

COMMONWEALTH OF PENNSYLVANIA

Loretta Johnson : State Civil Service Commission
 :
 v. :
 :
 Philadelphia County Assistance Office, :
 Department of Human Services : Appeal No. 30304

Loretta Johnson James S. Marshall
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Loretta Johnson challenging her Level-Two Alternative Discipline in Lieu of Suspension¹ (hereinafter “ADLS”) from regular Income Maintenance Caseworker employment with the Philadelphia County Assistance Office, Department of Human Services. Hearings were held on October 30, 2019 and December 10, 2019 at the State Civil Service Commission’s Eastern Regional Office in Philadelphia, Pennsylvania before Commissioner Gregory M. Lane.

¹ 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.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the post-hearing argument submitted by the appellant.² The issues before the Commission are whether there is good cause for the Level-Two ADLS and whether appellant has established the disciplinary action was the result of discrimination.

FINDINGS OF FACT

1. By letter dated July 3, 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 her position as an Income Maintenance Caseworker, regular status with the Philadelphia County Assistance Office (hereinafter “appointing authority”).
2. In its July 3, 2019 letter, the appointing authority charged appellant as follows:

The reason for this action is **Unsatisfactory Performance (as defined by DHS HR Policy 7174):** Specifically, your overall work performance is unsatisfactory as

² While the appointing authority was afforded the opportunity to submit a Brief, the appointing authority chose not to do so. N.T. p. 458.

indicated in the Interim Employee Performance Review for rating period April 2, 2019 – May 1, 2019 and incorporated herein by reference.

Comm. Ex. A (emphasis in original).

3. The appeal was properly raised before this Commission and was heard under Sections 3003(7)(i) and (ii) of Act 71 of 2018.
4. In 2011, appellant began employment as an Income Maintenance Caseworker with the appointing authority. N.T. p. 395.
5. As an Income Maintenance Caseworker, appellant is responsible for assessing the benefits administered by the appointing authority and any overpayments of those benefits. Appellant is also responsible for maintaining her caseload, which includes the disposition of data exchanges and alerts and the handling of hearings, appeals, and reconsiderations. N.T. pp. 102, 184.
6. Income Maintenance Casework Supervisor Mohamed Sherif has supervised appellant since March 2016. N.T. pp. 106, 183, 212.

7. On April 2, 2019, appellant was issued a Work Plan for the rating period of April 2, 2019 through May 1, 2019. The Work Plan was intended to assist appellant with establishing a structure for daily operations as well as meeting her job expectations and achieving a satisfactory work performance. N.T. pp. 109-110, 173, 185-186, 346; AA Ex. 7.
8. The Work Plan included a directive to attend daily conferences with Sherif to review work completed the previous day, as well as work to be completed by the close of business the same day. AA Ex. 7.
9. The Work Plan included a directive to appropriately address system alerts daily, including taking required action to update case information, properly disposing of the alerts, and writing a descriptive narrative into the case. AA Ex. 7.
10. The Work Plan included a directive to review the dashboard daily and take appropriate action to complete assigned tasks. AA Ex. 7.
11. The Work Plan included a directive to complete overpayment cases and customer service tickets in a timely manner. AA Ex. 7.

12. The Work Plan included a directive to provide accurate and descriptive narratives for all actions taken on cases. AA Ex. 7.
13. The Work Plan included a directive to research policies and procedures when handling cases. AA Ex. 7.
14. The Work Plan included a directive for appellant to inform Sherif if she could not meet a deadline. AA Ex. 7.
15. Sherif completed an Interim Employee Performance Review (hereinafter “Interim EPR”) based on appellant’s progress during the Work Plan. N.T. p. 190; AA Ex. 8.
16. The Interim EPR was presented to appellant on May 21, 2019. N.T. p. 73.
17. On the Interim EPR, appellant received an overall rating of “Unsatisfactory,” along with “Unsatisfactory” ratings in the following categories: 1) job knowledge and skills; 2) work results; 3) communication; 4) initiative and problem solving; and 5) work habits. AA Ex. 8.

18. Appellant received a rating of “Unsatisfactory” in the job knowledge and skills category based on her failure to follow the appointing authority’s policies and procedures, despite receiving previous training. Specifically, appellant failed to dispose of alerts, new hire data exchanges, and hearings and appeals in accordance with the appointing authority’s policies and the direction given. N.T. pp. 114, 193-194, 257, 310, 316-317; AA Ex. 8.
19. Appellant received a rating of “Unsatisfactory” in the work results category because she failed to meet deadlines. AA Ex. 8.
20. Appellant received a rating of “Unsatisfactory” in the communication category because she continued to miss deadlines without informing Sherif, even though she attended daily conferences with him. AA Ex. 8.
21. Appellant received a rating of “Unsatisfactory” in the initiative and problem solving category because she continued to need daily reminders, missed critical deadlines, and did not bring her overdue work items into compliance. N.T. p. 202; AA Ex. 8.

22. Appellant received a rating of “Unsatisfactory” in the work habits category because she failed to meet deadlines and expectations for managing her caseload and she failed to organize her desk as required under the Work Plan. N.T. pp. 203-204, 261, 266-268. AA Ex. 8.
23. At the inception of the Work Plan, appellant was informed her alerts needed to be completed by the end of the workday. N.T. pp. 195-196.
24. During the rating period for the Work Plan, appellant only completed approximately ten alerts, and 800 alerts remained overdue. N.T. pp. 196, 214, 225, 233.
25. Appellant did not receive more alerts than other Income Maintenance Caseworkers. N.T. p. 198.
26. Appellant’s workload was reduced during the Work Plan. N.T. pp. 199, 274, 296, 304.
27. Appellant’s failure to meet deadlines resulted in significant financial costs for the appointing authority because overpayments were made. N.T. pp. 214, 225, 233.

28. Appellant's failure to organize her desk resulted in rodent sightings because leftover food particles, utensils, and other loose materials remained littered about her work area. N.T. pp. 203-204, 261, 266-268.
29. On June 21, 2019, a pre-disciplinary conference (hereinafter "PDC") was held with appellant regarding her unsatisfactory work performance. Comm. Ex. A; N.T. pp. 53-54.
30. DHS HR Policy 7174 provides the charge of unsatisfactory performance is substantiated where performance is "overall unsatisfactory, or one or more rating factors may be unsatisfactory, and the extent of the unsatisfactory performance in a given area is such that the employee's performance is unacceptable." AA Ex. 6.
31. DHS HR Policy 7174 provides a third or subsequent offense of unsatisfactory performance may result in the issuance of a Level-One ADLS then a Level-Two ADLS with final warning. AA Ex. 6.

32. Previously, five disciplinary actions were issued to appellant for unsatisfactory performance. N.T. p. 32; AA Exs. 1-5.
33. On October 28, 2016, an oral reprimand was issued to appellant for unsatisfactory work performance. AA Ex. 1.
34. On February 10, 2017, a written reprimand was issued to appellant for unsatisfactory work performance. AA Ex. 2.
35. On January 19, 2018, a written reprimand was issued to appellant for unsatisfactory work performance. AA Ex. 3.
36. On February 7, 2018, a Level-One ADLS was issued to appellant for unsatisfactory work performance. AA Ex. 4.
37. On August 14, 2018, a Level-Two ADLS was issued to appellant for unsatisfactory-work performance. AA Ex. 5.

DISCUSSION

By letter dated July 3, 2019, the appointing authority notified appellant she was being issued a Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with final warning due to her overall unsatisfactory work performance, as indicated in her Interim Employee Performance Review (hereinafter “Interim EPR”) for rating period April 2, 2019 through May 1, 2019. Comm. Ex. A. The issues before the Commission are: 1) whether the appointing authority established good cause for appellant’s Level-Two ADLS with final warning from appellant’s regular status position of Income Maintenance Caseworker; and 2) whether appellant established the discipline was the result of discrimination. Specifically, appellant asserts the Level-Two ADLS with final warning was the result of discrimination based on her age and retaliation. Comm. Ex. B.

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.

Concerning the discrimination claim, appellant bears the burden of establishing the personnel action was due to discrimination. *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 has 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.³ 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*, at 141 Pa. Commw. 40, 594 A.2d 851 (1991).

Here, appellant alleges discrimination based on her age and retaliation. Comm. Ex. B. Specifically, appellant alleges her direct supervisor, Mohamed Sherif, bullied and harassed persons under his supervision who were over the age of forty. N.T. p. 406; Ap. Post-Hearing Argument. Additionally, appellant alleged Sherif gave her low evaluations because she filed complaints against him for harassing her and creating a hostile work environment. N.T. p. 428; Ap. Post-Hearing Argument.

³ 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 her age and retaliation. Comm. Ex. B.

In support of its charge and in rebuttal of appellant's discrimination claims, the appointing authority presented the testimony of Human Resource Analyst Latonia Lee,⁴ Assistant District Administrator Kelli Randale,⁵ and Income Maintenance Casework Supervisor Mohamed Sherif.⁶ Appellant testified on her own behalf. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

I. Evidence Presented by the Parties

A. Appointing Authority's Evidence

The appointing authority is responsible for administering benefits such as cash assistance, food stamps, and medical assistance. N.T. p. 100. Income Maintenance Caseworkers, such as appellant, are responsible for assessing the benefits administered by the appointing authority and any overpayments of those

⁴ Lee is employed by the Office of Administration (hereinafter "OA") as a Human Resource Analyst 2 and is assigned to the HR Service Center, Philadelphia County Assistance Office. N.T. pp. 25, 28. Lee has held this position for one year. N.T. pp. 26, 28. The working title of Lee's position is Human Resource Analyst Generalist and she is assigned to Labor Relations. N.T. p. 29. In that capacity, Lee conducts investigations regarding performance, policy violations, and discrimination. N.T. p. 29. Prior to that, Lee was employed as an Administrative Officer 1 and an Income Maintenance Caseworker. N.T. p. 27. Lee has approximately six years of service with the Commonwealth. N.T. pp. 26-27.

⁵ Randale is employed by the appointing authority as an Income Maintenance Administrator 1, which has a working title of Assistant District Administrator. N.T. pp. 94, 96. Randale has held the position of Assistant District Administrator for almost four years and has worked for the appointing authority for a total of nineteen years. N.T. pp. 95-96. Presently, Randale oversees the daily operations of the Glendale District Office and manages four Income Maintenance Casework Supervisors. N.T. pp. 97, 99. Randale has second-level supervisory duties over the Income Maintenance Caseworkers, including appellant. N.T. pp. 99, 106. As appellant's second-level supervisor, Randale was the reviewing officer on appellant's Interim EPR. N.T. p. 124.

⁶ Sherif is employed by the appointing authority as an Income Maintenance Casework Supervisor. N.T. p. 178. Sherif has held this position for twelve years. N.T. pp. 178, 180. Presently, Sherif is assigned to the Glendale District and reports directly to Randale. N.T. pp. 180-181. Sherif supervises Income Maintenance Caseworkers to ensure the proper implementation of their responsibilities, which include eligibility determinations and caseload maintenance. N.T. pp. 180-182. At any one time, Sherif supervises between four to ten Income Maintenance Caseworkers. N.T. pp. 106, 182. Sherif has been appellant's direct supervisor since March 2016. N.T. pp. 106, 183.

benefits. N.T. pp. 102, 184. Income Maintenance Caseworkers are also responsible for maintaining their caseloads, which include the disposition of data exchanges and alerts⁷ and the handling of hearings, appeals, and reconsiderations. N.T. p. 184. If Income Maintenance Caseworkers fail to perform their responsibilities competently, clients may not receive their benefits in a timely manner, or they may receive the wrong amount of benefits. N.T. pp. 103-104. Clients who do not receive their benefits in a timely manner may be unable to obtain their necessary medications, pay their rent, or buy food. N.T. pp. 103-104.

From April 2, 2019 through May 1, 2019, appellant was on a Work Plan.⁸ N.T. pp. 109, 185; AA Ex. 7. The Work Plan was issued to appellant because she received a rating of “Unsatisfactory” on her previous Interim EPR. N.T. pp. 11, 185; AA Ex. 7. The purpose of the Work Plan was to help appellant achieve a satisfactory level of performance. N.T. pp. 110, 185-186, 346.

The Work Plan was initially presented to appellant on March 29, 2019. N.T. p. 185. During this initial meeting, appellant expressed contempt and asserted the workload was too much. N.T. pp. 186-187, 350-351. A revised Work Plan was provided to appellant on April 2, 2019. N.T. pp. 109, 173; AA Ex. 7. The rating period for the Work Plan was April 2, 2019 through May 1, 2019. N.T. p. 109.

⁷ Alerts are notifications that the client has had a change in circumstances. N.T. pp. 116, 197. Alert information is provided to Income Maintenance Caseworkers through case processing and the dashboard. N.T. p. 116. There are many types of alerts: Social Security alerts; Supplemental Security Income alerts; Retirement Social Security Disability Insurance alerts; Medicare alerts; and PHEAA alerts. N.T. p. 225.

⁸ Sheriff testified, during the three years he supervised appellant, she has been on several Work Plans. N.T. p. 218. Sheriff noted during one of the Work Plans, appellant progressed from a rating of “Unsatisfactory” to “Needs Improvement.” N.T. pp. 219, 354. However, she subsequently regressed. N.T. p. 354. The prior Work Plans are not presently before the Commission.

Pursuant to the Work Plan, daily conferences were to be held between appellant and her direct supervisor, Mohamed Sherif. N.T. p. 109. The purpose of these conferences was to review appellant's completed work, provide appellant with an opportunity to ask questions, and assist appellant in prioritizing her work. N.T. p. 109. Between, April 2, 2019 and May 1, 2019, there were twenty workdays on which the conferences were to be held. N.T. p. 132. Appellant failed to attend several of the conferences; and, if she was late more than fifteen minutes, the conference was not held. N.T. p. 132. In total, appellant attended approximately fifteen conferences. N.T. pp. 108, 113, 131-132, 168, 189.

In attendance at the conferences were appellant, Sherif, and Kelli Randale, who was appellant's second-level supervisor.⁹ N.T. pp. 114, 132. Sherif led the discussion at each of the conferences, during which he reviewed with appellant the dashboard, her daily priorities, pending appeals, alerts, IEVS¹⁰ and ARRC¹¹ matters, as well as changes in the system. N.T. pp. 114, 132. Randale noted during the conferences, Sherif was very professional and at no time did Sherif act in a condescending, arrogant, or dismissive manner toward appellant. N.T. pp. 118-119. In contrast, Randale described appellant's demeanor as very nonchalant and noted appellant rarely brought the paperwork or information she needed to the conferences. N.T. pp. 119, 128-130, 142. Randale added appellant was not attentive

⁹ Randale testified she attended the conferences at Sherif's request because appellant filed a complaint against Sherif. N.T. pp. 113, 158. Randale explained her role was to ensure nothing improper was said or done. N.T. p. 157. Randale further noted Sherif performs his responsibilities commendably and she has never received any complaints of discrimination against Sherif based on age or retaliation, except from the appellant. N.T. pp. 105, 146-148. Likewise, Sherif testified, during his twelve years as an Income Maintenance Casework Supervisor, he has never been the focus of any discrimination claims, other than the complaint filed by appellant. N.T. pp. 192-193, 291-292.

¹⁰ IEVS stands for Income Eligibility Verification Systems. This system provides information about the client, such as the client's earned income, unemployment benefits, social security income, criminal history, among other information. N.T. pp. 115-116.

¹¹ ARRC matters are in direct correlation to IEVS matters and concern overpayments to clients. N.T. pp. 102, 116-117. No testimony was provided regarding what ARRC stands for.

nor was appellant engaged in the conversation. N.T. pp. 141, 143. However, Randale acknowledged, during the last three conferences, appellant started to participate a little more. N.T. pp. 120, 130-131.

Sherif agreed with Randale's characterization of appellant's demeanor during the conferences. N.T. pp. 189-190, 222. Sherif testified appellant came to the conferences unprepared. N.T. p. 222. Sherif also noted appellant failed to complete tasks which she indicated during the conference would be done that day. N.T. p. 222.

Sherif completed an Interim EPR based on appellant's progress during the Work Plan. N.T. p. 190; AA Ex. 8. On the Interim EPR, appellant received an overall rating, along with ratings in the following categories: 1) job knowledge and skills; 2) work results; 3) communication; 4) initiative and problem solving; 5) work habits; and 6) interpersonal relationships. N.T. pp. 190, 193-204. The only category for which appellant received a "Satisfactory" rating was interpersonal relationships. AA Ex. 8. Appellant was rated as "Unsatisfactory" in the other five categories. AA Ex. 8. For each rating, Sherif provided a narrative explaining the reasons for the rating. N.T. p. 191; AA Ex. 8.

Under the job knowledge and skills category, Sherif evaluated appellant's application of the appointing authority and district's policies and procedures, which are based on state and federal regulations. N.T. p. 193. Sherif explained appellant's performance in this category was "Unsatisfactory" because she did not correctly apply the appointing authority's policies when disposing of alerts and data exchanges. N.T. pp. 193-194. For example, the policy pertaining to new hire data exchanges from the County Assistance Office requires Income

Maintenance Caseworkers to contact and provide the client an opportunity to verify their new employment and clarify their income. N.T. p. 194. Sherif stated appellant failed to follow this policy in that she disposed of new hire data exchanges without contacting the clients; and, in some instances, she also failed to include a narrative regarding the action taken. N.T. pp. 194-195, 257; AA Ex. 8. Sherif explained this presents a problem because clients may be receiving overpayments for benefits, which may result in subsequent litigation to reclaim the overpayment. N.T. p. 195.

Additionally, Sherif noted under the job knowledge and skills category, appellant failed to provide hearing and appeals packets in accordance with the appointing authority's procedure. AA Ex. 8. Pursuant to the appointing authority's procedure, hearing and appeals packets are to be presented within five days after receiving the appeal notice and must also be well-written and well-researched. N.T. pp. 114, 310, 316. State procedures and federal regulations also require evidence in the form of exhibits be issued to the clients. N.T. p. 234. Appellant failed to address hearing and appeals packets in accordance with these procedures, which resulted in clients not receiving evidence to which they were entitled. N.T. p. 234. Appellant also presented hearing and appeals packets which were not legible and missed several deadlines. N.T. pp. 316-317. Therefore, appellant received an "Unsatisfactory" rating in the job knowledge and skills category. AA Ex. 8.

In the work result category, appellant received an "Unsatisfactory" rating because she failed to complete alerts, which were assigned to her. N.T. p. 195; AA Ex. 8. There is an expectation appellant will complete her work in a timely manner. N.T. p. 326. Failure to process alerts in a timely manner could result in clients receiving benefits for which they are not entitled. N.T. pp. 197-198. At the

inception of the Work Plan, appellant was informed her alerts needed to be completed by the end of the workday. N.T. pp. 195-196. Appellant failed to meet this expectation. N.T. p. 196; AA Ex. 8.

During the period of the Work Plan, appellant only completed approximately ten alerts, and 800 alerts remained overdue.¹² N.T. pp. 196, 214, 225, 233. Sherif noted appellant does not receive more alerts than other Income Maintenance Caseworkers. N.T. p. 198. In fact, appellant's workload had been reduced because she was on a Work Plan. N.T. pp. 199, 274, 296-298, 304. Sherif stated he consistently reassigned appellant's work to other Income Maintenance Caseworkers, which caused an undue burden on the employees in his unit. N.T. pp. 199, 304. Sherif denied reassigning work appellant completed. N.T. pp. 321-323.

In the communication category, appellant received an "Unsatisfactory" rating based on her lack of participation during the daily conferences, her failure to meet deadlines, and her failure to communicate with Sherif regarding the missed deadlines. AA Ex. 8. Appellant was required to inform Sherif of missed deadlines, unforeseen circumstances resulting in her inability to meet deadlines, and issues affecting her ability to help clients. N.T. pp. 199-200, 327. Additionally, appellant was required to write a narrative when she addressed an alert or a data exchange, which she failed to do. N.T. pp. 200-201; AA Ex. 8.

¹² Page 196 of the transcript reads that there were eighty overdue alerts. N.T. p. 196. All references to "eighty" in the transcript were to be corrected and changed to "800." N.T. pp. 390-391.

Sherif explained every client transaction must be documented by Income Maintenance Caseworkers. N.T. p. 200. This is done by inputting a narrative into the system. N.T. p. 200. The narrative is a detailed running record of the status of the case, which may be viewed by other Income Maintenance Caseworkers and the appointing authority's partners, such as Community Legal Services. N.T. pp. 200-201. During the period of the Work Plan, appellant failed to write narratives as required, and she failed to communicate missed deadlines to Sherif. N.T. p. 201. Sherif also noted he frequently sent appellant reminders about customer service tickets for which she missed the deadline. N.T. p. 201. Sherif explained there is an expectation customer service tickets will be completed by 1:30 p.m. daily. N.T. p. 271. Appellant's failure to complete these tasks as required resulted in an "Unsatisfactory" rating in the communications category. AA Ex. 8.

In the initiative and problem solving category, appellant received an "Unsatisfactory" rating based on her failure to take initiative to ensure compliance with the appointing authority's policies and procedures. AA Ex. 8. Sherif explained initiative and problem solving are critical to the success of Income Maintenance Caseworkers. N.T. p. 201. Appellant did not take initiative in completing tasks and she frequently needed to be reminded of deadlines. N.T. p. 202. Also, appellant was unable to work independently, despite having approximately eight years of experience. N.T. p. 202.

Sherif noted the appointing authority has a vast array of resources, including online resources such as OPS Memos. N.T. p. 202. However, appellant failed use these resources. N.T. p. 202. Rather, she relied on her supervisors and

coworkers to carry her, which placed a tremendous burden on everyone in the office. N.T. p. 202. Thus, she was issued an “Unsatisfactory” rating in the initiative and problem solving category. AA Ex. 8.

Lastly, appellant received an “Unsatisfactory” rating in the work habits category based on her disorganized work area and inefficient use of time. N.T. pp. 203-205. At the inception of the Work Plan, appellant was informed her work area needed to be organized. N.T. p. 203. The Work Plan specifically instructed appellant to clean up her desk so that she had a viable working space and was able to find necessary materials. N.T. p. 110; AA Ex. 7. Sherif explained appellant’s disorganized workstation had been an ongoing issue which had resulted in rodent sightings because leftover food particles, utensils, and other loose materials remained littered about her work area. N.T. pp. 203-204, 261, 266-268. Sherif noted, at the time of the hearing on the present matter, this issue still had not been addressed even though it had been repeatedly discussed with appellant. N.T. p. 204.

Sherif also noted, at the end of the Work Plan, there remained 800 overdue alerts, which appellant failed to complete. N.T. pp. 214, 225, 233. Sherif stated appellant made no attempt or effort to work on these alerts, and this inaction resulted in significant financial costs for the appointing authority because overpayments were made. N.T. pp. 214, 225, 233. Sherif further stated whenever other work items were reassigned to give appellant more time to address the alerts, she failed to use the additional time efficiently. N.T. pp. 204-205, 227. Instead, appellant often sat or walked around and socialized with other coworkers at times when she was not on break or at lunch. N.T. pp. 205, 222-223. Sherif explained

this behavior was also factored into the “Unsatisfactory” rating regarding appellant’s work habits. N.T. pp. 205, 214. Additionally, Sherif noted, unlike appellant, other Income Maintenance Caseworkers do not have overdue alerts or overdue payments. N.T. p. 239.

Sherif denied his evaluation of appellant’s work performance was based on any type of discrimination. N.T. p. 206. Sherif stated he does not know appellant’s age and asserted the ratings in each job category were based solely on appellant’s work performance. N.T. p. 215. Sherif further noted he is not the only supervisor who rated appellant as “Needs Improvement” and put her on a Work Plan. N.T. pp. 206-207, 211-212. Sherif testified Mr. Orr, who was one of appellant’s previous supervisors, rated appellant as “Needs Improvement” on her Interim EPR for rating period January 1, 2014 through December 31, 2014 and put her on a work plan from the latter part of 2014 through the beginning of 2015. N.T. pp. 206-207, 211-212. Sherif stated he became appellant’s supervisor thereafter in 2016. N.T. p. 212. Additionally, Randale, who was the reviewing officer on appellant’s Interim EPR for the present rating period, noted the information contained in the Interim EPR was true and correct based on her review of appellant’s work. N.T. pp. 124-126. Randale affirmed appellant’s work performance did not improve during this rating period. N.T. p. 120.

The Interim EPR was presented to appellant on May 21, 2019, after which appellant requested to meet with Randale to discuss it. N.T. pp. 73, 76. Randale scheduled two meetings with appellant to review the Interim EPR. N.T. pp. 76, 167. The first meeting was scheduled for February 21, 2019, at 12:00 p.m. N.T. p. 167. After this meeting was scheduled, appellant asked for more time

because she wanted to gather emails. N.T. p. 167. Therefore, the meeting was rescheduled for February 23, 2019, at 12:00 p.m. N.T. p. 167. Appellant failed to attend the rescheduled meeting and refused to sign the Interim EPR. N.T. pp. 72, 76, 167.

Pursuant to DHS HR Policy 7174, when an unsatisfactory performance evaluation is issued to an employee, a pre-disciplinary conference (hereinafter “PDC”) is conducted to provide the employee with an opportunity to explain why their performance was or was not unsatisfactory. N.T. pp. 53-54. Based on appellant’s unsatisfactory Interim EPR and the supporting documentation, a PDC was held on June 21, 2019. N.T. pp. 53-54. In attendance at the PDC were Human Resource Analyst Latonia Lee, appellant, Sherif, and a union representative. N.T. p. 54. The charges at the PDC were unsatisfactory performance based on appellant’s Interim EPR for rating period April 2, 2019 to May 1, 2019. N.T. pp. 54-55.

Lee testified appellant did not provide any evidence at the PDC to dispute the factors as stated in the Interim EPR. N.T. pp. 55, 63. At the PDC, appellant confirmed she had received the Interim EPR, Work Plan, and Performance Standards. N.T. pp. 55, 63-66. Appellant also confirmed she decided not to attend the meeting which was scheduled with Randale to discuss her Interim EPR. N.T. p. 78.

Additionally, at the PDC, appellant was provided an opportunity to respond to the charges. N.T. pp. 55, 63. Specifically, appellant was asked if she agreed with the ratings on the Interim EPR. N.T. p. 63. Appellant stated she did not agree with the ratings on the Interim EPR but failed to provide any evidence disputing the ratings. N.T. pp. 56, 63, 67.

At the end of the PDC, appellant was provided additional time to submit a written statement responding to the charges, which she did on June 26, 2019. N.T. pp. 56-57, 69; AA Ex. 9. Lee reviewed this statement, along with the case notes appellant provided, prior to making a disciplinary recommendation. N.T. pp. 57, 69-70. Upon considering appellant's verbal response at the PDC, as well as her written statement and the case notes, Lee concluded appellant did not provide any evidence to support her claim that her performance was satisfactory during the performance review period. N.T. pp. 57, 69-70. Therefore, Lee recommended appellant be removed. N.T. p. 58.

Lee explained she based her recommendation on the progression of discipline outlined in DHS HR Policy 7174. N.T. pp. 58-59; AA Ex. 6. Lee stated five disciplinary actions had previously issued to appellant for unsatisfactory work performance: 1) an oral reprimand on October 28, 2016; 2) a written reprimand on February 10, 2017; 3) a written reprimand on January 19, 2018; 4) a Level-One ADLS on February 7, 2018; and 5) a Level-Two ADLS with final warning on August 14, 2018.¹³ N.T. pp. 32-38; AA Exs. 1-5. Therefore, Lee asserted the next step of progressive discipline was removal. N.T. pp. 58-59; AA Ex. 6. With that said, Lee noted her recommendation was subsequently revised by the Human Resources Office and reduced to a Level-Two ADLS with final warning, which was

¹³ At the time of the hearing on the present matter, the February 7, 2018 Level-One ADLS was pending review before the Commission. N.T. pp. 39-40. The remaining disciplinary actions taken by the appointing authority were final, and not under review. N.T. p. 41. We hereby take notice that, on December 11, 2019, the Commission issued an adjudication in Appeal No. 29854 sustaining the issuance of the February 7, 2018 Level-One ADLS. *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).

a repetition of the prior level of discipline.¹⁴ N.T. pp. 58. Lee stated the Level-Two ADLS with final warning was based upon appellant's poor work performance during the period of the Work Plan, as set forth in the Interim EPR. N.T. p. 49; AA Ex. 8.

B. Appellant's Evidence

Appellant testified she has been employed by the Commonwealth since 2010 and has worked in the appointing authority's Glendale District since 2011. N.T. p. 395. During the time she worked in the Glendale District, appellant had a number of supervisors. N.T. p. 396. Appellant claims she never had any problems with her prior supervisors and asserts she always received favorable evaluations. N.T. p. 396. With that said, appellant noted she received an unfavorable evaluation when Sherif was the reviewing officer. N.T. p. 396. Appellant claims Sherif prevented her from receiving a favorable rating on this evaluation, which resulted in her being placed on a Work Plan. N.T. pp. 396-398. Appellant testified she successfully completed this Work Plan. N.T. p. 398.

Appellant testified she filed a complaint against Sherif in July 2016 because Sherif told her in March 2016 she would never receive a favorable review from him. N.T. pp. 398-399. At the time appellant made this complaint, she also asked to be removed from Sherif's supervision. N.T. pp. 398-399. Appellant stated she later filed a harassment complaint against Sherif, as well as numerous other complaints. N.T. p. 399. Appellant testified no action was taken on any of the complaints she filed. N.T. p. 399.

¹⁴ Lee did not indicate why the Human Resources Office revised the recommendation.

Appellant asserted, after she filed the complaints, Sherif continued to undermine her work, and even wrote her up for where she parked her car.¹⁵ N.T. p. 399. Appellant stated Sherif stands behind her and makes comments, such as, “I’ve been watching you for a minute and you haven’t been doing anything.” N.T. pp. 399-400. Appellant noted other employees are not scrutinized in this way. N.T. p. 400.

Appellant stated Sherif’s harassment created a hostile work environment, which greatly affected her health. N.T. p. 401. Appellant testified she had a heart attack at work in March 2017, after which she again asked to be removed from Sherif’s supervision. N.T. p. 402. Appellant noted her request was denied, and she claimed Sherif’s harassment continued in a more subtle manner. N.T. p. 402.

Appellant believes the decision not to transfer her to another supervisor was unfair. N.T. p. 404. Appellant argued the job descriptions for Income Maintenance Caseworkers are generally the same. N.T. p. 404. So, it should not have been a problem to transfer her. N.T. p. 404. Appellant noted when she initially talked to Human Resources, they told her it would not be a problem for her to transfer, but the transfer never occurred. N.T. p. 404. Appellant stated other employees in her unit have been moved to a different supervisor and she is the only employee who has remained under Sherif’s supervision. N.T. p. 402.

¹⁵ Sherif denied reporting where appellant parked her car. N.T. p. 367.

Appellant noted Sherif is the training supervisor; and, while she is not a trainee, she continues to remain under his supervision, which causes her to feel separated. N.T. p. 402. Appellant further argued this is evidence she was treated differently than similarly situated employees. N.T. pp. 451-452. Additionally, appellant asserted Sherif harasses many of the “older workers.” N.T. p. 406. Appellant did not clarify how Sherif harasses “older workers.”

While appellant did not provide any details regarding the alleged harassment of “older workers,” appellant noted Sherif harassed her in that he told others they needed to do her work for her because she did not know what she was doing. N.T. p. 403. Appellant stated Sherif’s statements about her work were untrue. N.T. p. 403. Appellant testified she was unable to complete her work because she was ill and took significant time off because of her health. N.T. p. 403. Appellant further claimed she was absent from work because of the hostile work environment, which she asserted was caused by Sherif’s harassment, constant humiliation, and constant put downs. N.T. p. 404. Appellant stated no action was taken by the appointing authority to address Sherif’s harassment and bullying of her. N.T. pp. 405-406.

Appellant acknowledged she was on a Work Plan. N.T. p. 436. However, appellant took issue with not being able to help develop it. N.T. pp. 436-437. Appellant testified the employee is supposed to help the supervisor develop the Work Plan. N.T. p. 436. Appellant stated during her first meeting about the Work

Plan, she was told it was in effect, even though she had not yet been given a copy. N.T. p. 437. Appellant noted another meeting subsequently occurred because the union indicated this was inappropriate.¹⁶ N.T. p. 437.

Appellant testified after she reviewed the Work Plan, it was given to the secretary, who failed to provide her with a copy. N.T. pp. 438-439. Appellant did not indicate on which day this occurred. However, appellant noted she did not receive a copy until ten days later. N.T. p. 439. Appellant further testified her Work Plan was to start on April 2, 2019, but she did not meet with Sherif until April 10, 2019. N.T. p. 438.

Appellant acknowledged as part of the Work Plan, she was required to attend daily conferences with Sherif and Randale.¹⁷ N.T. p. 432. Appellant denied she went to these conferences unprepared. N.T. pp. 405, 439. Appellant stated she printed off copies of her dashboard and gave the copies to Sherif and Randale at the conferences. N.T. p. 439. Appellant noted there were times when Sherif was unprepared and Randale printed off copies of the dashboard for him. N.T. p. 439.

¹⁶ Randale contradicted appellant's account regarding the development of the Work Plan. Randale explained Work Plans are initially developed by the supervisor and then presented to the employee, at which time the employee may indicate they want something more added to the work plan. N.T. pp. 171-172. After the revisions are made, the Work Plan is presented to the employee again and the employee is informed as to when the Work Plans will start. N.T. pp. 172-173. Randale stated this is what occurred with appellant's Work Plan. N.T. pp. 172-174. Randale also clarified appellant's Work Plan did not begin until April 2, 2019. N.T. p. 173.

¹⁷ Appellant noted Randale's role during the conferences was to act as a mediator. N.T. p. 405. Appellant stated Randale was not to participate based on an agreement with the union. N.T. pp. 405, 432. Appellant argued because Randale was to be quiet during the conferences, she should not be permitted to testify about what occurred during the conferences. N.T. p. 405. This is not a proper objection to the admissibility of testimony. Accordingly, we have considered Randale's testimony as provided during the appointing authority's case-in-chief.

Appellant recalled, during the conferences, they discussed the expectations for the day. N.T. p. 440. Specifically, they discussed which assignments listed on the dashboard appellant was going to complete. N.T. pp. 439-440. However, appellant stated when she returned to her desk after the conferences, she was often informed she needed to attend training, and the goals, which were discussed during the conferences, fell by the wayside. N.T. p. 440.

In addition to the daily conference, appellant testified she was to receive a daily review substantiating her shortcomings.¹⁸ N.T. p. 441. Appellant stated the purpose of the daily review was to provide her with an opportunity to fix whatever problems occurred. N.T. p. 441. The daily review was also to act as a gauge by which appellant could determine if she was completing her tasks successfully or unsuccessfully. N.T. p. 441. Appellant stated she never received any daily reviews during the Work Plan. N.T. p. 441.

Based on the above, appellant argued the Work Plan was not administered with the intention of guiding her to success. N.T. pp. 441-442. Appellant also asserted the Work Plan was not an accurate indicator of her performance, nor was she evaluated fairly. N.T. pp. 442, 444. Appellant stated the evaluation of her work as detailed in the Interim EPR is inaccurate. N.T. p. 442. Appellant provided a written response challenging the Interim EPR. N.T. pp. 442-443; AA Ex. 9. Additionally, appellant argued the ratings on her Interim EPR

¹⁸ Appellant suggests she was to receive daily reviews during the Work Plan so that she could fix whatever problems occurred. N.T. p. 441. There is nothing in the Work Plan requiring the appointing authority to provide daily reviews to appellant. AA Ex. 7. The Work Plan merely indicates appellant will be provided notes from the daily conferences. AA Ex. 7.

skewed based Sheriff's personal feelings. N.T. p. 400. Appellant believes the low evaluations she received from Sheriff were retaliatory and based on the complaints she filed against him for harassing her and creating a hostile work environment. N.T. p. 428.

II. Good Cause for the Level-Two ADLS

Good cause must relate to an employee's competence and ability to perform her 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 credible¹⁹ the testimony provided by the appointing authority's witnesses.

Here, appellant was charged with unsatisfactory performance as described in DHS HR Policy Manual 7174. Comm. Ex. A. DHS HR Policy Manual 7174 provides the charge of unsatisfactory performance is substantiated where performance is "overall unsatisfactory, or one or more rating factors may be unsatisfactory, and the extent of the unsatisfactory performance in a given area is such that the employee's performance is unacceptable." AA Ex. 6. Appellant was on a Work Plan from April 2, 2019 through May 1, 2019. N.T. pp. 109, 185; AA

¹⁹ 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).

Ex. 7. During the period of the Work Plan, appellant failed to reach a satisfactory level of performance. N.T. p. 120; AA Ex. 8.

As noted in the Work Plan, appellant was expected to complete the following tasks in accordance with the appointing authority's policies and procedures: 1) alerts; 2) IEVS matters; 3) overpayment cases; 4) customer service tickets; and 5) hearings and appeals. AA Ex. 7. Additionally, appellant was expected to attend and actively participate in daily conferences regarding her workload. AA Ex. 7. Appellant was also expected to keep her desk organized at all times and clear of all unwanted materials. AA Ex. 7.

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 Work Plan. N.T. p. 191; AA Ex. 8. Indeed, at the end of the Work Plan, there remained 800 overdue alerts, which appellant failed to complete. N.T. pp. 214, 225, 233. Additionally, appellant failed to follow the appointing authority's policies and procedures pertaining to case narratives and hearing and appeals packets. N.T. pp. 194-195, 257, 201, 234; AA Ex. 8. Appellant also failed to take initiative in completing tasks, frequently needed to be reminded of deadlines, failed to work independently, failed to avail herself the appointing authority's resources, and failed to communicate effectively with her supervisor. N.T. pp. 201-202; AA Ex. 8.

Appellant's failure to meet the standards set forth in the Work Plan resulted in an overall "Unsatisfactory" rating on her Interim EPR for rating period April 2, 2019 through May 1, 2019. AA Ex. 8. Appellant also received

“Unsatisfactory” ratings in the following categories: 1) job knowledge and skills; 2) work results; 3) communication; 4) initiative and problem solving; and 5) work habits. AA Ex. 8. Accordingly, we find the charge is substantiated.

Additionally, we find the level of discipline was appropriate. DHS HR Policy Manual 7174 sets forth the level of discipline to be imposed when the charge of unsatisfactory performance is substantiated. AA Ex. 6. Specifically, this policy provides a third or subsequent offense may result in the issuance of a Level-One ADLS then a Level-Two ADLS with final warning. AA Ex. 6. This was appellant’s sixth offense. N.T. pp. 32-38; AA Exs. 1-5.

Prior to the issuance of the disciplinary action, which is the subject of the present appeal, appellant was issued: an oral reprimand; two written reprimands; a Level-One ADLS; and a Level-Two ADLS with final warning. N.T. pp. 32-38; AA Exs. 1-5. All of these disciplinary actions were based on appellant’s continued unsatisfactory performance. AA Exs. 1-4. Thus, issuance of a second Level-Two ADLS with final warning was appropriate under DHS HR Policy Manual 7174. AA Ex. 6. As such, we find the level of discipline issued by the appointing authority was appropriate.

Furthermore, we are not persuaded by appellant’s claim that her supervisor was wrong in his assessment of her performance. N.T. p. 442; AA Ex. 9; Ap. Post-Hearing Argument. We find appellant’s supervisor, Sherif, credibly substantiated the ratings he gave appellant on the Interim EPR for rating period April 2, 2019 through May 1, 2019. AA Ex. 8.

Likewise, we are not persuaded by appellant's claim she did not receive adequate instruction under the Work Plan. N.T. pp. 441-442; Ap. Post-Hearing Argument. We find the instruction and expectations set forth in the Work Plan were clear. AA Ex. 7. Additionally, appellant's supervisor held daily conferences with her at which he provided guidance on the tasks appellant was to complete. N.T. pp. 109, 114, 132. However, appellant was not attentive or prepared at the conferences she attended. N.T. pp. 119, 128-130, 132, 141, 189-190, 222. Thus, we find it was appropriate for the appointing authority to hold appellant accountable for failing to meet the expectations set forth in the Work Plan.

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 April 2, 2019 through May 1, 2019 clearly relate to her competence and ability to perform her job duties, thereby providing good cause for issuing the Level-Two ADLS with final warning. *See Ehnot, supra*. Having determined the appointing authority demonstrated good cause for the disciplinary action, it is necessary to evaluate appellant's discrimination claim.

III. Appellant's Discrimination Claims

Appellant alleged discrimination based upon age and retaliation. Comm. Ex. B. Having carefully reviewed the evidence, the Commission finds appellant has not met her burden of establishing discrimination based on age. Appellant provided no evidence as to her age, nor did she present any evidence

showing how the appointing authority treated employees over the age of forty differently from similarly situated employees. Appellant merely made a conclusory statement asserting Sherif harasses many of the “older workers.” N.T. p. 406. Accordingly, we find appellant has failed to establish a *prima facie* case of discrimination based on age. With that said, we find appellant’s evidence of discrimination based on retaliation, while not overwhelming, it is sufficient to make out a *prima facie* case, if believed and otherwise unexplained by the appointing authority. *See Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864 (holding the burden of establishing a *prima facie* case cannot be an onerous one).

Although we find appellant met her initial burden of proof with regard to retaliation, the appointing authority presented credible evidence which establishes legitimate non-discriminatory reasons for its conclusion appellant’s work performance was unsatisfactory during the rating period of April 2, 2019 to May 1, 2019. As explained in detail above, these reasons include appellant’s failure to complete her tasks in a timely manner and in accordance with the appointing authority’s policies and procedures, even after she was given detailed instructions. AA Exs. 7, 8. Thus, we find the appointing authority successfully rebutted the presumption of discrimination raised by appellant’s *prima facie* case.

Furthermore, we find Sherif credibly denied appellant’s allegations and did not create a hostile work environment. N.T. pp. 206, 215. In fact, Sherif attempted to help appellant succeed by reducing her workload and meeting with appellant daily about the tasks she was completing. N.T. pp. 108, 113, 118-119, 131-132, 168, 199, 274, 296-298, 304. Therefore, based on Sherif’s credible denial and the evidence detailed above, we find Sherif’s evaluation of appellant’s work performance was based solely on her failure to complete her work in a timely manner

and in accordance with the appointing authority's policies. Indeed, Randale, who was the reviewing officer on appellant's Interim EPR, credibly testified Sheriff's evaluation was accurate. N.T. pp. 124-126. Thus, we find the appointing authority presented credible evidence the Level-Two ADLS with final warning was based on legitimate non-discriminatory reasons—appellant's unsatisfactory work performance. Appellant has failed to present any credible evidence the appointing authority's reasons are pretextual. Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing good cause for suspension under Section 2603 of Act 71 of 2018.
2. 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 Loretta Johnson challenging her Level-Two Alternative Discipline in Lieu of a three-day suspension from regular Income Maintenance Caseworker employment with the Philadelphia County Assistance

Office, Department of Human Services, and sustains the action of the Philadelphia County Assistance Office, Department of Human Services in the Level-Two Alternative Discipline in Lieu of a three-day suspension of Loretta Johnson from regular Income Maintenance Caseworker employment.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: October 26, 2020