

COMMONWEALTH OF PENNSYLVANIA

Destiny S. Rodriguez : State Civil Service Commission  
 :  
 v. :  
 :  
 Berks County Assistance Office :  
 Department of Human Services : Appeal No. 30329

Destiny S. Rodriguez Jonathan L. Curtis  
*Pro Se* Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Destiny S. Rodriguez challenging her Employee Performance Review for the rating period of June 13, 2019 to August 9, 2019, and her removal from probationary Income Maintenance Caseworker employment with the Berks County Assistance Office, Department of Human Services. A hearing was held on November 15, 2019, at the Strawberry Square Complex in Harrisburg, Pennsylvania before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issue before the Commission is whether the appointing authority discriminated against appellant in relation to her Employee Performance Review for the rating period of August 1, 2018, to August 1, 2019, and in relation to appellant's removal.

FINDINGS OF FACT

1. On August 14, 2019, appellant was informed she was removed from her probationary Income Maintenance Caseworker employment with the appointing authority, effective August 15, 2019. Comm. Ex. B; AA Ex. 1.
  
2. The August 14, 2019 removal letter provides the following:

This action is being taken because of Unsatisfactory Work Performance as defined by DHS HR Policy 7174; Specifically, you displayed unsatisfactory work performance as outlined in your Probationary Employee Performance Review dated August 9, 2019.

Comm. Ex. B; AA Ex. 1.
  
3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. D.
  
4. Appellant was employed as a probationary Income Maintenance Caseworker with the appointing authority. As a probationary Income Maintenance

Caseworker, appellant was responsible for correctly and independently authorizing and rejecting each case assigned. N.T. pp. 44-45, 178.

5. Income Maintenance Casework Supervisor Amy Lindenmuth was appellant's supervisor during the rating period of June 13, 2019 through August 9, 2019. N.T. pp. 30, 206, 226.
6. During the rating period of June 13, 2019 through August 9, 2019, Lindenmuth reviewed appellant case entries submitted for the Rushmore System. N.T. p. 43, Ap. Ex. 1.
7. Lindenmuth noticed appellant was initially performing the same as her fellow probationary Income Maintenance Caseworkers until the amount of assignments in the program increased. While the amount of case assignments increased for other probationary Income Maintenance Caseworkers, appellant's amount of assignments stopped increasing because appellant was not meeting the standards for the position. N.T. pp. 227, 229; AA Ex. 2.

8. On July 25, 2019, Lindenmuth contacted Income Maintenance Administrator Manager Gloria Cortes to describe her concern over appellant's errors not being shown in a Rushmore System report. N.T. p. 48; Ap. Ex. 9.
9. Lindenmuth calculated appellant's accuracy rate by reviewing appellant's data entries within each submitted case entry. Appellant's accuracy rating was 15.87% due to entering errors in fifty-three case entries out of sixty-three case entries. N.T. pp. 52-53, 87; Ap. Exs. 1, 9, 11.
10. Lindenmuth rated appellant's performance in her Employee Performance Review for the rating period of June 13, 2019 through August 9, 2019 (hereinafter "final EPR"). Lindenmuth utilized an Application Log noting appellant's errors and the IMSTP<sup>1</sup> job factors for the probationary Income Maintenance Caseworker position when rating appellant's performance. Comm. Ex. A; N.T. pp. 228-229, 230; AA Exs. 1, 3.

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<sup>1</sup> The acronym IMSTP was not explained during the proceedings. The IMSTP job factors are a list of job functions which are a minimum amount of duties a newly hired Income Maintenance Caseworker must be able to perform to successfully complete his or her probationary period. AA Ex. 2.

11. Appellant received an overall rating of Unsatisfactory on her final EPR and received a rating of Unsatisfactory for her job knowledge skills, work results, initiative program solving, and work habits. Comm. Ex. A; N.T. pp. 229-230, 233; AA Ex. 1.
12. Lindenmuth commented on appellant's final EPR how appellant's accuracy rating of 15.87% affected her overall rating of Unsatisfactory. Comm. Ex. A; N.T. pp. 231-232; AA Exs. 1, 3.
13. After completing appellant's final EPR, Lindenmuth submitted appellant's final EPR to Cortes for review. N.T. p. 232.
14. Cortes reviewed appellant's final EPR, agreed with appellant's overall rating of Unsatisfactory, and signed it. Comm Ex. A; N.T. pp. 240-241; AA Ex. 1.
15. Field HR Officer 2 Staci Bender received appellant's final EPR. N.T. pp. 246-247.
16. Bender recommended appellant's removal pursuant to the appointing authority's Disciplinary Policy 7174. N.T. pp. 246-247; AA Ex. 4.

## DISCUSSION

By letter dated August 14, 2019, the appointing authority removed appellant from her probationary Income Maintenance Caseworker position based on her Unsatisfactory work performance as reflected on her Employee Performance Review for the rating period of June 13, 2019, to August 9, 2019 (hereinafter “final EPR”). Comm. Exs. A, B. Before this Commission, appellant can only challenge her overall rating of Unsatisfactory on her final EPR and her subsequent removal under section 3003(7)(ii) of Act 71 of 2018. Specifically, appellant alleges the appointing authority engaged in discriminatory acts of retaliation, disparate treatment, and technical discrimination in violation of section 2704 of Act 71 when she was given an overall rating of Unsatisfactory on her EPR which resulted in her removal. Pa. C.S.A. §§ 2704, 3003(7)(ii). Comm. Ex. C.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claims of discrimination. Section 2704 of Act 71 of 2018 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. First, “traditional discrimination” encompasses claims of discrimination based on labor union affiliation, race, sex, national origin or other non-merit factors; and second, “technical discrimination” 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).

In analyzing claims of discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred. 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 v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990). In particular, an employee claiming disparate treatment must demonstrate that he or she was treated differently than other similarly situated employees. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851. When there is an allegation of technical discrimination, no showing of intent is required. There must be evidence, however, to show appellant

was harmed by the technical noncompliance or that because of the peculiar nature of the procedural impropriety that he or she could have been harmed but there is no way to prove that for certain. *Pronko*, 114 Pa. Commw. at 439, 539 A.2d at 462.

A retaliation claim is a specific subcategory of the broader category of non-merit factor discrimination. In a retaliation case, appellant may establish a *prima facie* case by proving 1) she engaged in a protected activity; 2) the appointing authority was aware of the protected activity; 3) that subsequent to participation in the protected activity, appellant was subjected to an adverse employment action by the appointing authority; and 4) there is a causal connection between participation in the protected activity and the adverse employment action. *Robert Wholey Co., Inc. v. Pennsylvania Human Rel. Commn.*, 606 A2d 982, 983 (Pa. Commw. 1992) citing *Brown Transport Corp. v. Pennsylvania Human Rel. Commn.*, 578 A.2d 555 (Pa. Commw. 1990). When participation in a protected activity and the occurrence of an adverse employment action occurs within close proximity in time, causation is inferred. *Id.* at 984.

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 that the proffered merit reason for the personnel action is merely pretextual. *Henderson*, 126 Pa. Commw. at 614-615.



At the hearing, appellant testified on her own behalf and presented the testimony of Income Maintenance Casework Supervisor Amy Lindenmuth,<sup>2</sup> Income Maintenance Casework Supervisor Stacy Ocasio,<sup>3</sup> Income Maintenance Casework Supervisor Melissa J. Lalli,<sup>4</sup> and Jessica Knott.<sup>5</sup> The appointing authority presented the testimony of Amy Lindenmuth, Income Maintenance Administrator Manager Gloria Cortes,<sup>6</sup> and Field HR Officer 2 Staci Bender.<sup>7</sup>

Appellant claimed the purpose of appealing her final EPR and removal was to discuss her experience during her training at the Berks County Assistance Office as a probationary Income Maintenance Caseworker. N.T. p. 178. Appellant asserted she felt there was harassment, bullying, and “some sort of retaliation or just something constantly being brought to me most of the time which was very distracting.” N.T. p. 179. Appellant asserted retaliation against her began after a dress code incident while she was under the supervision of Jessica Knott. Appellant

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<sup>2</sup> Amy Lindenmuth is employed by the appointing authority as an Income Maintenance Casework Supervisor at the Berks County Assistance Office. N.T. pp. 25-26. As an Income Maintenance Casework Supervisor, Lindenmuth is responsible for assisting and training the probationary Income Maintenance Caseworkers, including appellant, to learn and complete their tasks. Lindenmuth also supervises Income Maintenance Caseworkers, including appellant. N.T. p. 225. Prior to her position as an Income Maintenance Casework Supervisor, Lindenmuth was employed as an Income Maintenance Caseworker. N.T. p. 26.

<sup>3</sup> Stacy Ocasio is employed as an Income Maintenance Casework Supervisor at the Berks County Assistance Office. N.T. p. 103. Prior to being an Income Maintenance Caseworker, Ocasio was an Income Maintenance Caseworker for over eight years. N.T. p. 104.

<sup>4</sup> Melissa J. Lalli is currently employed as an Income Maintenance Casework Supervisor at the Berks County Assistance Office. N.T. pp. 123-124. Prior to being an Income Maintenance Casework Supervisor, Lalli was an Income Maintenance Caseworker. N.T. p. 140.

<sup>5</sup> Jessica Knott was previously employed as an Income Maintenance Casework Supervisor before resigning from her position with the Berks County Assistance Office. N.T. pp. 156-157.

<sup>6</sup> Gloria Cortes is employed as an Income Maintenance Administrator Manager within the Berks County Assistance Office. N.T. p. 236. As an Income Maintenance Administrator Manager, Cortes’s duties include reviewing EPRs distributing assignments, monitoring assignments, evaluating assignments for accuracy and timeliness, and supervising Income Maintenance Casework Supervisors. N.T. p. 238.

<sup>7</sup> Staci Bender is employed as a Field HR Officer 2. As a Field HR Officer 2, Bender reviews EPRs and provides human resource services to the Berks County Assistance Office. N.T. pp. 245-246.

alleged her progress as a probationary Income Maintenance Caseworker changed one day after she was sent home to change her sweater for being in violation of the appointing authority's dress code. N.T. p. 180. Appellant believed being told to change her sweater affected her training experience and performance on assigned cases. Once she requested assistance from a union representative to address the dress code incident, appellant felt "there was some sort of retaliation against me." N.T. p. 181.

Appellant further expressed how she felt harassed and bullied<sup>8</sup> by Income Maintenance Administrator Manager Gloria Cortes. Specifically, appellant felt harassed and bullied when Cortes sent instructions to appellant's supervisor for appellant to complete tasks by certain deadlines and for her supervisor to acknowledge how appellant dressed in the Berks County Assistance Office. N.T. p. 193. Income Maintenance Casework Supervisor Lindenmuth acknowledged receiving an email from Cortes on July 30, 2019, regarding appellant's dress being very short. Lindenmuth elected not to say anything to appellant because the dress came "down further in the back and front. I've also seen people regularly wear things as short or shorter." N.T. pp. 58-59; Ap. Ex. 3. Lindenmuth was not appellant's supervisor during appellant's dress code incident involving appellant's sweater. N.T. pp. 170-171.

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<sup>8</sup> Income Maintenance Casework Supervisor Lalli heard appellant's comments of how appellant believed she was harassed and bullied. Lalli did not describe appellant's incidents of harassment or bullying. When Lalli heard of appellant's assertions, Lalli was an Income Maintenance Caseworker. N.T. pp. 140, 148. As an Income Maintenance Caseworker, Lalli reviewed appellant's Rushmore System reports when appellant came to her. N.T. p. 142. Lalli acknowledged that as an Income Maintenance Caseworker, she did not have any authority to go into the Rushmore System or make decisions about appellant's case entry errors she observed. Lalli was also not privy to many of the meetings regarding appellant's performance during appellant's probationary period as an Income Maintenance Caseworker. N.T. pp. 149-150.

After the dress code incident, appellant received her first EPR<sup>9</sup> as a probationary Income Maintenance Caseworker on March 22, 2019, from Knott and was informed her probationary status was being extended. N.T. p. 182; Ap. Ex. 15. Appellant checked and agreed with the overall rating of Needs Improvement on the EPR created by Knott before appellant's probationary period extension. N.T. p. 206; Ap. Ex. 15.

Lindenmuth became appellant's supervisor on June 1, 2019, for appellant's probationary period extension. N.T. p. 226. Lindenmuth explained there have been instances where probationary Income Maintenance Caseworkers have been reassigned to different supervisors in the middle of their probationary period. N.T. p. 75. Lindenmuth acknowledged although appellant was physically located in the intake department on the third floor, appellant was assigned to the training department along with the other probationary Income Maintenance Caseworkers. N.T. p. 72. Once her probationary supervision shifted from Knott to Lindenmuth on June 1, 2019, appellant felt she was not receiving a "fresh start." N.T. pp. 187-188, 189, 197, 200.

Lindenmuth explained how she supervised appellant's work. She maintained progress notes for every Income Maintenance Caseworker she supervised. N.T. p. 30. Lindenmuth kept progress notes regarding appellant's performance from June 14, 2019 through August 2, 2019. N.T. pp. 29, 43; Ap. Ex. 1. Lindenmuth stated probationary Income Maintenance Caseworkers, including appellant, received assignment deadlines through their Workload Dashboards. As

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<sup>9</sup> Appellant acknowledged her first EPR was during a time period before she was assigned to Income Maintenance Casework Supervisor Lindenmuth. N.T. p. 206. Knott also confirmed she did not supervise appellant during the rating period of June 13, 2019 to August 9, 2019 because she had resigned from her position prior to the rating period. N.T. pp. 170-171.

cases were assigned, they would show on appellant's Workload Dashboard for completion. It would be appellant's responsibility to address each case assignment, including alerts and exchanges. N.T. pp. 226, 227.

As appellant's supervisor, Lindenmuth was able to meet with appellant once to twice a week to discuss appellant's performance and errors on case entries. N.T. p. 85. Lindenmuth freely trained appellant without receiving instructions from another manager regarding appellant's assignments or progress. N.T. p. 78. Appellant acknowledged she continued working on the same caseload when Lindenmuth became her supervisor. Appellant continued to feel overrun with her workload. Appellant further admitted to having conferences with Lindenmuth about her workload on Wednesdays. N.T. pp. 191-192.

When Lindenmuth was not available to help appellant, there were other training supervisors available to answer her questions. N.T. p. 34. For example, Ocasio supervised appellant from time to time.<sup>10</sup> N.T. p. 105. When appellant directed questions to other supervisors, those questions were sent to Lindenmuth, as well. N.T. p. 37. Lindenmuth explained appellant's questions to others on how to deal with specific cases and how to handle certain situations that pertain to her assigned cases were relevant to assessing her progress as an Income Maintenance Caseworker. N.T. p. 37.

Lindenmuth testified she provides her subordinate, probationary Income Maintenance Caseworkers, including appellant, a report created from reviewing the Rushmore System detailing the errors for each case entry. N.T. p. 83.

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<sup>10</sup> Ocasio did not participate in the creation of appellant's final EPR. N.T. p. 117.

Lindenmuth reviewed appellant's cases to ensure appellant was completing her case entries correctly. N.T. p. 84. Appellant felt her case entries were being picked apart for errors by Lindenmuth. N.T. p. 199.

During the final EPR rating period, Lindenmuth reviewed appellant's sixty-three case entries submitted for the Rushmore System.<sup>11</sup> N.T. p. 43. Lindenmuth explained appellant was responsible for correctly and independently authorizing and rejecting each case based on her interviews with each client. N.T. pp. 44-45. Due to being a probationary employee, appellant was unable to finalize and submit her case reports and entries until Lindenmuth reviewed them. N.T. p. 50. In comparison with other probationary Income Maintenance Caseworkers, Lindenmuth noticed appellant was initially on par with her colleagues. However, once the program increased the amount of assignments for probationary Income Maintenance Caseworkers, appellant's workload stopped increasing because her performance was not meeting the standards for the position. N.T. pp. 227, 229. For an Income Maintenance Caseworker to be moved from probationary status to regular status, he or she is expected to not make any benefit errors and achieve an accuracy rating as close to one-hundred percent as possible. N.T. pp. 91, 92.

On July 25, 2019, Lindenmuth contacted Income Maintenance Administrator Manager Gloria Cortes expressing her concern over appellant's errors not being shown in a Rushmore System report. N.T. p. 48; Ap. Ex. 9. Lindenmuth explained "the report that I was looking at was only looking at the end result. Whether the budget was open and it was the correct budget with the correct amount,

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<sup>11</sup> The Rushmore System is used by Income Maintenance Caseworkers and Casework Supervisors to enter in cases that have been reviewed. It provides an opportunity to notate errors within each case entry and generate a report presenting to the Income Maintenance Caseworker the information needed to remedy errors. N.T. p. 83.

it wasn't showing the fact that there were errors still made on the case entry and the processing itself." N.T. pp. 48-49; Ap. Ex. 9. As a result, the Rushmore System report analyzed only the end result presented and elevated appellant's accuracy rate due to a supervisor providing assistance in completing appellant's assigned cases. N.T. p. 87.

When she realized appellant's errors were not shown, Lindenmuth calculated appellant's accuracy of her entries by creating another Rushmore System report. Lindenmuth calculated appellant's accuracy rate for appellant's case entries by reviewing the data entries with each case entry and noting how many had data entry errors. According to Lindenmuth, fifty-three out of appellant's sixty-three cases had errors without supervisory review. As such, appellant's accuracy rate was 15.87% based on appellant's sixty-three cases submitted to Lindenmuth for review. N.T. pp. 52-53, 87; Ap. Exs. 1, 9, 11. Lindenmuth explained appellant's accuracy rate of 15.87% is rather low for an Income Maintenance Caseworker. N.T. p. 53. Lindenmuth emphasized appellant's case entry errors could have caused benefit errors. N.T. p. 49. Lindenmuth documented appellant's poor work performance by creating the final EPR. Lindenmuth rated appellant's performance during this period as overall Unsatisfactory. Comm. Ex. A; N.T. pp. 228-229; AA Ex. 1.

Appellant contends her final EPR was based on what Knott provided to Lindenmuth, which included appellant's training and progress, prior to appellant's extended period as a probationary Income Maintenance Caseworker. N.T. pp. 187-188, 189, 197, 200. However, Lindenmuth explained appellant received an overall rating of Unsatisfactory because appellant's performance was not meeting the standards set out in the IMSTP job factors. N.T. pp. 229-230; AA Ex. 2.

Specifically, appellant received a rating of Unsatisfactory for her job knowledge skills, work results, initiative program solving, and work habits. Comm. Ex. A; N.T. p. 233; AA Ex. 1. Appellant was made aware of the IMSTP job factors during her new hire orientation. N.T. p. 230. Lindenmuth also referred to an Application Log regarding appellant's cases. The Application Log accounts for a period of June 14, 2019 to August 7, 2019. Lindenmuth noted appellant's accuracy rate and the errors on fifty-three out of sixty-three cases within the EPR. Comm. Ex. A; N.T. pp. 231-232; AA Exs. 1, 3. Lindenmuth emphasized the expectations for appellant's progress were her own and not based on appellant's previous supervisor, Jessica Knott. N.T. p. 79. Lindenmuth affirmed appellant's dress code incident while appellant was under Knott's supervision was never taken into consideration when Lindenmuth created appellant's final EPR. N.T. pp. 88. Appellant signed the final EPR and checked the box agreeing with an overall rating of Unsatisfactory. N.T. p. 232.

After completing appellant's final EPR, Lindenmuth submitted it to Cortes for review. N.T. p. 232. Cortes reviewed appellant's final EPR. Cortes agreed with appellant's overall rating of Unsatisfactory because "[appellant] struggled, especially she started struggling more and more through the increase in work." N.T. p. 240. Cortes explained appellant's first couple of assignments appeared satisfactory but "then things started kind of, like, breaking apart when the increase continued through incrementally. So she was messing up a lot of basic information. Sometimes not being able to retain what she was learning and falling back." N.T. p. 241. After agreeing with appellant's final EPR's rating, Cortes signed it. Comm. Ex. A; N.T. p. 241; AA Ex. 1.

Field HR Officer 2 Bender received appellant's final EPR. After discovering appellant received an overall rating of Unsatisfactory, Bender recommended appellant's removal pursuant to the appointing authority's Disciplinary Policy 7174. N.T. pp. 246-247; AA Ex. 4. Bender explained pursuant to the appointing authority's disciplinary policy, if a probationary employee receives an overall rating of Unsatisfactory for his or her EPR, then the recommendation would be removal. Bender did not consider any mitigating factors because "based on circumstances and what they provided during the investigatory meeting and pre-disciplinary conference, we saw no reason to mitigate the action." N.T. p. 247; AA Ex. 4.

Having reviewed the record, as a whole, the Commission finds appellant failed to establish a *prima facie* case for her retaliation, disparate treatment, and technical discrimination claims. In support of our conclusion, we find credible<sup>12</sup> the testimony of Amy Lindenmuth, Gloria Cortes, and Staci Bender.

First, appellant believed she was the subject of retaliation for potentially violating the dress code and requesting union representation while under Jessica Knott's supervision. However, appellant acknowledged the incident was before Lindenmuth became her supervisor on June 1, 2019, and her probationary period's extension. Moreover, Lindenmuth credibly testified she did not take appellant's prior clothing related history into account when rating appellant's work performance for the final EPR.

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<sup>12</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*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986).



For appellant to establish a *prima facie* case of retaliation, she must provide evidence she engaged in protected activity. Although appellant contends the appointing authority issued the final EPR in retaliation for requesting a union representative to address the dress code incident, appellant failed to present how the dress code incident had a causal connection to the final EPR's overall rating of Unsatisfactory when Lindenmuth had no involvement in the incident. *Robert Wholely Co., Inc., supra*. Consequently, appellant has failed to establish a *prima facie* case of retaliation.

Second, appellant made allegations of disparate treatment because she was bullied, harassed, and did not receive a fresh start as a probationary Income Maintenance Caseworker when shifting from Knott's supervision to Lindenmuth's supervision. However, appellant did not compare or provide an example of how another similarly situated probationary Income Maintenance Caseworker was treated differently than her. In order to establish a *prima facie* case for a disparate treatment claim, appellant must demonstrate that he or she was treated differently than other similarly situated employees. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851. Because appellant has failed to present evidence of how she was treated differently than another similarly situated probationary Income Maintenance Caseworker, we find appellant failed to establish a *prima facie* case for her disparate treatment claim.

Lastly, appellant argues the appointing authority engaged in technical discrimination when only sixty-three case entries were being scrutinized within the Rushmore System for the final EPR. Lindenmuth credibly explained appellant provided sixty-three case entries during the final EPR's rating period. When Lindenmuth calculated appellant's accuracy rating, she discovered appellant entered

errors into fifty-three out of sixty-three cases, which equated to a 15.87% accuracy rate. Appellant neither disputes her accuracy rating of 15.87% from the sixty-three cases reviewed by Lindenmuth nor presents how the review of only sixty-three case entries could have harmed her due to the alleged technical noncompliance. In the matter before us, appellant's presented evidence is not enough to show how Lindenmuth's review of her sixty-three cases during the final EPR's rating period constituted technical discrimination. *Pronko, supra*.<sup>13</sup> Accordingly, we enter the following:

### CONCLUSION OF LAW

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 Destiny S. Rodriguez challenging her Employee Performance Review for the rating period of June 13, 2019, to August 9, 2019, in her position as a probationary Income Maintenance Caseworker, and her removal from probationary Income Maintenance Caseworker employment with the Berks County Assistance Office, Department of Human Services, and sustains the action

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<sup>13</sup> Even if appellant presented a *prima facie* case of retaliation, disparate treatment, or technical discrimination, the appointing authority presented legitimate non-discriminatory reasons for removing appellant and for providing an overall rating of Unsatisfactory in her final EPR. N.T. pp. N.T. pp. 52-53, 87, 229-230, 231-232, 233, 240, 246-247; AA Exs. 1, 2, 3, 4.

of Berks County Assistance Office, Department of Human Services, in the Employee Performance Review of Destiny S. Rodriguez for the rating period of June 13, 2019, to August 9, 2019, and in the removal of Destiny S. Rodriguez from probationary Income Maintenance Caseworker employment, effective August 15, 2019.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: October 26, 2020