

COMMONWEALTH OF PENNSYLVANIA

Gloria Damasus : State Civil Service Commission  
: :  
v. : :  
: :  
Washington County Behavioral Health :  
and Developmental Services : Appeal No. 30364

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Attorney for Appellant

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ADJUDICATION

This is an appeal by Gloria Damasus challenging her removal from regular County Mental Health Program Specialist 1 employment with the Washington County Behavioral Health and Development Services. Hearings were held January 7, 2020 and February 25, 2020, at the State Civil Service Commission’s Western Regional Office in Pittsburgh, Pennsylvania before Hearing Officer Odelfa Smith Preston.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issues before the Commission are whether the appointing authority had just cause to remove appellant and whether the appointing authority’s decision to remove appellant was based upon any discriminatory factor.

## FINDINGS OF FACT

1. By letter dated September 19, 2019, appellant was removed from her position as Mental Health Program Specialist 1, regular status, effective September 19, 2019. The appointing authority charged:

...your employment... is being terminated effective immediately, as your overall work performance did not meet the expectations for the position and you did not meet the goals of the performance improvement plan that was implemented effective June 18, 2019 and extended on July 31, 2019.

Comm. Ex. A.

2. The appeal was properly raised before this Commission and was heard under Sections 3003(7)(i) and 3003(7)(ii) of Act 71 of 2018.
3. Appellant began County Mental Health Program Specialist 1 employment with the appointing authority on November 5, 2018. Comm. Ex. B.
4. Appellant is of African race. She was born in the United States and has Nigerian heritage. Comm. Ex. B.

5. Appellant's job duties included scheduling and conducting commitment hearings, working with mental health commitments and Court of Common Pleas Orders, completing forms to be filed in the Court of Common Pleas and local and state agencies, and submitting bills for services. N.T. pp. 35-39, 54-59; AA Ex. 1.
6. Appellant was fully aware of her job duties and was supervised by Mental Health Program Director Scott Berry.<sup>1</sup> N.T. pp. 21, 26, 32, 558.
7. During her training period, Berry explained how to complete documents, explained the importance of accuracy, and possible negative consequences of inaccurate completion. N.T. pp. 42, 46.
8. Berry provided appellant with names, telephone numbers, and contact information so she could gather information to properly complete forms. He also explained how to properly schedule a timely hearing. N.T. pp. 39, 42.

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<sup>1</sup> Berry has been promoted to Acting Administrator for Behavioral Health and Development Services. However, at all times relevant to the issues in this appeal, Berry was the Mental Health Program Director. N.T. pp. 25-26.

9. On January 30, 2019, appellant and Administrative Assistant Donna Falvo engaged in a verbal altercation. After the altercation, appellant and Falvo met with Berry and Intellectual Disabilities Director Jennifer Scott. Appellant and Falvo were reminded to discuss office issues with their supervisors and not to confront each other. Neither appellant nor Falvo were disciplined. N.T. pp. 83-85, 387, 503-505; AA Ex. 8.
  
10. Appellant processed several billing invoices to the Allegheny County Office of Behavioral Health and provided the following incomplete information:
  - a. Invoice #: HS 18/19-6 was dated “November , 2018.” Appellant did not include a specific day and wrote the incorrect year.
  - b. Invoice #: HS 18/19-4 was dated “January, 2019.” Appellant did not include a specific day.
  - c. Invoice #: HS 18/19-5 did not include the recipient’s complete zip code.

N.T. pp. 5-56, 758; AA Ex. 3.
  
11. By letter dated February 8, 2019, Berry provided the Allegheny County Office of Behavioral Health with corrected billing invoices. N.T. pp. 58, 758-759; AA Ex. 4.

12. On a February 9, 2019 Application for Extended Involuntary Treatment appellant incorrectly copied the name of the hospital even though it had been provided on a separate document. N.T. pp. 97-98, 744, 748-749; AA Ex. 12.
13. In February 2019, appellant informed Berry she was planning a trip to Africa. N.T. pp. 91-92, 252-253.
14. A Tracking Form for Involuntary Commitments is filed with the Prothonotary at the Court of Common Pleas, which then uses the information to generate Court Orders. An error on the document may be carried through to a Court Order, which is subsequently provided to the Pennsylvania State Police (hereinafter “PSP”). Subsequently, because of the error on the document, an individual may not be properly identified as somebody who should be prohibited from purchasing a firearm. N.T. pp. 49, 51.
15. Appellant was responsible for completing Tracking Form for Involuntary Commitments documents. Among the errors appellant made are:
  - a. On February 12, 2019, appellant misspelled the individual’s last name.

- b. On March 3, 2019, appellant misspelled the Petitioner's first name and provided an incorrect last name for the Petitioner.
- c. On March 8, 2019, appellant indicated the incorrect type of commitment hearing and did not fill in the "Expiration of New Commitment."

N.T. pp. 50, 86, 115-116, 743, 752-753; AA Exs. 2, 9, 19.

16. Appellant was responsible for completing Individual Admission Information forms, which are used to provide information to the Behavioral Health office. Among the errors she made are:
- a. On February 12, 2019, appellant did not provide any information indicating where the individual was admitted from. She also omitted the date of commitment.
  - b. On February 13, 2019, appellant omitted the date of commitment.

N.T. pp. 101, 103; AA Exs. 13, 14.

17. Appellant was responsible for completing Notification of Mental Health Commitment forms. Similar to the Tracking Form for Involuntary Commitment, information from these forms is

submitted to the PSP and errors could result in an individual being able to purchase firearms. Among the errors appellant made completing these forms are:

- a. On February 6, 2019, appellant misspelled the individual's name. Berry voided the document and provided a corrected report to the PSP.
- b. On February 12, 2019, appellant did not include any information on the "date of commitment or adjudication incapacitated, etc." line.
- c. On February 13, 2019, appellant did not include any information on the "date of commitment or adjudication incapacitated, etc." line.
- d. On March 3, 2019, appellant misspelled the name of the individual's town. Berry noticed the error and corrected the document before it went to the PSP.

N.T. pp. 71-75, 99-103, 107; AA Exs. 6, 13, 14, 17.

18. Appellant was responsible for preparing the Official Orders for judges to sign. The information used for composing an Official Order consists of pre-populated information provided before the hearing is held. N.T. pp. 93-94.

19. On February 13, 2019, the Court of Common Pleas of Washington County issued an Amended Order correcting the spelling of the individual's name. Appellant had misspelled the individual's name in the Official Order she provided to the Court. N.T. pp. 94-96; AA Ex. 11.
20. On February 20, 2019, appellant completed a Recommended Order for Involuntary Treatment and indicated the incorrect type of commitment hearing. Such error could lead to the individual being committed for a longer time than necessary, which would be against regulations. N.T. pp. 104-106; AA Ex. 16.<sup>2</sup>
21. On March 1, 2019, appellant entered leave to take a trip to Africa. Her leave request was approved. N.T. pp. 506, 509, 587, 591; AA Ex. 62.
22. On March 4, 2019, appellant completed the wrong Recommended Order for Involuntary Commitment; she used one that did not include the term "Residential Treatment." The review officer handwrote "Residential Treatment" -on the document. N.T. pp. 107-108; AA Ex. 16.

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<sup>2</sup> In his testimony, Berry refers to the contents of AA Ex. 16 as AA Ex. 15. He also refers to the contents of AA Ex. 15 as being those of AA. Ex. 16. The error does not affect the outcome of this adjudication.

23. On March 4, 2019, appellant completed a Certification for the review officer. On the first page, she did not include the required “confidential” stamp. On the second page, appellant did not include the term number. N.T. pp. 110-114; AA Ex. 18.
24. On March 10, 2019, appellant met with Berry, Administrator Janice Taper, and Human Resources Generalist Carrie Taylor. At this time, appellant was performing approximately fifteen percent of the job duties assigned to her position. N.T. pp. 129-130, 510.
25. During the meeting, Berry provided examples of errors including incorrect docket numbers, incorrect codes, and misspelled names. He also explained why accuracy was important, specifically stating if an individual’s name was misspelled on a document provided to the PSP, the individual may be able to purchase a firearm. N.T. pp. 726-727.
26. During the meeting, appellant stated she had made each mistake only one time. N.T. p. 726.

27. Berry, Taper, and Taylor set a goal for appellant to understand the court commitment process. N.T. p. 131.
28. Berry offered appellant assistance and told appellant she could call his cell phone number or interrupt him if he was in a meeting. N.T. p. 727.
29. Shortly after the March meeting, appellant telephoned Taylor and verbally alleged Berry and Taper were exhibiting discriminatory conduct. N.T. pp. 513, 576-577, 723.
30. After the March meeting, appellant's work continued to vary in accuracy. There were periods of successful, accurate completion of documents and periods with errors on documents. N.T. p. 132.
31. Appellant made additional mistakes on Tracking Form for Involuntary Commitments documents. Among the errors she made completing the forms are:
  - a. On March 25, 2019, appellant recorded the incorrect name of the person who read the individual his rights.

- b. On April 9, 2019, appellant used an address for the individual that differs from the one provided by the PSP.
- c. On April 10, 2019, appellant did not complete the information in the tracking system, resulting in no way to identify the case. She did not send a copy of the Order to the provider. Without a copy of the Order, the provider could not monitor, track, or enforce the individual's commitment.
- d. On May 13, 2019, appellant spelled the individual's name incorrectly. This error was carried through the additional court documents, including the Notification of Mental Health Commitment, Certification, and Order.
- e. On May 20, 2019, appellant indicated the incorrect type of commitment hearing. In this instance, the hearing was held outside of the required time frame, resulting in the case being dismissed and the individual being released.
- f. On June 3, 2019, appellant provided the wrong last name for the Petitioner.
- g. On June 10, 2019, appellant did not indicate the length of the individual's commitment.

N.T. pp. 68-70, 119-121, 147-148, 168-169, 173, 195-197, 742-743, 749-750, 759-760; AA Exs. 5, 21, 22, 23, 29, 33, 35, 46, 47.

32. On March 25, 2019, appellant wrote the wrong Examining Physician on an Inpatient Admission Information Form. The incorrect information was later transferred to the PSP. N.T. pp. 77-79; AA Ex. 7.
  
33. Appellant continued to make errors completing Notification of Mental Health Commitment forms. Among the errors appellant made completing these forms are:
  - a. On March 28, 2019, appellant did not include the individual's address.
  - b. On April 14, 2019, appellant included the name of a review officer even though the information was not necessary.
  - c. On May 4, 2019, appellant wrote the wrong date of commitment.
  - d. On May 10, 2019, appellant wrote the wrong doctor's name. Berry rewrote the document so it could be submitted to the PSP.
  - e. On May 21, 2019, appellant did not include the individual's Social Security Number.

N.T. pp. 88-89, 109-110, 117, 171, 125-127, 133, 756-757; AA Exs. 10, 17, 20, 25, 26, 27, 34.

34. Appellant took her vacation to Africa from April 2, 2019 to April 9, 2019. N.T. p. 514; AA Ex. 62.
35. On or about May 13, 2019, shortly after returning from vacation, appellant received her Probationary Performance Evaluation Report (hereinafter “PER”) for the time period of November 2018 to May 2019. Appellant received the following ratings:
- a. “Quality of Work” and “Initiative” were both “Unsatisfactory.”
  - b. Work Habits, Relationship with People, Dependability, Quantity of Work, Analytical Ability, and Administrative Ability were each rated “Fair.”
  - c. Safety and Commitment to Affirmative Action were rated “Good.”

N.T. pp. 139-146, 247-249; 516; AA Ex. 28; Ap. Ex. 5.

36. The narrative to the PER explained appellant’s work performance. Specifically, Berry stated appellant’s job performance improved “some” after the March discussion, but there continued to be errors which required “continued monitoring and oversight to ensure accuracy....” He also stated appellant continued to require “frequent guidance

and clarification.” Berry provided remarks concerning appellant’s lack of organization leading to confusion with the hearing process, inaccurate information on required paperwork including misspellings and use of incorrect forms, as well as incorrect billing. AA Ex. 28; Ap. Ex. 5.

37. On the PER, Berry stated appellant’s goals were to continue to learn the services and programs provided by the appointing authority, identify how those services and programs operate, and improve her attention to detail and accuracy. Berry also stated appellant will “need to learn and expand her duties so that she is able to complete additional tasks, which she has not yet been exposed to, and are required in her position.” AA Ex. 28; Ap. Ex. 5.
38. Berry, Taper, and Taylor sat with appellant to discuss the PER. N.T. p. 137.
39. During the meeting, appellant became agitated, denied the statements about her work performance, and yelled that she was being discriminated against. She then stood up, walked into the hallway continuing to state she was being discriminated

against, went into her office, and closed her office door. N.T. pp. 137-138.

40. Berry did not have the opportunity to discuss the PER with appellant. N.T. p. 138.
41. Appellant refused to sign the PER. N.T. pp. 138, 280, 517, 596-597, 761.
42. Appellant passed her probationary period based upon her “fair” Performance Evaluation Report and was promoted to a regular status employee. N.T. p. 314.
43. In emails dated May 14 and May 15, 2019, Berry explained to appellant how to file an Amended Order and how to fix an error she made on a Notification of Mental Health Commitment form. N.T. pp. 123-124; AA Exs. 3, 22, 24.
44. Appellant mistakenly scheduled court hearings for Memorial Day and had to reschedule them quickly. As a result, Program Director for Long-Term Structured Residential Facility Amanda Serrino had to rush to get petitions completed and filed in a timely manner. N.T. pp. 287-289.

45. On an invoice dated May 29, 2019, appellant provided an incorrect individual name. N.T. pp. 153-154; AA Ex. 30.
46. On June 3, 2019, appellant brought her daughter into the office. After the daughter left, Berry advised appellant that the office needed to maintain confidentiality of information; he told appellant to let him know when somebody would be visiting and reminded her to make sure any visitor did not gain access to confidential information. Appellant was not formally disciplined. Approximately one week later, a white, female employee brought her son into the office. N.T. pp. 220-222, 521-523, 601-603; AA Ex. 63.
47. On or about June 10, 2019, appellant told Human Resources Generalist Taylor she wanted to file an Equal Employment Opportunity Complaint (hereinafter "EEOC") because Berry was discriminating against her and retaliating against her for not signing her May 2019 PER. N.T. pp. 729-730.
48. On June 11, 2019, appellant filed an EEOC complaint against Berry alleging he made repeated references to her trip to Africa, was harassing her

and overly scrutinizing her work, and favored white employees. N.T. pp. 525-257; AA Ex. 61; Ap. Ex. 6.

49. On June 17, 2019, appellant filed an internal Discrimination/Harassment Complaint against Berry alleging he was, “humiliating [with] verbal and constant scrutinization” and was “constantly reminding me that I am from Africa.” N.T. pp. 537-539, 758; Ap. Ex. 9.
50. On June 18, 2019, appellant was placed on a thirty day Performance Improvement Plan (hereinafter “PIP”). The PIP indicated appellant needed to improve accurate completion of required paperwork as well as her communication and interaction with coworkers and the appointing authority’s systems. N.T. pp. 158-159; AA Ex. 31; Ap. Ex 7.
51. On June 18, 2019 Berry, Taper, and Taylor met with appellant to discuss the PIP. N.T. pp. 158, 732.
52. Taylor encouraged appellant to ask questions during the meeting. Appellant replied she was not going to speak. N.T. pp. 732-733.

53. During the meeting, appellant stated she did not believe she needed any improvement, stated she did her job, and did not want to agree to the PIP. N.T. pp. 158, 732.
54. When Berry began explaining the PIP, appellant “shrieked” and stated she had enough. Appellant then left the meeting. N.T. p. 733.
55. After the meeting, Taylor spoke with appellant who stated she did not want to continue the discussion because the PIP was inaccurate. N.T. p. 734.
56. Human Resources Director Shelli Arnold explained the importance of the PIP to appellant. Appellant then agreed to sign the document. N.T. pp. 708-709.
57. After the implementation of the PIP, Berry, Taper, and Taylor met with appellant every Friday. During some supervision meetings, appellant left the room, refused to return, and claimed Berry and Taper were discriminating against her. N.T. pp. 159, 307, 737.

58. Taper would inform appellant the meetings were to help her understand the job duties. Appellant would then calm down and the meeting would continue. N.T. pp. 307-308.
59. Berry reviewed various documentation errors with appellant. Appellant sometimes listened to Berry and acknowledged an error, but did not realize the significance of the mistakes. Other times, appellant was agitated, uncooperative, and did not agree with Berry's concerns. N.T. pp. 309, 737-738.
60. Appellant's work performance continued to fluctuate; her work quality would improve, but the improvements were not long-lasting. N.T. pp. 307, 737.
61. On a Notification of Mental Health Commitment form dated June 26, 2019, appellant omitted the name of a person who was contacted even though she and Berry had specifically discussed including the person. Also, appellant misread the individual's credit of sixty-six days for time already served and improperly identified the individual as needing an additional sixty-six days of treatment. N.T. pp. 204-205; 753; AA Ex. 51.

62. On June 30, 2019, Berry composed a letter to the PSP. Appellant was responsible for ensuring the seal of the chief clerk was put on the document before it was sent out. She did not place the seal on the document. Berry noticed the omission and placed the seal on the document before it was sent. N.T. pp. 198-199; AA Ex. 48.
  
63. A Mental Health Court Order Information document is a court order request for a mental health assessment. The document is provided to an evaluator for the completion of a mental health order. When processing two Mental Health Court Order Information documents, dated July 3, and July 9, 2019, appellant omitted the name of the person contacted. N.T. pp. 190, 205-208, 753-754; AA Exs. 52, 53.
  
64. On a Recommended Order for Involuntary Treatment form dated July 10, 2019, appellant improperly identified the hearing location. The improper information was subsequently provided to the review officer, who then gave the incorrect information to the Court of Common Pleas Order. N.T. pp. 202-203, 752-753; AA Ex. 50.

65. On July 12, 2019, appellant completed a Notification of Mental Health Commitment Form and provided the incorrect date for the court order. N.T. pp. 193-194; AA Ex. 45.
66. In emails dated July 26, 2019, Berry explained the importance of monitoring cases for transition from one type of care to another, preparing for hearings, and identifying when she would have to convert an order. Berry also provided information needed to correct a document. N.T. pp. 213-214; AA Ex. 56.
67. On July 31, 2019, Berry met with appellant and extended her PIP for an additional thirty days. The plan reiterated the need for appellant to improve accurate completion of required paperwork as well as her communication and interaction with coworkers and the appointing authority's systems. The extended PIP indicated appellant had made some progress but must continue to use available resources to ensure accurate and correct information. It also noted appellant had not responded positively to instruction or guidance, often disagrees and is argumentative, and often talks over others. N.T. pp. 167-168; AA Ex. 31; Ap. Ex. 7.

68. When Berry, Taper, and Taylor met with appellant to discuss the July 31, 2019 PIP, appellant did not believe her work needed any improvement and refused to sign the document. N.T. pp. 167-168; AA Ex. 32.
69. Subsequently, Taylor spoke with appellant, who agreed to follow the PIP, but continued refusing to sign it. N.T. pp. 709-710; AA Ex. 32.
70. After the implementation of the July 31, 2019 PIP, appellant made the following errors on Notification of Mental Health Commitment forms:
  - a. On August 19, 2019, appellant did not complete the form. Berry completed the document.
  - b. On August 21, 2019, appellant provided two different spellings for the individual's first name. Berry provided appellant with guidance on how to find the proper spelling of an individual's name.
  - c. On August 22, 2019, appellant identified the wrong hospital as the facility providing treatment. The correct information was on the Individual Admission Information form appellant should have used for guidance.

d. On August 23, 2019, appellant wrote the individual's address incorrectly.

N.T. pp. 175-179, 184; AA Exs. 37, 38, 39, 41.

71. On August 2, 2019, appellant created a Commitment Expirations document to track individuals. She misspelled an individual's name. N.T. pp. 209-210; AA Ex. 54.
72. On August 6, 2019, Berry emailed appellant to explain the importance of properly monitoring cases and transitions in individual care to properly prepare for hearings. Berry also told appellant she had misspelled the individual's name on the August 2, 2019 Commitment Expirations document and to make the correction, then double check the recent court order and her own tracking information to make sure the name was correct. N.T. pp. 209-212; AA Exs. 54, 55.
73. On an August 12, 2019 Tracking Form for Involuntary Commitments, appellant identified the incorrect Petitioner who would testify at the hearing. N.T. pp. 174-175; AA Ex. 36.

74. On an August 14, 2019 Mental Health Order Information document, appellant did not include the individual's phone number or address, thereby rendering it impossible to complete an assessment. N.T. pp. 190-191, 751-752; AA Ex. 43.
75. By separate letters dated August 22, 2019, appellant and Berry were advised the investigation into appellant's internal June 17, 2019, Discrimination/Harassment Complaint did not reveal sufficient facts to substantiate the complaints. N.T. pp. 260-261, 545-546, 632, 649, 703-704, 716; AA Exs. 67, 70; Ap. Ex. 10.
76. On August 26, 2019, appellant was notified by the fiscal department of her neglect to enclose required paperwork with a billing invoice. N.T. pp. 188-189; AA Ex. 42.
77. On September 5, 2019, on two separate Mental Health Court Order Information documents, appellant did not provide an address or phone number for the Defendant. Without this information, the provider cannot contact the individual to complete the assessment. N.T. pp. 190-192, 751-752; AA Exs. 43, 44.

78. On a September 22, 2019 Tracking Form for Involuntary Commitments, appellant provided the incorrect zip code for the individual's address. Berry corrected the information on subsequent documents. N.T. pp. 182-183; AA Ex. 40.
  
79. Mental Health Program Director Berry, County Administrator Taper, Assistant Human Resources Director Johnston, Human Resources Generalist Taylor, and Human Resources Director Arnold determined appellant should be terminated because she was not meeting the objectives of her PIP. N.T. pp. 713, 739.

## DISCUSSION

The issues before the Commission are whether the appointing authority had just cause to remove appellant and whether the decision to remove appellant was based upon any discriminatory factor. The appointing authority alleges appellant did not meet the goals of her Performance Improvement Plan (hereinafter "PIP") implemented June 18, 2019 and extended on July 31, 2019. Appellant alleges she was discriminated against on the basis of her race (African) and national origin (Nigerian). Appellant also argues she was discriminated against in retaliation for filing an Equal Employment Opportunity Complaint (hereinafter "EEOC") and an internal Discrimination/Harassment Complaint, and for not signing her May 2019 Performance Evaluation Report (hereinafter "PER").

The appointing authority presented the testimony of Mental Health Program Director Scott Berry, Program Director for Long-Term Structured Residential Facility Amanda Serrino, retired County Administrator Janice Taper, Administrative Assistants Erin Geyer, Glenda Smith, and Sonja Hatfield, Intake Coordinator Michelle Gindlespbrger, Mental Health Program Director Mary Patrick-Hatfield, Intellectual Disabilities Director Jennifer Scott, Human Resources Director Shelli Arnold, and Human Resources Generalist Carrie Taylor. Appellant testified on her own behalf.

We begin by determining whether the appointing authority had just cause to remove appellant. The appointing authority bears the burden of proving just cause for removal of an employee and also 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 (Pa. Commw. 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 her job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

The following facts are not in dispute. Appellant began employment as a County Mental Health Program Specialist 1 with the appointing authority on November 5, 2018. Comm. Ex. B. Appellant's job duties included scheduling and conducting commitment hearings, working with mental health commitments and the Court of Common Pleas Orders, completing forms to be filed in the Court of

Common Pleas and with local and state agencies, and submitting bills for services. N.T. pp. 35-39, 54-59; AA Ex. 1. Appellant was fully aware of her job duties and was supervised by Mental Health Program Director Scott Berry. N.T. pp. 21, 26, 32.

Mental Health Program Director Scott Berry provided testimony about appellant's training. Initially, appellant shadowed Berry to hearings and watched him complete required paperwork. N.T. p. 39. He showed appellant how to properly fill out the documents and explained the importance of filling them in accurately. N.T. p. 42. In addition, Berry explained the negative consequences of inaccurate information on documents including the dismissal of cases and individuals not receiving emergency psychiatric care. N.T. pp. 42, 46. Further, inaccurate information provided to the Pennsylvania State Police (hereinafter "PSP") could result in an individual being able to purchase a firearm when he or she should not be able to do so. N.T. pp. 42, 46. Berry provided appellant with the names, telephone numbers, and contact information so she could gather information to use for completing forms. N.T. p. 39. He also trained appellant on the process of scheduling timely hearings and using a tape recorder during the hearings. N.T. p. 42.

Berry provided insight into appellant's work product during her training period. Initially, appellant asked questions, however not as many as he expected. N.T. p. 44. Berry explained he anticipated appellant would initially make errors on documents. N.T. p. 45. When he reviewed her errors with her, appellant would sometimes appreciate the counseling or state she "made a booboo." N.T. p. 45. However, other times appellant became "very agitated and defensive." N.T. p. 45. Some document errors were corrected prior to the court proceedings, but other documents went into the court proceedings. N.T. p. 46.

Further, Berry provided testimony about appellant's work performance throughout January, February, and the beginning of March 2019. Specifically, appellant made errors on several invoices, including omitting a specific date, providing an incorrect year, and including an incomplete zip code. (*See* Finding of Fact 10). Berry reviewed these invoices with appellant and corrected the information before they were sent. N.T. pp. 56-57, 154; AA Ex. 4. Further errors included incorrectly copying the name of the hospital onto an Application for Extended Involuntary Treatment. (*See* Finding of Fact 12). Berry was concerned about the error because the form is a legal document. N.T. p. 98.

Additionally, appellant made multiple errors on several Tracking Form for Involuntary Commitments Documents including misspelling an individual's last name, misspelling the Petitioner's name, providing an incorrect last name for a Petitioner, indicating the incorrect type of commitment hearing, and not filling in the "Expiration of New Commitment." (*See* Finding of Fact 15.) Berry explained these errors were significant because incorrect information was sent to the Prothonotary's office and, later, to the PSP resulting in the potential for the individual being able to purchase firearms when they should not be permitted to do so. Also, improperly indicating the individual's commitment expiration could result in the person's release despite an ongoing need for treatment and services. N.T. pp. 49-50, 116. Appellant also made multiple errors on Individual Admission Information forms when she did not include information about where the individual was admitted from and omitted the date of commitment. (*See* Finding of Fact 16). Berry spoke with appellant about the errors and the need for accuracy; she indicated she understood his concern. N.T. p. 100.

Appellant also made errors on several Notification of Mental Health Commitment forms, including misspelling an individual's name, not including the date of commitment or adjudicated incapacitated, and misspelling an individual's town. (*See* Finding of Fact 17). Berry spoke with appellant about the errors and she indicated she understood her mistakes. N.T. pp. 70, 73-74, 99. Another error appellant made was providing the Court of Common Pleas with the incorrect spelling of an individual's name, resulting in the Court issuing an Amended Order to correct the error. (*See* Findings of Fact 18, 19). Moreover, appellant made errors on Recommended Orders for Involuntary Treatment (*See* Findings of Fact 20 and 22). N.T. pp. 104-106; AA Ex. 16. Berry explained the errors could cause the individual to be committed for a longer period of time than necessary, which is against regulations. N.T. pp. 104-106. On March 4, 2019, appellant omitted the required "Confidential" stamp and term number on a Certification for the review officer. N.T. pp. 110-114; AA Ex. 18. When Berry told appellant the impact of her mistake, she seemed to understand. N.T. p. 113.

As a result of continued errors, on March 10, 2019, appellant met with Berry, retired County Administrator Janice Taper, and Human Resources Generalist Taylor. Taper testified she was not satisfied with appellant's work progress and was concerned legal documents were "not solidified." N.T. pp. 303-304. During the meeting, appellant was informed of her deficiencies and errors in her work assignments, including incorrect docket numbers, incorrect codes, and misspelled names. N.T. pp. 302-304, 724. Berry showed appellant several examples of her errors and explained the importance of accuracy, reiterating how the provision of incorrect information to the PSP could result in an individual purchasing a gun. N.T. pp. 726-727. They discussed how to provide better supervision so she could successfully complete her probationary period. N.T. pp. 302-303. Berry offered

appellant assistance and told appellant she could call his cell phone number or interrupt him in a meeting. N.T. p. 727. In addition, they set a goal for her to better understand the court commitment process. N.T. p. 131. Appellant stated she had made each individual mistake only one time. N.T. p. 726.

Berry testified appellant's work performance continued to fluctuate after the March 10, 2019 meeting. N.T. p. 132. Specifically, appellant continued to make mistakes on the Tracking Form for Involuntary Commitments, including recording the incorrect name for the person reading the individual his rights, using an address different than the one provided by the PSP, not completing the required information in the tracking system, not sending a copy of the Order to the provider, misspelling an individual's name, misidentifying the type of commitment hearing, providing an incorrect last name for a petitioner, and not indicating the length of an individual's commitment. (*See* Finding of Fact 31). Berry explained these errors created inaccurate records and led to PSP's inability to properly track an individual. N.T. pp. 70, 119, 148. When appellant miswrote the type of commitment hearing, the hearing was held outside of the required time period, resulting in a dismissal and release of the individual. N.T. p. 147-148; AA Ex. 29. When Berry tried to explain the error to appellant, she denied responsibility and said the correct information was not available. N.T. pp. 149-150. Berry then assisted the hospital with providing ongoing care and services to the individual. N.T. pp. 148-149. Berry explained the importance of accurate and timely documents, but appellant denied committing the errors. N.T. pp. 150-151. In some instances appellant's errors caused inaccurate court records and/or resulted in the issuance of an incorrect court order. N.T. pp. 69-70, 121, 169, 174, 742-743; AA Exs. 5, 22, 33, 36.

Additional errors after her March performance discussion included writing the wrong Examining Physician on an Inpatient Admission Information Form. (*See* Finding of Fact 32). The incorrect information was later transferred to the PSP. N.T. pp. 77-79; AA Ex. 7. Appellant also made errors when completing Notification of Mental Health Commitment forms such as unnecessarily including the name of a review officer, providing the wrong date for the individual's commitment, providing the wrong doctor's name, omitting the individual's address, and omitting an individual's Social Security number. (*See* Finding of Fact 33). Berry emailed appellant explaining the importance of providing accurate information on documents they provide to the PSP. N.T. p. 89; AA Ex. 10. He also corrected several errors on Notification of Mental Health Commitment forms before they were filed with the PSP. N.T. pp. 109, 133.

On or about May 13, 2019, appellant received her Probationary PER with an overall rating of "Fair." AA Ex. 28; Ap. Ex. 5. Appellant received "Unsatisfactory" ratings in the categories of "Quality of Work" and "Initiative." Appellant received a "Fair" rating in the categories of "Work Habits," "Relationship with People," "Dependability," "Quantity of Work," "Analytical Ability," and "Administrative Ability." In the categories of "Safety" and "Commitment to Affirmative Action," appellant received a "Good" rating. (*See* Finding of Fact 35). Berry's narrative explained appellant's job performance had improved "some" after the March discussion, but she needed frequent guidance and clarification of issues, and continued to make errors requiring him to monitor and oversee her accuracy. (*See* Finding of Fact 36). Berry commented appellant's lack of organization led to confusion with the hearing process and inaccurate documentation. (*See* Finding of Fact 36). Berry provided appellant with goals to continue learning the services and programs provided by the appointing authority and how those services and programs

operate. (*See* Finding of Fact 37). He stated appellant needed to learn and expand upon her job duties to complete new tasks required by her job position. (*See* Finding of Fact 37).

When Berry, County Administrator Taper, and Human Resources Generalist Taylor met with appellant to discuss the PER, appellant became agitated and denied the negative statements about her work performance. (*See* Finding of Fact 39). She also yelled they were discriminating against her, stood up and walked down the hallway continuing to state she was being discriminated against. (*See* Finding of Fact 39). She went into her office and closed the door; there was no opportunity to discuss her PER and she refused to sign it. (*See* Findings of Fact 40, 41). Berry did not have the opportunity to discuss the PER with her. N.T. p. 138. Appellant passed her probationary period based upon her “fair” PER and was promoted to a regular status employee. N.T. p. 314.

Appellant’s work performance continued to show deficiencies after the issuance of her PER. For example, in emails dated May 14 and May 15, 2019, Berry had to explain how to file an Amended Order and how to fix an error she made on a Notification of Mental Health Commitment forms. N.T. pp. 123-124; AA Exs. 3, 22, 24. On an invoice dated May 29, 2019, appellant provided an incorrect individual name. N.T. pp. 153-154; AA Ex. 30.

Program Director for Long-Term Structured Residential Facility Serrino testified regarding additional errors. First, appellant mistakenly scheduled court hearings for Memorial Day. N.T. p. 287. Once the error was discovered, others had to “scramble” to get petitions completed and filed in a timely manner.

N.T. pp. 287-289. In a second situation, appellant forgot when an individual's commitment hearing was due and the hearing had to be "abruptly" scheduled and appellant requested they complete the petition before the close of business in time for the hearing the following day. N.T. pp. 287-288. If the hearing had not been properly held, the individual could have been released from the facility. N.T. p. 290. In a third instance, appellant had the wrong date for the expiration of an individual's commitment. N.T. p. 291. If appellant's date had not been corrected, the individual would have remained hospitalized beyond his release date. N.T. pp. 291, 293.

Berry further testified that on June 18, 2019, appellant was placed on a thirty-day PIP. Prior to the implementation of the PIP, appellant met with Taylor, who encouraged appellant to ask questions during the discussion; however, appellant stated she would not be speaking. N.T. pp. 732-733. The PIP indicated appellant needed to improve accurate completion of required paperwork as well as her communication and interaction with coworkers and the appointing authority's systems. N.T. pp. 158-159; AA Ex. 31; Ap. Ex 7. When Berry and County Administrator Taper met with appellant to discuss the PIP, appellant denied needing to improve her job performance, stated she did her job, and did not want to agree to the terms of the PIP. N.T. pp. 158, 732. In addition, when Berry began discussing the PIP, appellant "shrieked," stated she had enough, and then left the meeting. N.T. p. 733. After the meeting, appellant told Human Resources Generalist Taylor she had discontinued the discussion because the PIP was inaccurate. N.T. p. 734. Subsequently, Human Resources Director Arnold explained the importance of the PIP to appellant, who then agreed to sign it. N.T. pp. 708-709; AA Ex. 31.

After the PIP was implemented, Berry and appellant met every Friday to discuss her work. N.T. p. 159. County Administrator Taper testified appellant's work quality continued to fluctuate; she would improve, but the improvement would not last. N.T. p. 309. During some supervision meetings, appellant left the room, refused to return, and claimed Berry and Taper were discriminating against her. N.T. pp. 159, 307. Taper would inform appellant the meetings were to help appellant understand the job duties. Appellant would then calm down and the meeting would continue. N.T. pp. 307-308. Berry would review various documentation errors with appellant. Appellant sometimes acknowledged some of the errors, but did not realize the significance of the mistakes. N.T. pp. 309, 737-738.

Berry noted that on a Notification of Mental Health Commitment form dated June 26, 2019, appellant omitted the name of a person who was contacted even though she and Berry had specifically discussed including the person. On the same Notification of Mental Health Commitment form, appellant improperly indicated the individual needed an additional sixty-six days of treatment. N.T. pp. 204-205; 753; AA Ex. 51. Another error appellant made was on a letter Berry composed to the PSP when she neglected to place the chief clerk's seal; Berry placed the seal on the document prior to sending it out. N.T. pp. 198-199; AA Ex. 48. Appellant also made errors on Mental Health Court Order Information Documents, a Recommended Order for Involuntary Treatment, and a Notification of Mental Health Commitment Form. (*See Findings of Fact 63, 64, 65*). In emails dated July 26, 2019, Berry explained the importance of monitoring cases for transition from one type of care to another, preparing for hearings, and identifying when she would have to convert an order. Berry also provided information needed to correct a document. N.T. pp. 213-214; AA Ex. 56.

Berry testified regarding the extension of appellant's PIP. On July 31, 2019, Berry, Taper, and Human Resources Generalist Taylor met with appellant and extended her PIP for another thirty days. (*See* Finding of Fact 67). The plan reiterated the need for appellant to improve accurate completion of required paperwork as well as her communication and interaction with coworkers and the appointing authority's systems. The PIP indicated appellant had made some progress but must continue to use available resources to ensure accurate and correct information. It also noted appellant had not responded positively to instruction or guidance, often disagrees and is argumentative, and often talks over others. (*See* Finding of Fact 67). During the discussion, appellant indicated she did not believe her work needed improvement and she refused to sign the document. N.T. pp. 167-168; AA Ex. 32. After the discussion, Taylor spoke with appellant, who then agreed to follow the PIP, but continued to refuse to sign it. N.T. pp. 709-710; AA Ex. 32.

Even after the extension of her PIP, appellant made additional errors on Notification of Mental Health Commitment Forms including failing to complete the form, providing two different spellings of an individual's first name, indentifying the incorrect hospital even though the correct information was available on a different document, and providing an incorrect address for an individual. (*See* Finding of Fact 70). Berry completed one Notification of Mental Health Commitment Form and provided appellant with guidance on how to find the proper spelling for an individual's name. (*See* Finding of Fact 70). When appellant created a Commitment Expirations document to track individuals, she misspelled an individual's name. N.T. pp. 209-201; AA Ex. 54. In his August 6, 2019 email, Berry told appellant she had misspelled the individual's name on the Commitment

Expirations document, told her to make the correction and double check additional documents to make sure she had not transferred the error to other documents. (*See* Finding of Fact 72). Additional errors on two Tracking Forms for Involuntary Commitment included incorrectly identifying a Petitioner and providing an incorrect zip code for an individual's address. (*See* Findings of Fact 73, 78). On one of the Tracking Forms for Involuntary Commitment, Berry was able to correct the zip code on subsequent documents. (*See* Finding of Fact 78). In addition, appellant erred when completing two Mental Health Court Order Information documents when she did not provide either Defendants' address or phone number; without this information the provider cannot contact an individual to complete the assessment. N.T. pp. 190-192, 751; AA Exs. 43, 44. Appellant neglected to enclose required paperwork with a billing invoice and misspelled an individual's name on a Commitment Expiration document. N.T. pp. 188-189, 209-210; AA Ex. 42.

Berry, Taper, Assistant Human Resources Director Johnston, Human Resources Generalist Taylor, and Human Resources Director Arnold determined it was appropriate to terminate appellant's employment. N.T. pp. 713, 739. Berry and Taper testified appellant was removed based upon her inability to accurately perform her work duties. N.T. pp. 34, 301. Taper explained, "...after many efforts to assist and provide supervision...that was needed to perform that job the way that it needed to be performed, it was evident that that was not going to happen for whatever reason. It was not gelling. So I agreed that it was time for a termination." N.T. p. 321. She explained that although appellant completed hundreds of assignments without error, "that doesn't make up for the fact that there's still errors. And there's no errors allowed in this position because this is legal work." N.T. p. 324. Arnold

explained appellant was not meeting the objectives of the PIP and there was no indication she would improve her job performance. N.T. p. 713. Arnold testified at the time of her termination, appellant was performing approximately twenty-five percent of the job duties required for the position. N.T. pp. 713-714.

In response to the allegations, appellant testified she was not responsible for all of the errors. Specifically, appellant refers to the May 20, 2019 Tracking Form for Involuntary Commitments and asserts Berry provided her with incorrect information she used to complete the form. N.T. pp. 443-444. She also claims the incorrect patient name provided on the February 9, 2019 Application for Extended Involuntary Treatment and subsequent Application for Extended Involuntary Treatment documents are the result of incorrect information provided by the hospital. N.T. pp. 469-474; AA Ex. 12. She testified Berry advised her that these documents were used as a “guide sheet” during the hearing to make sure information is correct. N.T. pp. 474-475. Appellant further argues Berry is responsible for the error on the March 25 and 26, 2019 Tracking Form for Involuntary Commitments forms because she cannot read his handwriting. N.T. pp. 475, 480-482; AA Exs. 5, 9. Appellant testified there were no negative ramifications as a result of these errors on the Tracking Form Involuntary Commitments because they are for internal use only and serve as worksheets; although they are provided to the PSP, they are not a final product because they return the information to her so she can double check the accuracy and provide a final document on a “long sheet.” N.T. pp. 478-479, 483-486.

Appellant also asserts Berry provided inconsistent directions which resulted in some documents appearing to have errors “but really it’s not an error” because she was initially provided one directive, then Berry changes the instructions

after she filled out the form. N.T. pp. 464-468; AA Exs. 43, 51, 52. She further alleged the improper information on some documents are not errors, they were “changes” she needed to make after Berry provided inconsistent directions regarding how to properly complete the forms. N.T. p. 463; AA Exs. 5, 9, 12, 40, 43, 51-56. Appellant also alleges some of the errors are attributed to an employee from an outside agency who repeatedly input information incorrectly. N.T. pp. 451-458; AA Ex. 38.

Upon review of the record the Commission finds the appointing authority has presented sufficient evidence to support the charge of failure to meet the goals of her PIP and extended PIP. Specifically, we find Mental Health Program Director Berry credible<sup>3</sup> regarding the extent of appellant’s mistakes on various legal documents, including documents provided to the Court of Common Pleas and PSP. Additionally, we find Program Director for Long-Term Structured Residential Facility Serrino’s credible testimony corroborates Berry’s testimony regarding appellant’s lack of organization and the ensuing negative consequences. Berry, County Administrator Taper, Human Resources Director Arnold, and Human Resources Generalist Carrie Taylor provided credible testimony explaining the unanimous decision to remove appellant based upon her inability to properly perform her job duties. Appellant’s attempt to place blame on others, including Berry and people outside of the appointing authority, is completely without merit. Appellant’s repeated errors on legal documents despite two PIPs and repeated meetings with Berry, Taper, and Taylor to review documentation and explain the

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<sup>3</sup> The Commission has the inherent power to determine the credibility of witnesses and the value of their testimony. *McAndrew v. State Civil Service Commission (Department of Community and Economic Development)*, 736 A.2d 26 (Pa. Commw. Ct. 1999).

negative consequences of errors, clearly reflects negatively on her competence and ability to perform her job duties. *Enhot, supra*. Thus, the appointing authority has ample evidence of just cause to remove appellant from her Mental Health Program Specialist 1 position.

Having determined the appointing authority presented just cause for removal, we now turn our attention to appellant's allegations of discrimination based upon race, age, sex, and retaliation. Section 2704 of Act 71 of 2018 prohibits discrimination. 71 Pa.C.S. § 7104.

§ 2704. Prohibition of discrimination.

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. § 2704.

The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language<sup>4</sup>. This includes prohibiting “traditional” discrimination which encompasses claims based upon race, national origin, retaliation or other non-merit factors. *Price v. Luzerne/Wyoming Counties*

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<sup>4</sup> Section 905.1 provides:

905.1 Prohibition of Discrimination—No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

*Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996); *Pronko v. Department of Revenue*, 114 Pa. Commw. Ct. 428, 539 A.2d 462 (1988); 71 P.S. § 2704. In claims of traditional discrimination, the appellant must prove a *prima facie* case of discrimination by producing sufficient evidence which, if believed and otherwise unexplained, indicates it is more likely than not discrimination has occurred. *Henderson v. Office of the Budget*, 126 Pa. Commw. Ct. 607, 560 A.2d 859 (1989); *Department of Health v. Nwogwugwu*, 141 Pa. Commw. Ct. 33, 594 A.2d 847 (1991). Once a *prima facie* case of discrimination has been established, the burden shifts to the appointing authority to present a legitimate, non-discriminatory explanation for the employment action. Appellant always retains the ultimate burden of persuasion and must demonstrate the proffered merit reason is merely a pretext for discrimination. *Henderson* at 126 Pa. Commw. Ct. 607, 560 A.2d 859.

Appellant alleges she was discriminated against based upon her race (African) and national origin (Nigerian). According to appellant, Berry was initially pleased with her work product. N.T. pp. 487-488. However, on or about January 10, 2019, when Berry asked her where she was from, she stated her father is Nigerian and she is African even though she was born the United States. N.T. p. 488. After the conversation, on January 16, 2019, appellant noticed Berry's attitude changed and he was polite and social with Caucasians, but ignored her. N.T. p. 490. Moreover, although she had asked Berry to keep her background confidential, he would often loudly state her background while in the office hallway and, as a result, several employees asked her about her African background. N.T. pp. 501, 503.

Appellant explained that in January 2019, she was involved in a verbal altercation with Administrative Assistant Falvo. According to appellant, after the verbal altercation, Berry demonstrated discriminatory conduct by siding with Falvo and treating her unfairly because she is from Africa. N.T. pp. 504-505. According to appellant both she and Falvo received written reprimands for the incident. N.T. p. 504.

On March 1, 2019, appellant put in her leave for a trip to Nigeria, Africa for April 2, 2019 through April 9, 2019. N.T. p. 587; AA Ex. 62. When he saw the leave request, Berry told appellant he had never worked with anybody from Africa before. N.T. p. 506. Appellant requested Berry keep the information about her background confidential so people would not know about her upcoming trip. N.T. p. 507. Appellant asserts Berry disregarded her request, spoke about her upcoming trip, and everybody in the office knew about it. N.T. p. 507. She also alleges Berry loudly stated, “Don’t let the lions eat you.” N.T. p. 508. After hearing the remark, appellant went into Berry’s office and told him it was not necessary for him to be so loud and he had been insensitive and embarrassed her. N.T. p. 509.

As further evidence of discrimination based upon her African race and Nigerian background, appellant claims that during the March 10, 2019 conference about her job performance, Taper asked why appellant had come here in the first place and asked, “Why can’t you go back to where you came from?” N.T. pp. 510-511, 563, 575. Appellant assumed the remarks meant appellant should return to Africa. N.T. p. 511. Shortly after the March 10, 2019 conference, appellant verbally reported discrimination to Taylor, but Taylor never investigated the allegations. N.T. p. 513, 576-577.

On June 3, 2019, appellant's teenage daughter came into the office. N.T. p. 521. Berry verbally reprimanded her and stated not to bring her child into the office because of the confidentiality required in the office. N.T. pp. 522, 605-606. Appellant replied there were other employees bringing in children; Berry told her they were younger children and appellant apologized for her actions. N.T. p. 522. According to appellant, on June 10, 2019, a coworker brought her teenage son into the office, but Berry did not reprimand her for doing so. N.T. pp. 523, 604.

Appellant also alleges retaliation. Appellant asserts she has been retaliated against because she refused to sign her May 2019 PER. On May 13, 2019, shortly after returning from her trip to Africa, she received her PER and refused to sign it because "I was practically accurate on everything." N.T. p. 517.

Second, appellant asserts she was retaliated against for filing her June 10, 2019 EEOC complaint. N.T. p. 527; Ap. Ex. 6. According to appellant, prior to filing her EEOC complaint, she went to Berry and Taper and told them she felt harassed and would file an EEOC complaint if the behavior did not stop. N.T. p. 528. In her complaint, appellant alleged Berry was overly scrutinizing her work and harassing her, favoring white employees, and had shouted at her once. N.T. p. 527. Appellant provided the Human Resources office with a copy of the EEOC complaint. N.T. p. 527.

Third, appellant claims she was retaliated against after filing her June 17, 2019 Internal Discrimination/Harassment Complaint. In her complaint, appellant alleged incidents began as early as March 2019 where Berry continually

yelled references to her African heritage, told coworkers she was from Africa, and constantly talked about Africa with her. N.T. p. 539; Ap. Ex. 9. Appellant also alleged Berry was unnecessarily constantly scrutinizing her work. N.T. p. 540; Ap. Ex. 9. Appellant explained she believed Berry threatened her to sign the extended PIP. N.T. p. 541, 544; Ap. Ex. 9.

Shortly after refusing to sign her May 2019 PER and filing her EEOC and internal Discrimination/Harassment complaints, on June 18, 2019, appellant was placed on the initial PIP. N.T. pp. 531, 627. According to appellant, when she asked Human Resources Director Arnold about the PIP, Arnold stated she implemented the plan “to cover herself.” N.T. p. 529. Appellant created her own PIP to self-monitor her progress; Berry and Taper would not sign it. N.T. pp. 534, 536. After thirty days, the PIP was extended for another thirty days, but she did not understand why and did not want to sign it. N.T. p. 532.

Appellant acknowledges in August 2019, she received a letter from Human Resources indicting her internal Discrimination/Harassment Complaint was unfounded and a separate letter from the EEOC stating her complaint was unfounded. N.T. pp. 544-545, 632; Ap. Ex. 10.

When making a claim of “traditional discrimination,” an appellant must initially present a *prima facie* case of discrimination by producing sufficient evidence which, if believed and otherwise unexplained, indicates it is more likely than not discrimination has occurred. *Henderson, supra*; *Nwogwugwu, supra*. We have been advised, “[g]iven the critical role of circumstantial evidence in

discrimination proceedings, the *prima facie* case cannot be an onerous one.” *Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864. In this instance, appellant has met her initial burden. Appellant has shown her initial allegation of discrimination began in January, when, according to appellant, Berry began discussing her African race and Nigerian national origin. Shortly after requesting leave for a trip to Africa, she was brought into a March 2019 meeting to discuss her allegedly poor work product. Shortly after returning from her trip to Africa, she received her “fair” PER which she refused to sign. Then, shortly after filing her EEOC complaint and internal Discrimination/Harassment Complaint, she received her initial PIP. The timeline of events suggests a possibility of discrimination based upon her race, national origin, and retaliation for refusing to sign the PER. Once a *prima facie* case of discrimination has been established, the burden shifts to the appointing authority to present a legitimate, non-discriminatory explanation for the employment action. Appellant always retains the ultimate burden of persuasion and must demonstrate the proffered merit reason is merely a pretext for discrimination. *Id.*

In response to the allegations regarding race and national origin, Berry testified he is unaware of appellant’s national origin. N.T. p. 90. Before and after her trip, he discussed the trip and asked “general questions of interest” including whether she would be seeing the wildlife or lions, and stating he was glad she returned safely. N.T. pp. 90-91, 252-253. Berry explained he never stated he had not worked with a person of Nigerian or African background and never criticized her trip or mocked her for going. N.T. p. 92. Berry denied speaking about appellant’s race or national origin with any other employee. N.T. p. 252. County

Administrator Taper corroborated Berry's testimony regarding his conduct toward appellant. She testified there were "probably" a few times appellant indicated she felt Berry was discriminating against her. N.T. pp. 304, 314-315. However, Taper disagreed with appellant's interpretation of the situation. N.T. p. 304. N.T. p. 316. Taper never saw any evidence of Berry treating white employees differently than appellant. N.T. p. 316.

Several employees testified regarding their observations of Berry's conduct. Administrative Assistants Geyer and Smith testified they never heard Berry say anything inappropriate to appellant and never saw him acting inappropriately toward her. N.T. pp. 327, 341-342. Geyer never heard discussions in the office regarding appellant's African heritage. N.T. p. 334. Berry never informed Smith of appellant's African heritage. N.T. p. 343. Intake Coordinator Michelle Gindlespbrger never saw Berry acting inappropriately toward appellant. N.T. p. 255. She never heard Berry discuss "Africa" with appellant. N.T. p. 255. Mental Health Program Director Mary Patrick-Hatfield testified she never heard Berry yell at appellant. N.T. p. 364. Furthermore, she never heard Berry yell or state anything about "Africa" or appellant's African heritage. N.T. p. 364. Administrative Assistant Hatfield testified she never heard Berry discussing Africa. N.T. pp. 369, 371. Intellectual Disabilities Director Jennifer Scott testified she never saw Berry act inappropriately, yell at any employee, or discriminate against any employee. N.T. p. 384. When she heard Berry and appellant discussing work, she never heard Berry state anything inappropriate or remark about appellant's African heritage. N.T. p. 388.

With regard to the January verbal altercation between appellant and Falvo, Berry testified he heard both women raise their voices. N.T. p. 81. After the incident, he and Intellectual Disabilities Director Scott spoke to appellant and Falvo and told them not to quarrel or raise their voices. Berry and Scott testified neither appellant nor Falvo were formally disciplined. N.T. pp. 83, 387. Scott testified Berry never sided with either Falvo or appellant and he did not place blame on either employee. N.T. p. 386.

With regard to her own alleged discriminatory conduct, Taper testified regarding the March 10, 2019 meeting with appellant. Specifically, she testified she never remarked appellant should “go back to where you came from.” N.T. pp. 306, 317. Berry corroborated Taper’s testimony. N.T. p. 253.

With respect to the June 2019 office visit from appellant’s daughter, Berry acknowledges he spoke to appellant about the need to maintain office confidentiality. N.T. pp. 221-222. However, appellant was never disciplined for this incident. N.T. p. 222.

Berry testified in response to the allegations of retaliation for deciding not to sign her May 2019 PER and for filing EEOC and internal Discrimination/Harassment complaints. With respect to the PER, Berry denied retaliating against appellant for her decision not to sign the PER. N.T. p. 761. Berry testified appellant “quite loudly” stated she filed an internal Discrimination/Harassment Complaint. N.T. p. 223. While he was aware of an investigation, he did not know he was the subject of the investigation and never saw the actual internal Discrimination/Harassment Complaint. N.T. p. 260; Ap. Ex. 9. He did receive notification the investigation was concluded. N.T. pp. 260-261; AA

Ex. 70. Berry testified he did not retaliate against her for filing the internal Discrimination/Harassment Complaint. N.T. p. 223. With respect to the EEOC complaint Berry testified initially he was not even certain appellant had filed one. N.T. p. 225. Berry believed there were multiple times appellant filed an EEOC complaint only to rescind each one. N.T. p. 256.

County Administrator Taper testified she was aware of the EEOC complaint but did not know if any allegations were specifically filed against her. N.T. p. 315. Taper was unaware the internal Discrimination/Harassment Complaint was unfounded. N.T. p. 321. She did not see either the internal Discrimination/Harassment Complaint or EEOC investigations. N.T. p. 322.

In this instance, the Commission finds the appointing authority has presented sufficient evidence of a legitimate, non-discriminatory reason for appellant's removal, namely her inability to perform her job duties as outlined above. The Commission finds Berry and Taper credible appellant was not disciplined after the January verbal altercation with her coworker; we find Berry credible that he did not discipline appellant for bringing her daughter to the office. Further, Mental Health Program Director Berry, County Administrator Taper, Administrative Assistants Geyer, Smith, and Hatfield, Intake Coordinator Gindlespbrger, Mental Health Program Director Patrick-Hatfield, Intellectual Disabilities Director Scott, and County Administrator Taper credibly testified Berry never acted inappropriately or made inappropriate remarks regarding appellant's African race or Nigerian national origin. We find Taper credible she never remarked appellant should return to where she came from.

With respect to retaliation, Berry credibly testified he never retaliated against appellant for her decision not to sign her May 2019 PER. We find Berry and Taper credible they never retaliated against appellant for filing the EEOC complaint or internal Discrimination/Harassment Complaint. Moreover, as explained above, the appointing authority presented ample evidence of appellant's poor work performance and her inability to meet the terms of her PIP and extended PIP as rationale for removing her from her County Mental Health Specialist 1 position. Appellant has not presented any evidence establishing the reasons set forth by the appointing authority for removal are mere pretext. *Id.* Thus, we find appellant has not met her ultimate burden to establish discrimination based upon her race or national origin or in retaliation for not signing her PER or filing EEOC and internal complaints.

In conclusion, the appointing authority has presented just cause for appellant's removal. Appellant has not presented sufficient evidence to establish her removal was based upon any discriminatory, non-merit factor. Accordingly we enter the following:

#### CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing just cause for removal under Section Section 2607 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 Gloria Damasus challenging her removal from regular Mental Health Program Specialist 1 employment with the Washington County Behavioral Health and Developmental Services Department and sustains the action of the Washington County Behavioral Health and Developmental Services Department in the removal of Gloria Damasus from regular Mental Health Program Specialist 1 employment, effective September 19, 2019.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: 12/21/20