Manager Jamie Jerosky,<sup>4</sup> General Accounting Manager Michelle Baker,<sup>5</sup> and Assistant Director Andy Cameron.<sup>6</sup> Appellant testified on his own behalf and also presented testimony from Jerosky, Baker, and Cameron. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

### *Summary of Evidence*

Appellant was employed by the appointing authority as an Accountant 3 in its Bureau of Accounting and Financial Management (hereinafter "BAFM"). AA Ex. 4. Appellant held this position for seven years, until his removal in June 2019. N.T. p. 172. Appellant is a CPA<sup>7</sup> and has worked in public, private, and federal accounting for about thirty-seven years. N.T. p. 174.

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<sup>4</sup> Jerosky serves as the Financial Services Manager for the appointing authority's Bureau of Accounting and Financial Management (hereinafter "BAFM"). N.T. pp. 25-26. Jerosky has held this position for approximately two years and has worked for the appointing authority for almost twenty years. N.T. p. 26. Prior to serving in his current position, Jerosky directly supervised appellant and provided guidance to assist appellant in improving his performance. N.T. pp. 30-31.

<sup>5</sup> Baker is employed by the appointing authority as the General Accounting Manager of BAFM within the appointing authority's Office of Comptroller Operations. N.T. pp. 65, 67. Baker has held this position for approximately two years and nine and a half months and is a Certified Public Accountant in Pennsylvania. N.T. pp. 65, 68. As the General Accounting Manager, Baker supervises two Accountant 3 employees and two Accountant 2 employees. N.T. p. 68. Baker was appellant's direct supervisor and was responsible for reviewing his work performance. N.T. p. 69.

<sup>6</sup> Cameron is the Assistant Director of the appointing authority's General Accounting Unit. N.T. p. 142. Cameron has held this position since April 2018, and prior to that, Cameron was the Assistant Director of BAFM. N.T. pp. 142-143. Cameron is a licensed CPA and as the Assistant Director, he is responsible for overseeing the operations of the General Accounting Unit, which consists of approximately fifty employees. N.T. pp. 144-146. Cameron directly supervises Baker and Jerosky, and he is appellant's second level supervisor. N.T. pp. 145-147.

<sup>7</sup> Appellant noted his CPA license has been inactive since 2002.

As an Accountant 3 with the appointing authority, appellant was responsible for overseeing the fiscal and budgetary affairs of multiple Commonwealth agencies, which included: reconciling and analyzing financial information; preparing financial statements; and forecasting budgetary and cash needs, among other duties. AA Ex. 4. Appellant's performance of these duties was measured by the Job Performance Standards, which he acknowledged on February 21, 2018. N.T. p. 76; AA Ex. 5. These performance standards were in effect at all times relevant to the present appeals. N.T. p. 74. Also, management reviewed these performance standards with appellant each time he received an "Unsatisfactory" rating on an Employee Performance Review (hereinafter "EPR"). N.T. p. 74.

Beginning in August 2017, Financial Services Manager Jaime Jerosky and appellant's direct supervisor at the time, Paul Jones, began working with appellant to improve his performance by providing guidance and discussing his performance at biweekly meetings. N.T. pp. 31-32, 40. Despite these measures, appellant's performance remained unsatisfactory resulting in a written reprimand, dated February 20, 2018, for unsatisfactory performance during the Interim EPR period of August 30, 2017 to December 13, 2017. N.T. pp. 32-34; AA Ex. 1.

In or around March 2018, Jones left employment with the appointing authority, and Michelle Baker became appellant's direct supervisor. N.T. p. 35. Under Baker's supervision, appellant continued to perform unsatisfactorily resulting in the issuance of two Level-One ADLS letters. By letter dated July 25, 2018, a Level-One ADLS was issued to appellant for unsatisfactory performance during the

Interim EPR period of February 21, 2018 to May 31, 2018.<sup>8</sup> N.T. pp. 36-37; AA Ex. 3. A second Level-One ADLS was issued to appellant on January 11, 2019 for unsatisfactory performance during the Interim EPR period of July 25, 2018 to October 12, 2018.<sup>9</sup> N.T. pp. 37-38; AA Ex. 2. The second Level-One ADLS was not progressed to a Level-Two ADLS because appellant improved in one of the rating categories. N.T. p. 39.

Following the issuance of the second Level-One ADLS, appellant was placed on a performance improvement plan (hereinafter “PIP”) from January 9, 2019 to March 27, 2019. N.T. pp. 77-79; AA Ex. 6. The purpose of the PIP was to give appellant guidance so that he did not continue to make the same mistakes. N.T. p. 57. The PIP was a corrective action plan aimed at improving appellant’s performance. N.T. pp. 57-58.

To obtain a satisfactory evaluation under the PIP, appellant was required to meet the minimum standards of performance as set forth in the PIP. AA Ex. 6. To that end, appellant could not have more than two incidents or deviations in the following job categories: job knowledge/skills; work results; communications, initiative/problem solving; and work habits. N.T. pp. 58, 115, 118; AA Ex. 6. Additionally, one incident where financial statements were not completed within the assigned time frames with minimum revisions could result in less than satisfactory

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<sup>8</sup> The Commission takes administrative notice of its decision in *Frank M. Burock v. Office of the Budget, Executive Offices*, Appeal No. 29985, in which it sustained the appointing authority’s action in issuing the Level-One ADLS, dated July 25, 2018. See *Falasco v. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole*, 104 Pa. Commw. 321, 326 n.6, 521 A.2d 991, 994 (1987) (holding an administrative agency may take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person).

<sup>9</sup> The Commission takes administrative notice of its decision in *Frank M. Burock v. Office of the Budget, Executive Offices*, Appeal No. 30131, in which it sustained the appointing authority’s action in issuing the January 11, 2019 Level-One ADLS. See *Falasco, supra*.

ratings in the job knowledge/skills and work results categories. AA Ex. 6. Appellant was required to obtain satisfactory ratings in all job categories to achieve an overall satisfactory rating on the Interim EPR for the rating period identified by the PIP. AA Ex. 6. Failure to achieve an overall rating of satisfactory on the Interim EPR could result in progressive discipline up to and including removal. AA Ex. 6.

During the rating period identified by the PIP, Baker, Jerosky, and Assistant Director Andy Cameron met with appellant weekly to discuss his performance. N.T. pp. 69-70, 80, 86, 147; AA Ex. 8. Jerosky was also available to answer appellant's questions outside of these meetings. N.T. p. 41. At the weekly meeting, Baker, Jerosky, and Cameron offered appellant suggestions, advice, and direction as to how he could improve his performance. N.T. pp. 43, 70. Specific examples of appellant's work were also discussed, to include: incorrect account reconciliations and unpaid items<sup>10</sup>; the Underground Storage Tank Indemnity Fund (hereinafter "USTIF") statement, which appellant failed to properly prepare; and appellant's inability to independently research and resolve various matters. N.T. pp. 80-81, 91, 123-124; AA Ex. 8. These items, along with other incidents, were documented in the Weekly Meeting Minutes, in emails, and on appellant's Interim EPR for the rating period identified by the PIP. N.T. pp. 86-87; AA Exs. 7, 8.

Despite the guidance provided by management, appellant's performance continued to be unsatisfactory. N.T. pp. 41, 153. Specifically, during the rating period of the PIP, which spanned from January 9, 2019 to March 27, 2019, appellant failed to include documentation supporting his analyses, failed to solve problems independently, and failed to conduct necessary research. N.T. pp. 41, 148;

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<sup>10</sup> If unpaid items are incorrectly marked, the items will not be paid. N.T. p. 129. This is avoided by researching the items and understanding the reconciliation process. N.T. pp. 129-130.

AA Ex. 8. Appellant also provided inaccurate adjustments. N.T. p. 41; AA Ex. 8. For example, appellant incorrectly marked items for deletion. N.T. p. 42. Appellant also incorrectly included accruals in the financial statements that he was responsible for processing, and improperly changed the methodology, resulting in unnecessary data being included and thereby frustrating review of the reports. N.T. p. 42; AA Ex. 8. There were also incidents where appellant's work was not completed on time and treasury reconciliations were not done. N.T. pp. 60-61; AA Ex. 8. Regarding the treasury reconciliations, appellant was unable to consolidate names, dates, and items research. N.T. p. 150.

Appellant's continued unsatisfactory performance resulted in an "Unsatisfactory" overall rating on his Interim EPR for the period of January 9, 2019 to March 27, 2019. AA Ex. 7 (p. 4). Appellant also received "Unsatisfactory" ratings in the following categories: job knowledge/skills; work results; communications; and initiative/problem solving. N.T. pp. 91-93; AA Ex. 7 (p. 2). Appellant was rated "Satisfactory" in interpersonal relations and work habits. N.T. p. 93; AA Ex. 7 (p. 3).

Appellant was rated "Unsatisfactory" in the job knowledge/skills category based on his continued failure to grasp the basic job skills necessary to complete his assigned tasks. N.T. p. 91. Appellant has been an Accountant 3, which is a more senior position, for many years. N.T. p. 91. Therefore, he should understand how to update quarterly financial statements and calculate various items. N.T. pp. 91-92. Yet, appellant displayed a lack of understanding in updating the USTIF statement quarterly, which resulted in missed and miscalculated items. N.T. p. 92; AA Ex. 7 (p. 5).

Additionally, appellant displayed a lack of knowledge and understanding regarding his everyday work, to include reviewing unpaid items. AA Exs. 7 (p. 5), 8 (p. 7). Appellant also enlisted another accountant to analyze the “1190000 balancing account,” which was appellant’s responsibility. AA Exs. 7 (p. 5), 8 (p. 7). As a senior level accountant, appellant was expected to provide guidance to other accountants. N.T. p. 45. Instead, he sought guidance from entry level accountants. N.T. p. 45.

Appellant was rated “Unsatisfactory” in the work results category based on his failure to independently and correctly complete the USTIF statement and his failure to complete the checklist for the Capital Facility Report. N.T. p. 92; AA Ex. 7 (p. 5). The errors in the USTIF statement included: 1) failing to update the support spreadsheet to reference the current quarter; 2) including an image of an arrow in the financial statement numbers of the final report; and 3) failing to remove a hyperlink to a random folder, as previously directed. AA Ex. 7 (p. 5).

Appellant was rated “Unsatisfactory” in the communications category based on his inability to explain account reconciliations, the USTIF statement, and other everyday items. N.T. p. 92; AA Ex. 7 (p. 2). Appellant was also argumentative with management regarding a Treasury adjustment. AA Ex. 7 (p. 5). This adjustment was from a year and a half prior, and appellant did not follow-up on the issue, which resulted in the issue recurring. AA Ex. 7 (p. 5).

Appellant was rated “Unsatisfactory” in the initiative/problem solving category based on his failure to independently research issues. N.T. pp. 92-93; AA Ex. 7 (p. 2). Specifically, appellant did not remove old adjustments from financial statements. N.T. p. 93; AA Ex. 7 (p. 5). Appellant also failed to research items

included in the Capital Facilities Report. N.T. p. 93; AA Ex. 7 (p. 5). For example, appellant assumed the unpaid amounts in the Capital Facilities Report were correct instead of researching the issue. AA Ex. 7 (p. 5).

Based on appellant's unsatisfactory performance during the period of January 9, 2019 to March 27, 2019, Baker, Jerosky, and Cameron recommended a Level-Two ADLS be issued to appellant. N.T. pp. 44, 93, 153. On April 22, 2019, the Level-Two ADLS was issued to appellant. N.T. pp. 94-95; Comm. Ex. A. Specifically, appellant was charged with failing to attain a satisfactory level of performance during his Interim EPR period of January 9, 2019 to March 27, 2019. N.T. p. 96; Comm. Ex. A.

Upon failing to attain a satisfactory level of performance during the Interim EPR period, appellant was placed on another PIP from March 28, 2019 to May 30, 2019. N.T. pp. 97, 100; AA Ex. 10. The minimum standards of performance to obtain a satisfactory evaluation under this PIP were the same as the prior PIP. AA Exs. 6, 10. Also, as with the prior PIP, Baker, Jerosky, and Cameron continued to meet with appellant on a weekly basis. N.T. pp. 44, 100, 103; AA Ex. 12. However, the same issues with appellant's work performance persisted. N.T. pp. 45, 150-151, 154-155; AA Exs. 11, 12.

Appellant's continued unsatisfactory performance resulted in an "Unsatisfactory" overall rating on the Interim EPR for the period of March 28, 2019 to May 30, 2019. N.T. p. 109; AA Ex. 11 (p. 4). Appellant also received "Unsatisfactory" ratings in the following categories: job knowledge/skills; work

results; communications; and initiative/problem solving. AA Ex. 11 (p. 2). Appellant was rated “Satisfactory” in interpersonal relations and work habits. AA Ex. 11 (p. 3).

Appellant was rated “Unsatisfactory” in the job knowledge/skills category based on his continued failure to grasp the basic job skills, which were repeatedly explained at the weekly meetings. N.T. pp. 106-107. Specifically, appellant marked account reconciliations as complete when there was nothing identified in the record, and, rather than independently researching accounting reconciliation items as directed, appellant sought guidance from another Accountant 3. N.T. p. 107; AA Ex. 11 (p. 5). Additionally, appellant failed to correctly complete T-accounts, which is a basic accounting function. N.T. p. 107; AA Ex. 11 (p. 5).

Appellant received guidance regarding how to complete T-accounts at several of the weekly meetings; however, he was still unable to correctly complete them. AA Ex. 11 (p. 5). Appellant also failed to independently research and complete unpaid items. AA Ex. 11 (p. 5). For example, appellant failed to research and identify documents to resolve an unpaid item which was repeatedly discussed during several weekly meetings. AA Ex. 11 (p. 5). Regarding two other unpaid items, appellant went to another manager to resolve the issues rather than independently researching and resolving the issues as directed. AA Ex. 11 (p. 5). Thus, appellant demonstrated a lack of knowledge and understanding of the essential skills of an Accountant 3. N.T. p. 107.

Appellant was rated “Unsatisfactory” in the work results category based on his failure to complete and follow-up on a “PPA Taxi transfer.” N.T. p. 107; AA Ex. 11 (p. 5). Appellant also failed to research and complete two account reconciliations. AA Ex. 11 (p. 5). Additionally, appellant failed to accurately complete account reconciliations because he proposed an incorrect entry to clear an unpaid item. AA Ex. 11 (p. 5).

Appellant was rated “Unsatisfactory” in the communications category based on his inability to understand and explain unpaid items for account reconciliations. N.T. p. 107; AA Ex. 11 (pp. 2, 5). Appellant also included sarcastic and unprofessional remarks in his response to the Interim EPR for the prior rating period. AA Ex. 11 (p. 5). Additionally, appellant erroneously directed an agency to send federal email correspondence to an obsolete federal group email account. AA Ex. 11 (p. 5).

Appellant was rated “Unsatisfactory” in the initiative/problem solving category because he failed to take initiative when solving problems and he failed to independently resolve issues. AA Ex. 11 (p. 2). For example, appellant was unable to complete basic accounting functions, such as looking up a transaction in the appointing authority’s accounting system. N.T. p. 108; AA Ex. 11 (p. 5). Appellant was also unable to independently resolve several unpaid items. AA Ex. 11 (p. 5). Additionally, appellant confirmed an “AM document” was completed without reviewing the entry to ensure it was correct. N.T. p. 108; AA Ex. 11 (p. 5). The debits and credits for the entry were incorrect. AA Ex. 11 (p. 5). The “USTIF statement FI recon backup” was also still not completely transparent and linked to support. AA Ex. 11 (p. 5).

Based on appellant's unsatisfactory performance during the period of March 28, 2019 to May 30, 2019, Baker, Jerosky, and Cameron recommended that appellant be removed from employment. N.T. pp. 46, 109, 155-156. By letter dated June 19, 2019, appellant was removed from Accountant 3 employment, effective June 20, 2019. N.T. pp. 110-111; Comm. Ex. D. Appellant was removed because he failed to attain a satisfactory level of performance during the rating period of March 28, 2019 to May 30, 2019, as reflected on the Interim EPR, which was issued on May 31, 2019. N.T. p. 110; Comm. Ex. D.

In response to the above, appellant asserted the Level-Two ADLS and removal were the result of retaliation. Additionally, appellant took issue with the incidents used by the appointing authority to support the ratings on his Interim EPRs. Specifically, appellant claimed the incidents were "petty" and "excessive," as well as duplicative. Additionally, appellant asserted he was given a heavier workload based on his sex. The evidence pertaining to each of these claims is discussed more fully below.

First, appellant claims the disciplinary actions, which are the subject of the present appeals, are the result of retaliation, which spanned two years and began with a disagreement over a USTIF financial statement that he was processing in 2017. N.T. p. 175; Ap. Exs. 4, 5. Appellant testified he told his then supervisor, Jones, about the issue and suggested checking with Mike Burns, who was the Director of the Budget and Jones' direct supervisor. N.T. pp. 175-176. Appellant stated Jones responded, "I don't agree with you, and if you do that, you'll be gone." N.T. p. 176.

Appellant later went to Burns about the issue,<sup>11</sup> which appellant claims resulted in the issuance of an unsatisfactory EPR from Jones about a month later.<sup>12</sup> N.T. p. 176; Ap. Ex. 23. Appellant further stated that, on January 5, 2018, Jones threatened to fire him, and he claimed the unsatisfactory EPR issued by Jones began a progression of events, which prevented him from being selected for other Commonwealth positions.<sup>13</sup> N.T. pp. 177-178, 187. Additionally, appellant believes the unsatisfactory EPR from Jones was the basis for all the disciplinary actions, including the removal, which were issued to him. N.T. pp. 242-243.

Appellant did not present any evidence to substantiate his beliefs. Appellant did not present any evidence that Jones influenced or was a part of the disciplinary actions which are presently before the Commission, nor did he present any evidence regarding a connection between the interviews, EPR issued by Jones, and the present matters. Jerosky, who was involved in the disciplinary actions under review, testified he did not have any issue with appellant discussing the USTIF

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<sup>11</sup> Appellant testified he also spoke with Senator Spiegelman and emailed Erik Smith, who was with the Office of Inspector General, as well as the Secretary of the Budget and the Auditor General, about his perceived issues with the USTIF statement for the quarter ending September 30, 2017. N.T. pp. 207-209; Ap. Exs. 8, 9, 10. Appellant did not articulate how these conversations influenced the Level-Two ADLS and removal, which were issued almost two years later. Indeed, contrary to his claims, appellant presented a letter dated March 13, 2018, from the appointing authority's Bureau of Audits Director indicating that the matter was investigated, and the statement was adequately supported and appropriately recorded in accordance with General Accepted Accounting Principles. N.T. p. 210; Ap. Ex. 11.

<sup>12</sup> After initially testifying Jones issued an unsatisfactory EPR to him, appellant stated an unsatisfactory EPR issued by Jones was "tossed out" and replaced with a Mid-Point Progress Review detailing substantially the same information. N.T. pp. 176, 182-186, 190; Ap. Exs. 2, 3. Appellant noted upon receiving the Mid-Point Progress Review, he was placed on a PIP, which resulted in a suspension. N.T. p. 187. It is unclear based on appellant's testimony whether these are two separate EPRs. Nonetheless, any disciplinary actions which preceded the Level-Two ADLS and removal are not presently before us. Indeed, as noted previously in this adjudication, the Commission upheld two Level-One ADLS disciplines issued to appellant.

<sup>13</sup> Appellant testified he interviewed for thirty-five positions and was unsuccessful each time. N.T. pp. 177-178. None of these non-selection matters are presently before us for review. Therefore, the Commission will not opine on these matters. With that said, the Commission takes administrative notice of its decision in *Frank M. Burock v. Executive Offices and Kimberly A. Bubbenmoyer, Indispensable Party*, Appeal No. 29961, in which appellant challenged his non-selection for placement in a Fiscal Management Specialist 3 position with the Executive Offices. See *Falasco, supra*. In that appeal, the Commission found appellant failed to present evidence establishing the non-selection was affected by discrimination.

statement with Burns, nor was he aware of Jones ever threatening appellant. N.T. pp. 200-201. While Jerosky did recall Jones saying to appellant, “It would be better for all if you were not here at all,” there was no evidence to suggest this statement motivated the issuance of the Level Two-ADLS or removal. N.T. pp. 202-203.

Additionally, Cameron noted he tried to show appellant that there was no conspiracy against him. N.T. p. 251. This occurred during a meeting with appellant on July 5, 2018, to discuss the EPR which was issued to appellant on that date. N.T. pp. 249-251; Ap. Ex. 13. Cameron explained that, during the meeting, he provided appellant with information regarding the internal review of the issue appellant raised with Burns. N.T. pp. 251-254; Ap. Ex. 11. Cameron stated he provided appellant with this information so that appellant could see there was no conspiracy and focus on improving his performance under the PIP. N.T. pp. 251-254; Ap. Ex. 11.

Nonetheless, appellant accused Jerosky of retaliating against him about a year after he spoke with Burns about the USTIF statement. N.T. pp. 233-234. Specifically, appellant asserted Jerosky took away his Alternative Work Scheduled (hereinafter “AWS”) for performance reasons. N.T. pp. 233-234; Ap. Ex. 19. Appellant recalled Jerosky informed him that he “was being stripped of the AWS” after he “spent three hours in a PowerPoint presentation showing [Cameron, Jerosky, and Baker] how to do the USTIF statement.” N.T. p. 233. Appellant asserted the USTIF statement is the hardest statement to complete and characterized Jerosky’s action as “vindictive.” N.T. pp. 233-234. Appellant also accused Baker of being “vindictive” when she counseled him about his nearly exhausted leave balance, and he believed the failure to nominate him for the Governor’s Award for Excellence was “vindictive.” N.T. pp. 235-238; Ap. Ex. 20. Additionally, appellant believed it

was “vindictive” for the appointing authority’s Corporate Card Coordinator to copy his supervisors when she informed him that his corporate travel card issued by the appointing authority would be closed due to him initiating bankruptcy. N.T. pp. 259-261; Ap. Ex. 31. Appellant does not explain how these perceived “vindictive actions” are related to the Level-Two ADLS and removal, which are the subject of the present appeals.

In addition to the preceding claims of retaliation, appellant made the following claims pertaining to the incidents listed on the Interim EPRs related the Level-Two ALDS and removal. First, appellant asserted the incidents documented on the Interim EPRs were “petty” and “excessive,” and do not merit the issuance of a Level-Two ADLS or removal. N.T. p. 177. Specifically, appellant suggested he should not have been given deadlines for processing financial statements. N.T. pp. 220-221. Based on this reasoning, appellant interpreted an email from Baker reminding him of these deadlines as a threat. N.T. p. 221; Ap. Ex. 14.

Contrary to appellant’s interpretation, Baker explained the deadlines for completing financial statements were agreed upon. N.T. p. 220. Baker reminded appellant of the agreed upon deadlines in an email when she approved his leave request. Ap. Ex. 14. Baker explained the email was not a threat, but a reminder that appellant still had responsibilities. N.T. p. 221. Baker also noted appellant’s responses to her email displayed a lack of concern for the seriousness of the “action items” that he needed to improve on. N.T. p. 221; Ap. Ex. 14. Appellant was required to complete three financial statements—Capital Facilities, Catastrophic Loss, and USTIF—by close of business on July 16, 2018. AA Ex. 14. Appellant’s failure to complete these financial statements as instructed resulted in a written reprimand. N.T. pp. 224-225; AA Ex. 16.

In addition to his claims regarding deadlines, appellant argued he should not be held responsible for errors that his immediate supervisor did not initially notice. N.T. p. 231. Contrary to appellant's belief, Baker explained there is a multi-level review process. N.T. p. 231. Errors may be caught and addressed at any point in the review process under the PIP. N.T. pp. 231-232.

Appellant further argued duplicative incidents were used to support the "Unsatisfactory" ratings on his Interim EPRs. However, Baker explained that the incidents were not duplicative even though some of the incidents arose from the same task. N.T. pp. 120-121. For example, Baker stated communication impacts everything an employee does, and therefore, it overlaps with the other categories, such as job knowledge/skills and problem solving. N.T. p. 120.

With that said, appellant noted he submitted lengthy responses to each Interim EPR issued to him. N.T. p. 240. Appellant stated on one of the Interim EPRs, he found an error, which Baker corrected. N.T. p. 240. Appellant believes this correction was made "begrudgingly." N.T. p. 241.

Additionally, appellant asserted he performed many facets of his job well and helped other co-workers, which management should have been doing. N.T. pp. 243, 261-262; Ap. Exs. 24, 25, 26, 27, 28, 33, 34. Baker disagreed with this characterization and noted there were issues with some of the items that appellant asserted he completed correctly. N.T. pp. 357-359, 366-367. Cameron also noted that, during one of the weekly meetings, appellant misled them and tried to take credit for solving a "big issue," which was solved for him by another employee. N.T. pp. 370-371.

Lastly, appellant asserted his workload was heavier than a female Accountant 3, who left employment with the appointing authority prior to his removal. N.T. p. 214. Contrary to this assertion, Baker testified all of the accountants are assigned more than one financial statement to complete, including the female Accountant 3, who appellant referenced. N.T. pp. 349-350. Baker explained, the female Accountant 3 had similar duties to appellant, which included “servicing areas, answering emails, and answering how she did the technical project, which took a longer time.” N.T. p. 350. Baker also noted it was the female Accountant 3’s first year with the appointing authority, and appellant had been employed by the appointing authority as an Accountant 3 for seven years. N.T. pp. 172, 350. Additionally, Cameron noted appellant was not assigned special projects, which are usually completed by Accountant 3 employees, because he continued to perform poorly. N.T. p. 152.

### ***Good Cause for the Level-Two ADLS with Final Warning***

Good cause must relate to an employee’s competence and ability to perform his job duties, *Department of Corrections v. Ehnnot*, 110 Pa. Commw. 608, 532 A.2d 1262 (1987), or must result from conduct that hampers or frustrates the execution of the employee’s duties. *McCain v. Department of Education*, 71 Pa. Commw. 165, 454 A.2d 667 (1983). Having carefully reviewed the evidence, we find that the appointing authority has established the charge against appellant and established good cause for the Level-Two ADLS with final warning. In support of our conclusion, we find credible<sup>14</sup> the testimony provided by the appointing authority’s witnesses.

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<sup>14</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*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

The Level-Two ADLS with final warning issued to appellant was based solely on his unsatisfactory performance during the Interim EPR rating period of January 9, 2019 through March 27, 2019. Comm Ex. A. During this rating period, appellant was on a PIP, which set forth the minimum standards of performance that appellant was required to meet to obtain a satisfactory evaluation. AA Ex. 6. Specifically, appellant could not have more than two incidents or deviations in the following job categories: job knowledge/skills; work results; communications, initiative/problem solving; and work habits. N.T. pp. 58, 115, 118; AA Ex. 6. Additionally, one incident where financial statements were not completed within the assigned time frames with minimum revisions could result in less than satisfactory ratings in the job knowledge/skills and work results categories. AA Ex. 6.

Based on the credible testimony of the appointing authority's witnesses and detailed narratives in the Interim EPR, we find appellant failed to meet the standards set forth in the PIP. N.T. pp. 44-45, 91-93; AA Ex. 7. During the rating period, appellant displayed a lack of understanding regarding the skills necessary to complete his assigned tasks, resulting in errors in the reconciliations and unpaid items assigned to him, along with errors in the USTIF statement and Capital Facility Report, which he was responsible for completing. N.T. pp. 91-93; AA Ex. 7. Appellant also failed to independently research and resolve various matters for which he was responsible and was unable to explain his work. N.T. pp. 45, 92-93; AA Ex. 7.

Appellant's failure to meet the standards set forth in the PIP resulted in an overall "Unsatisfactory" rating on his Interim EPR for rating period January 9, 2019 through March 27, 2019. AA Ex. 7 (p. 4). Appellant also received

“Unsatisfactory” ratings in the following categories: job knowledge/skills; work results; communication; and initiative/problem solving. N.T. pp. 91-93; AA Ex. 7 (p.2). Accordingly, we find the charge is substantiated.

Additionally, we find the level of discipline was appropriate. Prior to the issuance of the Level-Two ADLS, appellant was issued a written reprimand and two Level-One ADLS letters. N.T. pp. 32-34, 36-38; AA Ex. 1, 2, 3. All of these disciplinary actions were based on appellant’s continued unsatisfactory performance. AA Exs. 1, 2, 3. Thus, the next step in progressive discipline would be the issuance of a Level-Two ADLS with final warning. As such, we find the level of discipline issued by the appointing authority, a Level-Two ADLS with final warning, was appropriate.

Furthermore, we are not persuaded by appellant’s claim that his supervisors were wrong in their assessment of his performance. Ap. Bf. The appointing authority credibly substantiated the ratings on the Interim EPR for rating period January 9, 2019 through March 27, 2019. AA Ex. 7. Additionally, we find the instructions and expectations set forth in the PIP were clear. AA Ex. 6. Also, appellant’s supervisors held weekly meetings with him at which guidance was provided on the tasks appellant was to complete. N.T. pp. 69-70, 80, 86, 147; AA Ex. 8. However, despite this guidance, appellant failed to improve. Thus, we find it was appropriate for the appointing authority to hold appellant accountable for failing to meet the expectations set forth in the PIP, which resulted in the “Unsatisfactory” Interim EPR.

Based on the above, we find the appointing authority had good cause to issue the Level-Two ADLS with final warning to appellant. Specifically, we find the appointing authority presented credible evidence appellant failed to maintain the appointing authority's standards of performance. AA Exs. 7, 8. We further find appellant's "Unsatisfactory" performance ratings on the Interim EPR for rating period January 9, 2019 through March 27, 2019 clearly relate to his competence and ability to perform his job duties, thereby providing good cause for issuing the Level-Two ADLS with final warning. *See Ehnnot, supra*. Having determined the appointing authority demonstrated good cause for the disciplinary action, appellant's discrimination claims pertaining to the Level-Two ADLS with final warning will be discussed in a subsequent section of this adjudication.

### ***Just Cause for Removal***

To show just cause for the removal of a regular status civil service employee, the employer must show that the actions resulting in the removal are related to an employee's job performance and touch in some rational and logical manner upon the employee's competence and ability. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992). Having carefully reviewed the evidence, we find the appointing authority has established the charge against appellant and established just cause for his removal. In support of our conclusion, we find credible the testimony provided by the appointing authority's witnesses.

Appellant's removal was based on his unsatisfactory performance during the Interim EPR rating period of March 28, 2019 through May 30, 2019. Comm Ex. D. During this rating period, appellant was on a PIP, which set forth the

minimum standard of performance that appellant was required to meet to obtain a satisfactory evaluation. AA Ex. 10. These standards were the same as the standards set forth in the previous PIP, which resulted in the issuance of the Level-Two ADLS with final warning. AA Exs. 6, 10.

Based on the credible testimony of the appointing authority's witnesses and detailed narratives in the Interim EPR, we find appellant failed to meet the standards set forth in the PIP. N.T. pp. 109; AA Ex. 11. During the rating period, appellant displayed a lack of understanding regarding the skills necessary to complete his assigned tasks. N.T. p. 107; AA Ex. 11. Appellant failed to correctly complete account reconciliations, unpaid items, T-accounts, a "PPA Taxi transfer, an "AM document," and the "USTIF statement FI recon backup." N.T. pp. 107-108, Ex. 11. Appellant also failed to independently research reconciliation and unpaid items and was unable to explain his work. N.T. pp. 107; AA Ex. 11.

Appellant's failure to meet the standards set forth in the PIP resulted in an overall "Unsatisfactory" rating on his Interim EPR for rating period March 28, 2019 through May 30, 2019. AA Ex. 11 (p. 4). Appellant also received "Unsatisfactory" ratings in the following categories: job knowledge/skills; work results; communication; and initiative/problem solving. AA Ex. 11 (p. 2). Accordingly, we find the charge is substantiated.

Additionally, we find the level of discipline was appropriate. Prior to removing appellant, the appointing authority issued the following to appellant: a written reprimand; two Level-One ADLS letters; and a Level-Two ADLS with final warning. N.T. pp. 32-34, 36-38, 94-95; Comm. Ex. A; AA Exs. 1, 2, 3. All of these

disciplinary actions were based on appellant's continued unsatisfactory performance. Comm. Ex. A; AA Exs. 1, 2, 3. Thus, the next step in progressive discipline would be removal. As such, we find removal was appropriate.

Furthermore, we are not persuaded by appellant's claim that his supervisors were wrong in their assessment of his performance. Ap. Bf. The appointing authority credibly substantiated the ratings on the Interim EPR for rating period March 28, 2019 through May 30, 2019. AA Ex. 11. Additionally, we find the instructions and expectations set forth in the PIP were clear. AA Ex. 10. Also, as with the prior PIPs, appellant's supervisors held weekly meetings with him at which guidance was provided on the tasks appellant was to complete. N.T. pp. 644, 100, 103; AA Ex. 12. However, despite this guidance, appellant failed to improve and the same issues with his performance persisted. N.T. pp. 45, 150-151, 154-155; AA Exs. 11, 12. Thus, we find it was appropriate for the appointing authority to hold appellant accountable for failing to meet the expectations set forth in the PIP, which resulted in the "Unsatisfactory" Interim EPR.

Based on the above, we find the appointing authority had just cause to remove appellant. Specifically, we find the appointing authority presented credible evidence appellant failed to maintain the appointing authority's standards of performance. AA Exs. 10, 11. We further find appellant's "Unsatisfactory" performance ratings on the Interim EPR for rating period March 28, 2019 through May 30, 2019 clearly relate to his competence and ability to perform his job duties, thereby providing just cause for the removal. *See Mihok, supra*. Having determined the appointing authority demonstrated just cause for the disciplinary action, it is necessary to review appellant's discrimination claims, which are discussed in the following section.

### *Appellant's Discrimination Claims*

In addition to challenging the substance of the appointing authority's claims, appellant alleged discrimination due to his age, sex, and in retaliation for a complaint he made in 2017 regarding a USTIF statement that he was processing. Comm. Exs. B, E; Ap. Bf. Appellant has also introduced claims of a hostile work environment. Comm. Exs. B, E. Insofar as the present appeals address matters brought under Section 3003(7)(ii) of the Civil Service Act, the initial burden has been placed upon appellant to establish a *prima facie* case in support of his allegations—*i.e.*, he was required to introduce evidence that, if believed and otherwise left unexplained, would indicate that more likely than not discrimination has occurred. *Henderson*, 126 Pa. Commw. at 614, 560 A.2d at 863. We find appellant has failed to meet that standard.

Regarding his age discrimination claim, appellant provided no evidence as to his age, nor did he present any evidence showing how the appointing authority treated younger employees differently from similarly situated employees. Accordingly, we find appellant has failed to establish a *prima facie* case of discrimination based on age.

Likewise, appellant failed to establish a *prima facie* case of discrimination based on his sex. Appellant's claim of sex-based discrimination is premised upon his belief that he had a heavier workload than a female Accountant 3. Ap. Bf., pp. 4-5. This belief is unsubstantiated. Indeed, Baker credibly testified both appellant and the female Accountant 3 had similar duties, even though it was the female Accountant's first year as an Accountant 3, whereas appellant had been an Accountant 3 for seven years. N.T. p. 350. Cameron also credibly noted appellant's

workload was reduced because of his poor performance in that, unlike the other Accountant 3 employees, he was not assigned special projects. N.T. p. 152. Thus, we find appellant has failed to establish a *prima facie* case of discrimination based on his sex.

We further find appellant's claims of retaliation and hostile work environment are insufficient to establish a *prima facie* case of discrimination. Appellant has provided no credible evidence to support his belief that the Level-Two ADLS with final warning and removal were motivated by actions which occurred almost two years prior. Indeed, Jerosky specifically stated the events from 2017 had no bearing on the disciplinary actions, which are presently before the Commission. N.T. pp. 200-201. Also, prior to the issuance of the Level-Two ADLS and removal, Cameron attempted to show appellant that there was no such conspiracy against him so that appellant could focus on improving his performance under the PIP. N.T. pp. 249-254; Ap. Ex. 11. Thus, the evidence presented by appellant is insufficient to establish a *prima facie* case of retaliation.

Furthermore, we find the appointing authority presented credible evidence which establishes legitimate non-discriminatory reasons for its conclusions that appellant's work performance was unsatisfactory during the rating periods of January 9, 2019 through March 27, 2019, and March 28, 2019 through May 30, 2019. As explained in the preceding sections of this adjudication, the reasons included appellant's failure to correctly complete his assigned tasks, to independently research assigned items, and to communicate effectively. AA Exs. 7, 11. Accordingly we find, appellant failed to present evidence sufficient to establish that his supervisors' assessment of his performance was, in any way, affected by discrimination as alleged.

CONCLUSIONS OF LAW

1. The appointing authority has presented credible evidence establishing good cause for the suspension under Section 2603 of Act 71 of 2018.
2. The appointing authority has presented evidence establishing just cause for removal under Section 2607 of Act 71 of 2018.
3. Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Frank M. Burock challenging a Level-Two Alternative Discipline in Lieu of Suspension assessed upon his regular status Accountant 3 employment with the Office of the Budget and sustains the action of the Office of the Budget in the Level-Two Alternative Discipline in Lieu of Suspension imposed upon Frank M. Burock in his regular Accountant 3 employment.

Additionally, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Frank M. Burock challenging his removal from regular Accountant 3 employment with the Office of the Budget, and sustains the action of the Office of the Budget in the removal of Frank M. Burock from regular Accountant 3 employment, effective June 20, 2019.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: 4/29/21