

COMMONWEALTH OF PENNSYLVANIA

Edward L. Galovich, Jr. : State Civil Service Commission

v. :

Department of Environmental Protection : Appeal No. 30370

Timothy J. Sloan
Attorney for Appellant

John J. Cantwell, Jr.
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Edward L. Galovich, Jr. challenging his removal from regular Sanitarian Supervisor employment with the Department of Environmental Protection. A hearing was held on January 16, 2020, at the State Civil Service Commission’s Western Regional Office in Pittsburgh, Pennsylvania, before Hearing Officer Odelfa Smith Preston. A second day of hearing was held May 21, 2021, via video, before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony, the exhibits introduced at the hearing, and the Briefs submitted by the parties. The issue before the Commission is whether the appointing authority has established just cause for appellant’s removal.

FINDINGS OF FACT

1. By letter dated September 19, 2019, appellant was removed from his position as a regular status Sanitarian Supervisor with the Department of Environmental Protection (hereinafter “appointing authority”). Comm. Ex. A.

2. The appointing authority charged appellant with the following: 1) providing unauthorized individuals and appointing authority regulated entities with confidential and privileged information; 2) engaging in supplementary employment and other non-Commonwealth business activities on multiple occasions during work hours without authorization; 3) misusing Commonwealth equipment and resources (e.g. computer, email, internet, and assigned work hours) for personal and non-Commonwealth business purposes without authorization; and 4) submitting inaccurate financial disclosure statements. Comm. Ex. A.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.¹

¹ Appellant’s request for a hearing on the removal under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination.

Employment History

4. Appellant began employment with the appointing authority in March of 1992. N.T. p. 377.
5. At the time of his removal, appellant held the position of Sanitarian Supervisor. N.T. p. 29
6. In his role as Sanitarian Supervisor, appellant was responsible for training and overseeing the inspectors who test the water supplies for several counties, as well as the certified operators who service those counties. N.T. p. 378; Ap. Ex. 1.
7. Certified operators are responsible for handling all process control decisions related to water quality or quantity at a public water system. N.T. pp. 266-267.
8. On his last three annual EPRs, which were issued for the rating periods ending August 1, 2015, August 1, 2016, and August 1, 2017, appellant received the highest and second highest ratings for each job factor. Ap. Exs. 1, 2, 3.
9. Management employees, such as appellant, are rated in seven job factors: 1) job knowledge/skills; 2) work results; 3) communications;

4) initiative/problem solving; 5) interpersonal relations/EEO; 6) work habits; and 7) supervision/management. Ap. Exs. 1, 2, 3.

10. There are five possible ratings for each factor. These ratings are: “outstanding,” “commendable,” “satisfactory,” “needs improvement,” and “unsatisfactory.” Ap. Exs. 1, 2, 3.
11. On his 2015 and 2016 EPRs, appellant was rated “outstanding” in six of the seven factors, to include: work results, communications, initiative/problem solving, interpersonal relations/EEO, work habits, and supervision/management. Appellant was rated “commendable” in the job knowledge/skills category. Ap. Exs. 1, 2.
12. On his 2017 EPR, appellant was rated “outstanding” in four factors, to include: job knowledge/skills, work results, initiative/problem solving, and work habits. Appellant was rated “commendable” in the following three job factors: communications, interpersonal relations/EEO, and supervision/management. Ap. Ex. 3.

13. The comments on the 2017 EPR are vague and in no way criticize appellant's performance. Ap. Ex. 3.
14. Prior to his removal, appellant was never disciplined or reprimanded for any action he took. N.T. p. 379.

Work Hours

15. Effective February 23, 2018, appellant was on an alternate work schedule, meaning he has every fourth Friday off. During the week, appellant either works from 7:00 a.m. to 3:00 p.m. or 7:00 a.m. to 3:30 p.m., with a half-hour lunch period from 12:00 p.m. to 12:30 p.m. N.T. pp. 110-113; AA Ex. 17.
16. During his work hours, appellant was entitled to two fifteen-minute breaks and a half-hour lunch break. N.T. p. 416.
17. It was within appellant's discretion when to take his breaks and lunch. N.T. p. 416.

18. Appellant frequently worked outside of his scheduled work hours to address emergencies. N.T. pp. 417-419.
19. No evidence was presented regarding appellant's leave usage.

Investigation

20. In mid-May 2019, the appointing authority launched an investigation of appellant's usage of his Commonwealth email. N.T. pp. 21, 269, 276-277.
21. The Office of Administration's Information Technology Section (hereinafter "IT") was responsible for capturing the emails, and Human Resource Analyst 3 Kandice Botchie conducted the review. N.T. pp. 276-277.
22. No evidence was presented establishing appellant saw, reviewed, or sent the majority of the emails.
23. On August 15, 2019, the Pre-disciplinary Conference (hereinafter "PDC") was held at the appointing authority's Cambria District Office. N.T. pp. 27, 230-231.

24. In attendance at the PDC were Botchie, Diehl, and appellant. N.T. pp. 27, 230-231.

Dissemination of Information

25. On August 8, 2019 at 4:25 p.m., appointing authority Attorney Wendy Carson emailed appellant and several other appointing authority employees, regarding a phone call she had with the Solicitor for Northern Cambria Municipal Authority about the execution of a Consent Order and Agreement. The bottom of her email indicated this was an attorney-client privileged communication. N.T. pp. 46, 51, 232; AA Ex. 5.
26. On August 9, 2019 at 9:11 a.m., appellant attempted to forward Carson's email to Lonnie Batdorf, along with his draft response to Carson. N.T. pp. 51, 53, 233, 385, 439; AA Ex. 5 (p. 1).
27. Batdorf is a certified operator for several water supplies, to include Carrolltown and Marsteller, which are regulated by the appointing authority. Batdorf also serves as the back-up water treatment plant operator for Northern Cambria Municipal Authority. N.T. pp. 52, 263, 317, 333-334.

28. Batdorf never received appellant's August 9, 2019 email. N.T. pp. 320, 387.
29. Batdorf never saw appellant's draft response to Carson, which was contained in his August 9, 2019 email. N.T. pp. 320-321.
30. At 9:59 a.m. on August 9, 2019, prior to speaking with Batdorf, appellant responded to Carson's August 8, 2019 email. N.T. pp. 59-60, 320-321, 388; AA Ex. 6.
31. After appellant responded to Carson, he spoke with Batdorf on the phone. N.T. pp. 320-321, 388.
32. During his conversation with Batdorf, appellant only asked Batdorf to confirm his water usage numbers. Appellant did not discuss with Batdorf the location or purpose of the numbers. N.T. pp. 320, 364.
33. On June 11, 2019, Thomas Mccaffrey, who is a Geologic Specialist with the appointing authority, emailed appointing authority Attorney Mary Trunschel and copied several other appointing authority employees. N.T. pp. 63-64; AA Ex. 7 (p. 1).

34. Attached to Mccaffrey's June 11, 2019 email were sampling results from June 4 and 5, 2019. Mccaffrey indicated these were the only results he had seen or received thus far and asked if he was correct to assume the appointing authority would wait until it received all the results before providing the results to Marsteller. N.T. pp. 66, 240-242; AA Ex. 7 (p. 1).
35. On June 13, 2019, appellant forwarded Mccaffrey's email and the attachment to Batdorf. N.T. pp. 65-66, 242, 439-440; AA Ex. 7 (p. 1).
36. No evidence was presented that the results, which appellant forwarded to Batdorf on June 13, 2019, were confidential.
37. It is not unusual for Batdorf to receive test results, such as the results attached to Mccaffrey's June 11, 2019 email. N.T. p. 222.
38. Appellant routinely forwards test results to certified operators because they need this information. N.T. p. 391.
39. The test result attached to Mccaffrey's June 11, 2019 email were final results. N.T. p. 391.

40. On June 26, 2019, appellant forwarded split sample results from Marsteller, which were provided by Batdorf, to several appointing authority employees, including Mccaffrey. N.T. pp. 69, 392-393; AA Ex. 8 (p. 2).
41. About fifteen minutes after appellant forwarded Batdorf's results, Mccaffrey responded and provided additional results that he also took at Marsteller. These results were related to the results in Mccaffrey's June 11, 2019 email. N.T. pp. 69-70, 243, 245; AA Ex. 8 (p. 1).
42. Shortly after receiving Mccaffrey's response, appellant forwarded Mccaffrey's response to Batdorf. The text of appellant's email read, "FYI." N.T. pp. 72, 244; AA Ex. 8 (p. 1).
43. On July 8, 2019, Mccaffrey sent an email in which he asked whether anyone provided the sampling results from June 4 and 5, 2019 to Marsteller. N.T. pp. 74-75, 246-247.
44. About a half hour later, appellant replied to Mccaffrey's July 8, 2019 email, indicating he did not send the results to Marsteller. N.T. pp. 75-76, 247.

45. Appellant previously sent the results to Marsteller, but he did not remember sending them at the time he responded to Mccaffrey. N.T. pp. 248, 395-396.
46. It is common practice for appellant to send the results when they are received. N.T. p. 395.
47. On March 1, 2018, appellant received a request from Batdorf for information related to work he was doing for the Susquehanna River Basin Commission (hereinafter "SRBC") on the allocation of current and future wells. N.T. pp. 323-324, 397.
48. Batdorf contacted appellant because he was working in the field and could not easily access copies of the information, which were in his office. N.T. pp. 323-325.
49. Appellant provided the requested information via email, which included fifteen attachments. N.T. pp. 80, 85, 87, 205, 250, 256; AA Ex. 10.
50. At the time he emailed the information to Batdorf, appellant was aware Batdorf had copies of the documents that he attached to the email. N.T. pp. 397-398

51. One of the documents was a 2010 draft Consent Order, which provided historical context. N.T. p. 268.
52. A topographical map of water source locations was also attached. N.T. p. 256.
53. Under the appointing authority's Access to Sensitive Information Policy, citizens requesting such maps need to request a file review and provide identification verifying United States citizenship. AA Ex. 49 (p. 1).
54. The appointing authority's Access to Sensitive Information Policy is not intended to inhibit communications with entities that the appointing authority routinely exchanges this type of information. AA Ex. 49 (p. 2).
55. Batdorf was not an ordinary citizen making a request for information. Batdorf is a certified operator, who has security clearances through Carrolltown Municipal Authority and Carrolltown Borough. N.T. pp. 318, 398.

56. Batdorf never received information from appellant, which did not relate to a system for which he is a certified operator or has an affiliation. N.T. p. 333.
57. Batdorf never received any information from appellant that he did not request or that he should not have received. N.T. p. 334.
58. As the certified operator for Carrolltown and Marsteller and the back-up water treatment plant operator for Northern Cambria Municipal Authority, it is a normal part of Batdorf's business to request information from the appointing authority on an as-needed basis. N.T. pp. 333-334.

Supplemental Employment

59. On August 2, 2010, appellant received approval to engage in supplementary employment related to his family farm (hereinafter "Galovich Farms"), subject to several conditions. N.T. p. 411; AA Ex. 16.
60. The conditions of appellant's supplemental employment included: 1) "[appellant] cannot be in any way involved with [his] supplementary employment while on the job or on Commonwealth premises;" and 2) "[appellant] may not use any

Commonwealth equipment, supplies, telephones, or property in connection with [his] supplementary employment...” N.T. pp. 107-108; AA Ex. 16 (p. 2).

61. On May 7, 2019 at 9:02 a.m., a Certification Specialist from Pennsylvania Certified Organic (hereinafter “PCO”) emailed appellant at his Commonwealth email address regarding an upcoming inspection at Galovich Farms. Appellant responded to this email at 9:24 a.m., confirming the inspection. N.T. pp. 120-122; AA Ex. 19.
62. On May 2, 2019 at 3:22 p.m., an email was sent from a PCO employee to appellant’s Commonwealth email address informing him that his web portal account for Galovich Farms was now active and instructing him how to login. N.T. p. 126; AA Ex. 20.
63. At 1:51 p.m. on May 3, 2019, appellant responded that it worked. AA Ex. 20.
64. On April 30, 2019 at 3:06 p.m., a PCO Certified Specialist emailed appellant at his Commonwealth email address. The body of this email simply provided a link to POC’s portal. AA Ex. 21 (p. 2).

65. On May 1, 2019 at 3:16 p.m., appellant responded thanking the Certified Specialist for the link and requesting information regarding his username, which the Certified Specialist provided three minutes later. AA Ex. 21 (pp. 1-2).
66. On May 2, 2019 at 3:16 p.m., appellant forwarded the emails from April 30 and May 1, 2019, to another PCO employee and requested assistance to reset his password. AA Ex. 21 (p. 1).
67. On November 17, 2017 at 2:26 p.m., appellant sent an email from his Commonwealth email address to the Department of Agriculture, regarding a cost-share application for Galovich Farms. N.T. pp. 139-141; AA Ex. 32.
68. On October 20, 2016 at 8:50 a.m., appellant sent an email from his Commonwealth email account to his personal email address for Galovich Farms. N.T. pp. 142-143; AA Ex. 33, 37.
69. The October 20, 2016 email contained a draft response related to appellant's supplementary employment. N.T. pp. 143-144; AA Ex. 33.

70. On October 26, 2015 and April 6, 2017, Beth Futrick, who is an acquaintance of appellant, sent emails to appellant at his Commonwealth email address, regarding chicken processing and the purchase of a ham. N.T. pp. 146-147, 156, 420-421; AA Exs. 34, 36.
71. On April 11, 2017, Futrick sent an email to appellant at his Commonwealth email address, informing him of a local event being hosted by the Blair County Conservation District, which sought to highlight local farmers. AA Ex. 35.
72. Appellant responded to the emails from his acquaintance from his Commonwealth email. N.T. pp. 155-157; AA Exs. 34, 35, 36.
73. The emails sent by appellant's acquaintance were unsolicited. N.T. pp. 421-422.
74. Appellant's email responses, which were dated October 20, 2016, May 3, 2019, and May 7, 2019 were sent during appellant's work hours. No evidence was presented that the other emails were sent or read during appellant's work hours. N.T. pp. 121-124, 127-129, 143; AA Exs. 19, 20, 33.

75. At no time did he solicit any sales from his acquaintance or any other individuals through the use of his Commonwealth email. N.T. p. 421.
76. Appellant did not use his work computer to generate sales for Galovich Farms. N.T. pp. 421-422.

Use of Commonwealth Equipment and Resources

77. Appellant received emails related to his personal credit card and personal loans at his Commonwealth email address. N.T. pp. 177, 183-185; AA Ex. 47.
78. Between 2016 and 2019, appellant received subscription-based emails from Sheetz, Inc., Rodale Institute, MROChem.com, USDA Agricultural Marketing Services (hereinafter “USDA”), GNC, Grower’s Secret, and the Organic Farmers Association. AA Ex. 38.
79. Most of the subscription-based emails were caught by the appointing authority’s spam software and quarantined. N.T. p. 426.

80. IT directed appellant to delete the quarantined emails, which he did after reviewing the headings to ensure no emails from a water supplier were unintentionally caught by the spam software. N.T. p. 426.
81. The emails from Sheetz, Inc. were related to a Sheetz reward card that the Department of General Services instructed all employees to obtain so that they could take advantage of the rebate on gas when filling up the state vehicles. N.T. pp. 427-428.
82. Appellant did not read or respond to any emails from Sheetz, Inc. N.T. p. 428.
83. The emails from Rodale Institute were related to appellant's previous position as Watershed Manager. N.T. pp. 164-165.
84. Rodale Institute conducts environmental research in Eastern Pennsylvania and was awarded monies in 2001 and 2002 by the appointing authority as part of a watershed project. N.T. p. 427.

85. Appellant did not read or respond to any emails from Rodale Institute. N.T. p. 428.
86. Appellant did not open or respond to any spam emails. N.T. p. 428.
87. Appellant did not use his Commonwealth email to subscribe to any service. N.T. p. 428.

Financial Interest Statement

88. Pursuant to the Governor's Code of Conduct, Management Directive 205.9 Amended, and the Ethics Act, employees are required to submit two forms each year—a Code of Conduct Statement of Financial Interest Form and a Statement of Financial Interests Form.
89. In the employment and liability sections of his "Code of Conduct Statement of Financial Interest for 2018 Filing Year," appellant wrote "N/A," meaning he did not have anything additional to add in this section. N.T. pp. 176-177, 216; AA Ex. 41 (p. 3).

90. The form for the “Code of Conduct Statement of Financial Interest for 2018 Filing Year” states retail credit accounts, commercial banks, savings and loans and finance company loans are to be excluded. N.T. pp. 429-430; AA Ex. 41 (p. 3)
91. On his Statement of Financial Interests Form, appellant did not list anything in the creditors section, nor did he include his supplementary employment on the form. N.T. pp. 179-180; AA Ex. 42.
92. Supplementary employment would most likely be captured in the following sections of the Statement of Financial Interests Form: 1) direct or indirect sources of income; 2) office, directorship, or employment in any business; 3) financial interest in any legal entity in business for profit.
93. In 2018, appellant did not have any income from his supplemental employment. N.T. p. 437.
94. Appellant did not include his supplemental employment on the forms because the farm did not make a profit and he was never paid for his services. N.T. pp. 432-435.

DISCUSSION

The present appeal challenges the appointing authority's decision to remove appellant from regular status employment as a Sanitarian Supervisor. The issue before the Commission is whether the appointing authority has established just cause to remove appellant from his position. In an appeal challenging the removal of a regular status employee, the appointing authority has the burden of establishing just cause for the personnel action. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992); 71 Pa.C.S.A. §§ 2607, 3003(7)(i). Just cause must be job related and, in some manner, rationally and logically touch upon the employee's competency and ability to perform. *Mihok*, 147 Pa. Commw. at 348, 607 A.2d at 848.

In support of its charge, the appointing authority presented the testimony of Human Resource Analyst 3 Kandice Botchie,² Program Manager Renee Diehl,³ and Human Resource Analyst 5 Renata Moseley.⁴ Appellant

² Botchie is employed by the Office of Administration's Conservation and Environment Delivery Center, which provides services to the appointing authority. N.T. p. 19. She has held the position of Human Resource Analyst 3 for approximately two years and served the Commonwealth in various Human Resource positions for about six years. N.T. pp. 19-20. In her capacity as a Human Resource Analyst 3, Botchie is responsible for assisting supervisors and managers with their concerns, addressing performance issues, and assisting with performance standards. N.T. pp. 20-21.

³ Diehl is the Program Manager for the appointing authority's Safe Drinking Water Program in the Southwest Region. N.T. p. 226. She has held that position for approximately one year and has served in the Safe Drinking Water Program for thirteen years. N.T. p. 227. As the Program Manager, Diehl is responsible for overseeing the operations of the Program, including inspection, enforcement, and the issuance of permits. N.T. p. 227. In that capacity, she also serves as appellant's second level supervisor. N.T. p. 228. Prior to serving as appellant's second level supervisor, Diehl was his immediate supervisor for two years. N.T. p. 228.

⁴ Moseley is employed by the Office of Administration and supervises five Human Resource Analysts. N.T. pp. 274-276. Moseley has held the position of Human Resource Analyst 5 since 2013 and has worked for the Commonwealth for forty-two years. N.T. p. 275. In her capacity as a Human Resource Analyst 5, Moseley is responsible for conducting investigations, implementing adverse actions, defending grievances and appeals of disciplinary actions, and reviewing financial disclosures, among other duties. N.T. p. 276.

testified on his own behalf and presented the testimony of Certified Operator Lonnie Batdorf.⁵ The evidence provided by the parties has been reviewed by the Commission and is summarized below, along with the Commission's findings.

Appellant was employed by the appointing authority as a Sanitarian Supervisor and has worked for the appointing authority for twenty-eight years. N.T. pp. 29, 190-191, 377. In his role as Sanitarian Supervisor, appellant was responsible for training and overseeing the inspectors who test the water supplies for several counties, as well as the certified operators⁶ who service those counties. N.T. p. 378; Ap. Ex. 1. Appellant was also expected to effectively deal with sensitive issues. N.T. p. 30; AA Ex. 1.

Based on appellant's last three annual Employee Performance Reviews (hereinafter "EPR"), he performed these responsibilities effectively, professionally, and diligently. Ap. Exs. 1, 2, 3. Appellant received the highest and second highest ratings on his last three annual EPRs, which were issued for rating periods ending August 1, 2015, August 1, 2016, and August 1, 2017. Ap. Exs. 1, 2, 3. Management employees, such as appellant, are rated in seven job factors: 1) job knowledge/skills; 2) work results; 3) communications; 4) initiative/problem solving; 5) interpersonal relations/EEO; 6) work habits; and 7) supervision/management. Ap. Exs. 1, 2, 3.

⁵ Batdorf is the Borough Municipal Authority Manager for Carrolltown Borough Municipal Authority and has held that position for seventeen years. N.T. pp. 315-316. Batdorf also serves as the Water Treatment Plan Operator for Marsteller. N.T. pp. 315-316. Batdorf has worked for Marsteller for approximately six years. N.T. p. 316.

⁶ Certified operators are responsible for handling all process control decisions related to water quality or quantity at a public water system. N.T. pp. 266-267. Certified operators report to municipal authorities, which in turn notify the appointing authority. N.T. p. 267.

There are five possible ratings for each factor. These ratings are “outstanding;” “commendable,” “satisfactory,” “needs improvement,” and “unsatisfactory.” Ap. Exs. 1, 2, 3. Appellant was rated as follows for each job category on his last three annual EPRs:

Job Factor	2015	2016	2017
Job Knowledge/Skills	Commendable	Commendable	Outstanding
Work Results	Outstanding	Outstanding	Outstanding
Communications	Outstanding	Outstanding	Commendable
Initiative/Problem Solving	Outstanding	Outstanding	Outstanding
Interpersonal Relations/EEO	Outstanding	Outstanding	Commendable
Work Habits	Outstanding	Outstanding	Outstanding
Supervision/Management	Outstanding	Outstanding	Commendable

N.T. pp. 380-384; Ap. Exs. 1, 2, 3.

It is unclear why appellant’s ratings dropped in the communication, interpersonal relations/EEO, and supervision/management categories on his 2017 annual EPR. The comments on the 2017 EPR are vague and in no way criticize appellant’s performance. Ap. Ex. 3. Indeed, prior to his removal, appellant was never disciplined or reprimanded for any action he took during the twenty-eight years he worked for the appointing authority. N.T. p. 379.

Appellant was removed as a result of an investigation that was launched in mid-May 2019 because there was a concern internal emails were being given to an outside regulated entity. N.T. pp. 21, 269, 276-277. This concern arose from an email by appellant that was found on a printer in the appointing authority's Cambria District Office. N.T. p. 229.

Human Resource Analyst 3 Kandice Botchie conducted the investigation, which consisted of reviewing emails sent to and from appellant's Commonwealth email address.⁷ N.T. p. 277. As Botchie reviewed the emails, she asked Program Manager Renee Diehl for assistance in determining whether it was appropriate to share certain technical information with a third-party. N.T. pp. 23, 229. Upon reading the emails, Diehl informed Botchie which emails were concerning and should be discussed at the Pre-disciplinary Conference (hereinafter "PDC"). N.T. pp. 24, 230.

On August 15, 2019, upon completion of the investigation, the PDC was held at the appointing authority's Cambria District Office. N.T. pp. 27, 230-231. In attendance at the PDC were Botchie, Diehl, and appellant. N.T. pp. 27, 230-231. Following the PDC, Botchie discussed her preliminary findings with her immediate supervisor, Human Resource Analyst 5 Renata Moseley. N.T. p. 279. Based on this discussion, it was decided appellant would be suspended pending investigation. N.T. p. 279.

⁷ The Office of Administration's Information Technology Section (hereinafter "IT") was responsible for capturing the emails Botchie reviewed. N.T. pp. 276-277. Botchie reviewed the emails by breaking them down into different categories. N.T. p. 23. However, no evidence was presented establishing appellant saw, reviewed, or sent the majority of the emails, which were presented in list format during the hearing. There were only a few select emails, which appellant admitted to sending or reading.

By letter dated September 18, 2019, the appointing authority charged appellant with multiple violations of various policies and directives. Comm. Ex. A. These violations included: 1) providing unauthorized individuals and regulated entities with confidential and privileged information; 2) engaging in supplemental employment and other non-Commonwealth business activities on multiple occasions without authorization during work hours; 3) misusing Commonwealth equipment and resources for personal and non-Commonwealth business purposes; and 4) submitting inaccurate financial disclosure statements. Comm. Ex. A. The evidence pertaining to each of these charges is discussed in detail below, along with the Commission's findings pertaining to each charge. In support of our conclusions, we find credible the testimony and evidence provided by appellant and Batdorf and resolve all conflicts in evidence in favor of appellant.⁸

Unauthorized Dissemination of Confidential
and Privileged Information

The appointing authority presented five email chains in support of its charge that appellant disseminated internal, confidential, and privileged communications and information. These emails chains were from: 1) August 8 and 9, 2019; 2) June 27, 2019 through July 8, 2019; 3) June 26, 2019; 4) June 11 and 13, 2019; and 5) March 1, 2018. The contents of the emails and appellant's responses are detailed below.

⁸ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

On August 8, 2019 at 4:25 p.m., appointing authority Attorney Wendy Carson emailed appellant and several other appointing authority employees, including Program Manager Diehl, regarding an ongoing case with Northern Cambria Municipal Authority. N.T. pp. 46, 51; AA Ex. 5 (p. 2). In the email, Carson detailed a phone call she had with the Solicitor for Northern Cambria Municipal Authority about the execution of a Consent Order and Agreement. N.T. p. 232. The bottom of her email indicated this was an attorney-client privileged communication. N.T. p. 232.

On August 9, 2019 at 9:11 a.m., appellant attempted to forward Carson's email to Lonnie Batdorf, along with his draft response to Carson.⁹ N.T. pp. 51, 53, 233, 385, 439; AA Ex. 5 (p. 1). Batdorf is a certified operator for several water supplies, to include Carrolltown and Marsteller, which are regulated by the appointing authority. N.T. pp. 52, 263, 317. Batdorf also serves as the back-up water treatment plant operator for Northern Cambria Municipal Authority.¹⁰ N.T. pp. 333-334.

Appellant explained he attempted to send the email to Batdorf because Batdorf had previously checked the numbers that were at issue in the email. N.T. p. 386. Appellant explained the matter had been reassigned to Carson and he wanted to bring her up to date on what had happened in the past and some of the issues that

⁹ The August 9, 2019 email, with time stamp of 9:11 a.m., lists three email addresses belonging to Batdorf in the "To" line. N.T. pp. 51, 233, 337-338; AA Ex. 5 (p. 1). Only two of the email addresses were valid. N.T. p. 338. The third email address belonged to a personal gmail account, which was closed. N.T. p. 338. No other email addresses are listed. N.T. p. 51; AA Ex. 5.

¹⁰ Botchie mistakenly believed Batdorf was not affiliated with Northern Cambria Municipal Authority. N.T. p. 52. Upon review of Botchie's testimony, it appears this mistaken belief was the basis for many of her conclusions regarding the appropriateness of appellant's interactions with Batdorf.

he was seeing with the water quality.¹¹ N.T. p. 386. Appellant stated he attempted to contact the appointing authority's technical staff for assistance but was unable to reach them. N.T. pp. 386-387, 389. So, he contacted Batdorf to confirm the numbers. N.T. p. 387. However, Batdorf did not respond to his email. N.T. p. 387.

Batdorf testified he never received the email and only spoke with appellant over the phone. N.T. p. 320. This conversation occurred sometime after appellant responded to Carson. N.T. pp. 320-321, 388. Batdorf also recalled, when he spoke to appellant, appellant only asked him to confirm his water usage numbers. N.T. pp. 320, 364. Appellant did not discuss with Batdorf the location or purpose of the numbers. N.T. p. 320.

At 9:59 a.m. on August 9, 2019, prior to speaking with Batdorf, appellant responded to Carson's August 8, 2019 email. N.T. pp. 59-60, 320-321, 388; AA Ex. 6. Appellant's response mirrored the initial draft, which he attempted to send to Batdorf, with a few changes. N.T. pp. 58, 60, 236-238; AA Exs. 5, 6. Program Manager Diehl speculated these changes were the result of Batdorf's review. N.T. p. 239. However, Batdorf never saw the draft, and appellant denied the changes were influenced by any third party. N.T. pp. 320-321, 388.

Appellant explained he was able to send the response prior to speaking with Batdorf because he found his calculations and confirmed the numbers were correct. N.T. p. 389. Additionally, appellant denied Human Resource Analyst 3 Botchie's claim that he acknowledged at the PDC he should not have sent

¹¹ Appellant's response to Carson's email suggests local politics and personality conflicts resulted in a disagreement amongst several entities for which Batdorf worked and/or was supplying water, to include Carrolltown, West Carroll Municipal Authority, Bakerton, and Northern Cambria Municipal Authority. N.T. pp. 370-372; AA-6.

the email to Batdorf. N.T. pp. 50, 389. Appellant asserted there was nothing inappropriate about confirming the numbers prior to sending his response to Carson. N.T. p. 389.

On June 11, 2019, Thomas Mccaffrey, who is a Geologic Specialist with the appointing authority, emailed appointing authority Attorney Mary Trunschel, regarding an ongoing compliance case with Marsteller, which is one of the water supplies run by Batdorf. N.T. pp. 63-64; AA Ex. 7 (p. 1). Appellant and several other appointing authority employees were copied on this email. N.T. pp. 63-64; AA Ex. 7 (p. 1). Attached to the email were sampling results from June 4 and 5, 2019, which Mccaffrey indicated were the only results he had seen or received thus far. N.T. pp. 66, 240; AA Ex. 7. Mccaffrey also asked Trunschel if he was correct to assume the appointing authority would wait to receive all the results before providing the results to Marsteller.¹² N.T. pp. 240-242; AA Ex. 7 (p. 1).

On June 13, 2019, appellant forwarded Mccaffrey's email and the attached results to Batdorf. N.T. pp. 65-66, 242, 439-440; AA Ex. 7 (p. 1). The email was sent to three email accounts belonging to Batdorf. N.T. p. 66; AA Ex. 7 (p. 1). Appellant did not include a message with the forwarded email and attachment. N.T. p. 66.

¹² Program Manager Diehl mischaracterized Mccaffrey's question as a request for legal advice. N.T. p. 240. Not all communications with counsel are privileged. *See Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44, 52 n. 8 (2011). Here, Mccaffrey was merely asking about the timing for releasing the results. This question appears to be seeking business advice, not legal advice. Thus, it is not an attorney-client privileged communication.

No evidence was presented that the results were confidential. To the contrary, Batdorf testified it is not unusual for him to receive testing results, such as the results attached to Mccaffrey's email. N.T. p. 222. Likewise, appellant testified he routinely forwards such results to certified operators because they need this information. N.T. p. 391.

The only issue raised in Mccaffrey's email was when the results were to be released. AA Ex. 7. Appellant testified these were final results. N.T. p. 391. Appellant further explained, because the results were final, there was no reason not to provide the results.¹³ N.T. p. 391.

On June 26, 2019, appellant emailed split sample results taken at Marsteller to several appointing authority employees. N.T. p. 69; AA Ex. 8 (p. 2). Appellant explained these results had been provided by Batdorf and he simply forwarded them to the appointing authority's employees. N.T. pp. 392-393.

About fifteen minutes after appellant forwarded Batdorf's results, Geologic Specialist Mccaffrey, who was one of the original recipients, responded and provided additional results that he also took at Marsteller. N.T. pp. 69-70, 243; AA Ex. 8 (p. 1). These results were related to the results in Mccaffrey's June 11, 2019 email. N.T. p. 245.

¹³ Botchie claimed appellant agreed, at the PDC, he should not have forwarded the email to Batdorf because the results were only preliminary. N.T. pp. 66-67. Appellant denied making this statement and reiterated the results were final and there was no reason to withhold the results. N.T. p. 392.

Shortly after receiving Mccaffrey's response, appellant forwarded it to Batdorf, along with his initial email. AA Ex. 8 (p. 1). The text of appellant's email to Batdorf simply read, "FYI." N.T. pp. 72, 244; AA Ex. 8 (p. 1).

At the hearing, Program Manager Diehl testified appellant should not have shared the results emailed by Mccaffery because this was an ongoing compliance case. N.T. pp. 243-244. Diehl explained the matter should have been handled by the attorney assigned to the case. N.T. pp. 243-244. Diehl did not believe the attorney had given appellant permission to share the results at that time. N.T. pp. 244-245. Conversely, appellant maintained there was nothing inappropriate or unusual about forwarding the results to Batdorf. N.T. p. 394.

On June 27, 2019, Mccaffrey sent another email to Attorney Trunchel and copied several appointing authority employees, including appellant. N.T. pp. 73-74; AA Ex. 9 (p. 2). The subject of this email was the Marsteller sampling results from June 4 and 5, 2019. N.T. pp. 73-74; AA Ex. 9 (p. 2). In the body of the email, Mccaffrey detailed the results of the sampling conducted on those days and indicated the results had not yet been provided to Marsteller. N.T. pp. 245-246.

On July 8, 2019, a second email regarding the sampling results was sent by Mccaffrey. N.T. p. 74; AA Ex. 9 (p. 1). In the second email, Mccaffrey asked whether anyone provided the sampling results from June 4 and 5, 2019 to Marsteller. N.T. pp. 75, 246-247. About a half hour later, appellant replied that he did not send the results to Marsteller. N.T. pp. 75-76, 247.

At the hearing, appellant indicated he was not trying to mislead Mccaffrey. N.T. pp. 395-396. Appellant stated he simply did not remember sending them, which is consistent with his response at the PDC. N.T. pp. 248, 395-396. Appellant explained it is common practice to send the results when they are received. N.T. p. 395. So, the matter did not stick out to him. N.T. p. 395.

On March 1, 2018, appellant received a request from Batdorf for information related to work Batdorf was doing for the Susquehanna River Basin Commission (hereinafter “SRBC”) on the allocation of current and future wells. N.T. pp. 323-324, 397. Batdorf was working in the field and could not easily access his copies of the information, which were in his office.¹⁴ N.T. pp. 323-325. Batdorf needed to reply to SRBC with the correct allocation information for Carrolltown’s supply of another water source. N.T. p. 324. Knowing appellant had direct access to these numbers, Batdorf contacted appellant. N.T. p. 324.

Appellant provided the requested information via email. N.T. p. 80; AA Ex. 10. The body of the email read: “large email.” N.T. pp. 80, 250; AA Ex. 10. No other explanation was provided. Attached to the email were fifteen documents, to include: 1) a letter signed by appellant to Mr. Golby of the Northern Cambria Municipal Authority; 2) a draft Consent Order from August 3, 2010; and 3) a topographical map showing water sources and potential test well sites within Northern Cambria Municipal Authority. N.T. pp. 85, 87, 205, 256.

¹⁴ Batdorf indicated he received copies of the documents in 2012 and believed they were provided by “Kay Frederick or Dorothy Velotery or Velarity.” N.T. p. 324. It is unclear for whom Frederick or Velotery work.

Appellant testified, at the time he emailed the information to Batdorf, he was aware Batdorf already had copies of the documents.¹⁵ N.T. pp. 397-398. Appellant further indicated the documents attached to the email were historical and were provided to establish a timeline. N.T. pp. 81-82, 260. Appellant noted such documents are always sent to certified operators, such as Batdorf. N.T. p. 405. Appellant stated he was never advised it was against policy to share such information with certified operators. N.T. p. 406. Therefore, he believed it was not inappropriate to send the information to Batdorf. N.T. p. 406.

Additionally, Batdorf testified to the circumstances by which copies of the Consent Order and map came into his possession. N.T. pp. 328-329, 331. Batdorf explained he had received a copy of the Consent Order because he and the Carrolltown Municipal Board Authority Board Members had been approved by the appointing authority to provide assistance to the Northern Cambria Municipal Authority in obtaining further water allocation needs. N.T. p. 329. In order to facilitate that objective, a review of all related documents, including the Consent Order levied upon Northern Cambria Municipal Authority, was necessary. N.T. pp. 329-330. Batdorf also noted he possessed a copy of the attached map because all mapping is required to be done as a part of the annual CCR reports.¹⁶ N.T. p. 331.

¹⁵ Human Resource Analyst 3 Botchie and Program Manager Diehl believed the attachments were related to an active compliance case the appointing authority had with the Northern Cambria Municipal Authority. N.T. pp. 84, 251. However, no evidence was presented by the appointing authority to support this belief. Nor did the appointing authority present any credible evidence contradicting Batdorf or appellant's testimony that Batdorf already had copies of the documents in his possession.

¹⁶ Consumer Confidence Reports, also referred to as CCRs, are annual water quality reports that water suppliers are required to provide to their customers. N.T. pp. 401-402. The appointing authority's instructions for preparing these reports requires the water suppliers to provide the name and location of each water source. N.T. p. 402. Appellant provided a copy of the 2018 Annual Drinking Water Quality Report for Northern Cambria Municipal Authority, demonstrating the disclosure of the water source locations. N.T. p. 403; Ap. Ex. 4.

Batdorf further noted this information is listed on the “SARA Title 2” and disclosed on various other state sites. N.T. p. 331. Each water source is also physically identified by a sign at the location. N.T. p. 332.

Nonetheless, Program Manager Diehl characterized the information attached to the email as being related to an ongoing compliance matter and asserted it should not be released because it could harm the appointing authority’s stance during negotiations. N.T. pp. 251-252. Yet, based on Diehl’s own testimony, it appears the 2010 draft Consent Order merely provided historical context and was in no way part of an ongoing negotiation. Diehl testified the 2010 draft Consent Order, which was provided to Batdorf, was replaced in 2011 by an executed Consent Order. N.T. p. 268. The 2011 Consent Order was amended in 2013. N.T. p. 268. However, at the time appellant forwarded the 2010 draft Consent Order to Batdorf, the 2013 amendment was no longer viable because negotiations had broken down and a new Consent Order and Agreement were being negotiated. N.T. p. 268. No other testimony was provided as to how the remaining documents were related to an ongoing compliance matter.¹⁷ Indeed, appellant noted he did not have any reason to believe the 2010 draft Consent Order contained any sensitive information, eight years after the fact. N.T. p. 404.

Likewise, Diehl’s testimony regarding the process for requesting maps seems contrary to Batdorf’s function as a certified operator, especially with the understanding that Batdorf already had a copy of the map attached to the email.

¹⁷ Diehl testified, at the time appellant provided the documents to Batdorf, the appointing authority was looking to negotiate a new order and agreement for a different solution for Northern Cambria County’s water supply, other than Carrolltown. N.T. p. 261. It is unclear what relation, if any, the 2010 draft Consent Order had to any current negotiations. It is unclear what, if any steps, had been taken to begin such negotiation, nor is there any credible evidence Batdorf was aware of any such negotiations. Moreover, as Batdorf credibly testified, he already had a copy of the 2010 draft Consent Order. N.T. pp. 329-330.

Diehl asserted the topographical map should not have been forwarded to Batdorf, based on the direction set forth in the appointing authority's Access to Sensitive Information Policy. N.T. p. 256; AA Ex. 49. Diehl explained the Access to Sensitive Information Policy was enacted after the events of September 11, 2001, and limits public access to information regarding the location of facilities, including public water supplies, that may be potential terrorism targets. N.T. p. 254; AA Ex. 49. Pursuant to the policy, citizens seeking such information must be directed to request a file review at the appropriate appointing authority office. N.T. pp. 254, 264; AA Ex. 49. The policy is not intended to inhibit communications with entities that the appointing authority routinely exchanges this type of information. AA Ex. 49.

As appellant explained, Batdorf was not an ordinary citizen making a request for information. N.T. p. 398. Batdorf is a certified operator, who has security clearances through Carrolltown Municipal Authority and Carrolltown Borough. N.T. pp. 318, 398. Thus, appellant asserted it was not inappropriate to provide Batdorf with the requested information. N.T. p. 398.

Furthermore, Batdorf denied ever receiving information from appellant, which did not relate to a system for which he is a certified operator or has an affiliation. N.T. p. 333. Nor did he receive any information from appellant that he did not request or that he should not have received. N.T. p. 334. Batdorf explained, as the certified operator for Carrolltown and Marsteller and the back-up water treatment plant operator for Northern Cambria Municipal Authority, it is a normal part of his business to request information from the appointing authority on an as-needed basis. N.T. pp. 333-334.

Nonetheless, the appointing authority asserts the above emails sent by appellant to Batdorf were confidential and privileged, thereby violating Management Directive 505.7 Amended, which is the Commonwealth's Personnel Rules, and the appointing authority's Work Rules.¹⁸ AA Bf., pp. 24-27. The applicable rules, along with the corresponding evidence or lack thereof, is discussed below.

Chapter 13.1(a) of Management Directive 505.7 Amended provides, in relevant part:

No employee of the commonwealth is to engage in scandalous or disgraceful conduct, or any other behavior, on or off duty which may bring the service of the Commonwealth into disrepute. Violations of this nature or violations of the Commonwealth's human resources management rules may result in disciplinary action.

N.T. p. 39; AA Ex. 3. It is unclear how any of the emails appellant sent to Batdorf could be characterized as scandalous or disgraceful conduct. While it was poor judgment to attempt to send Batdorf a draft of his response to Attorney Carson, we fail to see how the content of that email would bring the service of the Commonwealth into disrepute. Furthermore, there is nothing unprofessional, scandalous, or disgraceful about the other emails appellant sent to Batdorf. AA Exs. 7, 8, 9, 10. Indeed, the documents appellant emailed Batdorf on March 1, 2018, were already in Batdorf's possession. N.T. pp. 323-325, 397-398. Moreover, no credible evidence was presented that these documents or the test results, which appellant sent Batdorf in several other emails, were confidential. AA Exs. 7, 8, 9, 10. We find credible Batdorf and appellant's testimony that Batdorf received such

¹⁸ The appointing authority cited to numerous policies in its removal letter. Comm. Ex. A. However, the appointing authority did not argue the applicable sections of these policies in its brief. Nonetheless, we have reviewed the listed policies and addressed them accordingly in making our decision.

information in the normal course of his business as a certified operator. N.T. pp. 333-334, 391, 395. Accordingly, we find appellant did not violate Management Directive 505.7 Amended.

Additionally, we find there is no credible evidence to support violations of Work Rule Nos. 1, 2, and 8, with the exception of the email appellant attempted to forward from Attorney Carson. Pursuant to Work Rule No. 1, failure to perform one's duties satisfactorily would be a violation for which disciplinary action may be taken. AA Ex. 4 (p. 1). Here, there is no evidence appellant failed to perform his duties satisfactorily. On his last three annual EPRs, which were issued for rating periods ending August 1, 2015, August 1, 2016, and August 1, 2017, appellant consistently received the highest and second highest ratings for each job factor. Ap. Exs. 1, 2, 3.

Furthermore, we are not persuaded by Human Resource Analyst 3 Botchie's claim that appellant failed to perform his duties satisfactorily because he provided attorney-client privileged information, as well as sensitive and confidential information, to a third party not authorized to receive the information. N.T. pp. 203-204. With the exception of the email from Attorney Carson, we find no credible evidence was presented to support the appointing authority's belief the information provided to Batdorf was sensitive or confidential. Also, none of these emails are attorney-client privileged communications.¹⁹

¹⁹ We note upon finding the email that sparked the investigation in May 2019, the appointing authority did not take any steps to counsel appellant regarding the sending of such emails. Nor did the appointing authority suspend appellant at that time. Rather, the appointing authority permitted appellant, who had no prior disciplinary history, to continue providing information to certified operators as he had always done. We also find it curious that the appointing authority did not interview Batdorf as part of its investigation.

Not all communications with counsel are privileged. To invoke the attorney-client privilege, the communications must be for the purpose of securing or providing professional legal services. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44, 52 n. 8 (2011). The attorney-client privilege does not extend to business advice or protect clients from factual investigations. *Id.* Here, there is no credible evidence the email communications were for the purpose of securing or providing professional legal services. Furthermore, no testimony was presented from the attorneys, or anyone, as to how the forwarding of these emails hurt the case. Accordingly, we find the emails entered into evidence by the appointing authority were not attorney-client privileged communications.

With that said, we recognize appellant should not have attempted to forward Attorney Carson's email requesting information related to an ongoing compliance matter to Batdorf. Although Carson's email did not contain any information regarding the appointing authority's stance on the compliance matter, appellant should not have attempted to forward it.²⁰ AA Ex. 5. We find appellant's attempt to forward this email is good cause for suspension because such conduct frustrates the execution of appellant's duties as Sanitarian Supervisor. *See McCain, supra.*

Next, we find there is insufficient information to support a violation of Work Rule No. 2. Pursuant to Work Rule No. 2, failure to follow instructions, policies, or procedures would be a violation for which disciplinary action may be taken. AA Ex. 4 (p. 1). In the present matter, the only policy the appointing

²⁰ Carson's email summarized a conflict between the Northern Cambria Municipal Authority and a consultant. After summarizing the conflict, Carson asked for a meeting to be set up to have an internal discussion on the matter. AA Ex. 5.

authority discussed, in relation to the emails which were sent to Batdorf, was its Access to Sensitive Information Policy, which includes a formal file review process. AA Bf., p. 26. We find appellant did not violate this policy and thereby, did not violate Work Rule No. 2.

The appointing authority argued appellant violated the Access to Sensitive Information Policy by providing a topographical map of public water supplies to Batdorf on March 1, 2018. AA Bf., p. 26. This policy restricts information provided to citizens, not entities with whom the appointing authority routinely exchanges such information. AA Ex. 49. We find Batdorf, as a certified operator, is not an ordinary citizen making a request for such information. N.T. pp. 318, 398. Indeed, a copy of the map was already in Batdorf's possession at the time he requested the information from appellant. The only reason Batdorf requested the information again was because he was in the field and could not easily access it. N.T. pp. 323-325. Therefore, we find appellant did not violate Work Rule No. 2 by emailing Batdorf a copy of the map.

For the same reasons, we also find the other documents attached to appellant's March 1, 2018 email, do not violate the Access to Sensitive Information Policy. Furthermore, it makes little difference from where appellant uploaded these documents. While it is undisputed appellant uploaded the files from the appointing authority's server, there is no evidence this caused a breach in the server or any other harm. N.T. p. 405. Moreover, there is no credible evidence appellant provided Batdorf files which were not otherwise in his possession. Appellant credibly testified he was aware the documents were in Batdorf's possession when he sent the March 1, 2018 email. N.T. pp. 397-398. Accordingly, the evidence presented by the appointing authority is insufficient to establish a violation of Work Rule No. 2.

Likewise there is no evidence appellant violated Work Rule No. 8. Work Rule No. 8 prohibits employees from using any machines, tools, equipment, vehicles, materials, or other department property in an unauthorized manner. AA Ex. 4 (p. 1). No evidence, other than sending the above emails, was presented by the appointing authority to establish a violation of this Rule. Therefore, based on our findings above, there is insufficient evidence to substantiate a violation of Rule No. 8.

Supplemental Employment Violations

On August 2, 2010, appellant received approval²¹ to engage in supplementary employment related to his family farm (hereinafter “Galovich Farms”), subject to several conditions.²² N.T. p. 411; AA Ex. 16. These conditions included, in pertinent part: 1) “[appellant] cannot be in any way involved with [his] supplementary employment while on the job or on Commonwealth premises;” and 2) “[appellant] may not use any Commonwealth equipment, supplies, telephones, or property in connection with [his] supplementary employment...”²³ N.T. pp. 107-108; AA Ex. 16 (p. 2).

²¹ There are several policies, which require employees, such as appellant, to obtain approval before engaging in or accepting private employment or rendering services for a private interest, as well as unpaid volunteer activities which may present a conflict with the employee’s regular work hours. AA Exs. 11 (p. 3), 14 (p. 2), 15 (p. 1). These policies include: Executive Order 1980-18 (Code of Conduct); Management Directive 515.18 Amended (Supplementary Employment); and the appointing authority’s Supplementary Employment Process. AA Exs. 11, 14, 15.

²² The family farm had been run by appellant’s father, until his health began to fail in 2011. N.T. pp. 411, 414. Upon taking over the farm for his ailing father, appellant considered it to be a hobby. N.T. p. 422. Appellant did not have an ownership interest in the farm. N.T. p. 422.

²³ Upon obtaining approval to engage in supplementary employment, the employee may be subject to various restrictions. The following general restrictions are set forth in the appointing authority’s Supplementary Employment Process: 1) the employee cannot engage in supplementary employment during work hours; and 2) the employee cannot use Commonwealth equipment, supplies, or property, including telephones, in connection with supplementary employment. AA Ex. 15 (p. 2). These are the same restrictions set forth in the approval form appellant received, upon requesting permission to engage in supplementary employment related to Galovich Farms. AA Ex. 16 (p. 2).

The appointing authority asserts appellant violated these conditions because he used his Commonwealth email address to send and receive emails related to his supplementary employment during his scheduled work hours. AA Bf., p. 27-28. The offending emails included: 1) emails between appellant and Pennsylvania Certified Organic (hereinafter “PCO”); 2) an email between appellant and the Department of Agriculture; 3) emails between appellant and an acquaintance; and 4) emails sent to and from appellant’s personal email. The evidence presented regarding these emails is detailed below, along with the Commission’s findings.

The appointing authority entered into evidence a list of 106 emails, which it asserted were between appellant and PCO employees. N.T. pp. 115-116; AA Ex. 18. The emails on this list span from April 2015 through July 2019, which equates to approximately two emails per month. AA Ex. 18. The majority of these emails were not entered into evidence; therefore, their contents are unknown.

Also, the information pertaining to each email on the list is limited. The list only details the sender, recipient, subject heading, date and time received, and size of the email. AA Ex. 18. This information is insufficient to ascertain whether the emails were sent, received, or read during work hours because no evidence of appellant’s work schedule prior to February 23, 2018 was presented, nor is there any evidence regarding appellant’s leave usage. N.T. pp. 110-111, 113; AA Ex. 17. Also, some of the time stamps are incomplete and/or appear to be during appellant’s current lunch period or quitting time. AA Ex. 17, 18. Therefore, absent additional information, the Commission is unable to ascertain whether appellant was engaging in supplementary employment during work hours merely by looking at the list. AA Ex. 17.

With that said, the appointing authority did provide testimony regarding email chains between appellant and PCO employees from April 30, May 2, May 7, 2019.²⁴ AA Exs. 19, 20, 21. That testimony is summarized as follows.

On May 7, 2019 at 9:02 a.m., a Certification Specialist from PCO emailed appellant at his Commonwealth email address regarding an upcoming inspection. N.T. pp. 120-121; AA Ex. 19. Appellant responded to this email at 9:24 a.m., confirming the inspection. N.T. p. 122; AA Ex. 19. The email sent by appellant included his Commonwealth signature block. N.T. p. 124; AA Ex. 19.

During the PDC, appellant acknowledged the May 7, 2019 email pertained to his supplementary employment, not his Commonwealth duties, and he confirmed he sent the email during his work hours. N.T. pp. 121-124. Appellant also indicated he previously directed PCO to email his Hotmail account. N.T. p. 122. However, appellant did not mention his Hotmail account when responding to the May 7, 2019 email. N.T. p. 124.

On May 2, 2019 at 3:22 p.m., an email was sent from a PCO employee to appellant's Commonwealth email address informing him that his web portal account for Galovich Farms was now active and instructing him how to login. N.T.

²⁴ In addition to the emails, about which Human Resource Analyst 3 Botchie testified, the appointing authority entered into evidence several email chains between appellant and PCO employees. AA Exs. 22-31. There were a total of twenty emails sent by appellant within these email chains, which were not duplicates of the emails discussed by Botchie. AA Exs. 21-31. Out of the twenty emails, eight emails were sent in 2019. AA Exs. 22, 30, 31 Two emails were sent in 2018, as well as 2017, and eight emails were sent in 2015. AA Exs. 23-29. No evidence was presented that these emails were sent during appellant's work hours. Furthermore, the Commission cannot infer the emails were sent during appellant's work hours, because most of the emails were sent prior to the effective date of appellant's current work hours and because there is no information regarding appellant's leave usage. AA Ex. 17. Absent this information, it is unclear whether the emails were sent during appellant's work hours.

p. 126; AA Ex. 20. At 1:51 p.m. on May 3, 2019, appellant responded that it worked. AA Ex. 20. Human Resource Analyst 3 Botchie testified appellant's response was sent during work hours, and she noted appellant acknowledged, during the PDC, the email was related to his supplementary employment, not his Commonwealth duties. N.T. pp. 127-129. However, no evidence was presented that appellant tried to access the web portal from his Commonwealth computer or during work hours.

On April 30, 2019 at 3:06 p.m., a PCO Certified Specialist emailed appellant at his Commonwealth email address. AA Ex. 21 (p. 2). The body of this email simply provided a link to PCO's portal. AA Ex. 21 (p. 2). On May 1, 2019 at 3:16 p.m., appellant responded thanking the Certified Specialist for the link and requesting information regarding his username, which the Certified Specialist provided three minutes later. AA Ex. 21 (pp. 1-2). The following day at 3:16 p.m., appellant forwarded the emails from April 30 and May 1, 2019, to another PCO employee and requested assistance to reset his password. AA Ex. 21 (p. 1). Botchie did not indicate whether this email was sent during work hours, nor did she indicate whether she spoke with appellant about the email during the PDC.

On November 17, 2017 at 2:26 p.m., appellant sent an email from his Commonwealth email address to the Department of Agriculture, regarding a cost-share application. N.T. pp. 139-141; AA Ex. 32. During the PDC, appellant acknowledged the email was related to his supplementary employment, not his Commonwealth duties. N.T. pp. 139-140. No testimony was provided as to whether this email was sent during appellant's work hours.

The appointing authority provided testimony regarding three email chains between appellant and Beth Futrick, who is an acquaintance of his. N.T. p. 146, 420; AA Exs. 34, 35, 36. Appellant met Futrick in 2001, when he was the Watershed Manager for the appointing authority. N.T. pp. 146, 420. She is an employee with the Blair County Conservation District. N.T. pp. 146, 420.

On October 26, 2015, between 9:32 a.m. and 11:17 a.m., Futrick sent several emails to appellant at his Commonwealth email address, regarding chicken processing and the purchase of a ham.²⁵ N.T. pp. 146, 156; AA Ex. 36. Appellant responded to these emails the same day, using his Commonwealth signature block. N.T. pp. 155-157; AA Ex. 36. At the PDC, appellant acknowledged this email chain was related to his supplementary employment and indicated he should not have been using his Commonwealth email for this purpose. N.T. pp. 155-156.

About two years later, on April 6, 2017 at 11:43 a.m., Futrick, sent an unsolicited inquiry to appellant at his Commonwealth email address asking to purchase a ham. N.T. pp. 146-147, 421; AA Ex. 34 (p. 3). Through a series of emails that followed, appellant provided Futrick with the information she sought. AA Ex. 34. At the PDC, appellant confirmed this email chain pertained to his supplementary employment. N.T. p. 147.

On April 11, 2017 at 12:12 p.m., Futrick again sent an unsolicited email to appellant. N.T. pp. 150, 422; AA Ex. 35. In this email, Futrick alerted appellant to a local event being hosted by the Blair County Conservation District, which sought to highlight local farmers. AA Ex. 35. Appellant responded the following

²⁵ Based on the contents of the emails, it appears Futrick wanted to purchase a ham from appellant and did so.

morning at 9:48 a.m. and asked for details. AA Ex. 35. At the PDC, appellant acknowledged this email chain was related to his supplementary employment, not his Commonwealth employment. N.T. pp. 151-152.

At the hearing, appellant noted at no time did he solicit any sales from Futrick or any other individuals through the use of his Commonwealth email. N.T. p. 421. Appellant denied using his work computer to generate sales for Galovich Farms. N.T. pp. 421-422.

In addition to the emails from Futrick, the appointing authority entered into evidence a list of sixty-six emails, which it asserted were sent between appellant's Commonwealth email address and his personal email address for Galovich Farms.²⁶ N.T. p. 159; AA Ex. 37. The list detailed the sender, recipient, subject heading, date and time received, and size of the email. AA Ex. 37. Based on the information contained on the list, the emails were sent between 2015 and 2019, which equates to less than two emails per month. AA Ex. 37.

Human Resource Analyst 3 Botchie testified the emails consisted of items related to appellant's supplementary employment, as well as his work for the Commonwealth. N.T. p. 160. Appellant explained some of these emails were sent from his personal cell phone regarding information he obtained while in the field, such as photographs from accidents or other compliance issues. N.T. p. 424. Appellant did not have a work cell phone at the time, which is why he used his personal phone. N.T. p. 424.

²⁶ Appellant noted he most likely forwarded the emails to his personal email so that he could review them. N.T. p. 423.

It is unclear which emails on the list pertained to appellant's supplementary employment and which emails are work-related.²⁷ It is also unclear whether the emails were sent, received, or read during work hours, as the information regarding appellant's work schedule is limited. AA Exs. 17, 37.

Only one of the sixty-six emails was entered into evidence. This was an email dated October 26, 2016 at 8:50 a.m., which appellant sent from his Commonwealth email account to his personal email address for Galovich Farms. N.T. pp. 142-143; AA Ex. 33, 37. The email contained a draft response related to appellant's supplementary employment. N.T. pp. 143-144; AA Ex. 33. Botchie testified this email was sent during appellant's work hours. N.T. p. 143.

Based on the above, the appointing authority asserts appellant violated the restrictions of his supplementary employment in that he used his Commonwealth computer and email account to conduct supplemental employment activities during his scheduled work hours.²⁸ AA Bf., pp. 27-28. Contrary to the appointing authority's assertion, no evidence was presented establishing appellant used his Commonwealth computer to send and receive emails related to his supplemental employment. Furthermore, we are unable to ascertain whether the two lists of emails, which the appointing authority asserts are related to appellant's supplemental

²⁷ While the subject headings for some of the emails suggest they are related to appellant's supplementary employment (e.g., "Fw: PCO Receipt" and "Fw: PCO Web Portal Account Credentials"), many of the subject headings are nebulous (e.g., "Fwd:," "Fw: Compliance Correction Letter," "Forms, " "[External]," "99," and "Voicemail 1"). Absent additional information, the Commission cannot discern whether these emails violate the appointing authority's or Commonwealth's policies. Furthermore, Botchie's blanket statement that some of the emails contained pictures from an emergency response conducted by the appointing authority, is insufficient to cure this deficiency. N.T. pp. 160-161.

²⁸ During the hearing, Botchie argued appellant falsified payroll because he was conducting supplementary employment during work hours. N.T. p. 204. The appointing authority did not argue this issue in its Brief. Nevertheless, we recognize, if such action was proven, it would violate Rule Nos. 3 and 14 of the appointing authority's Work Rules, as listed in the Removal Letter. Comm. Ex. A (p. 2). Since the evidence of appellant's work hours in relation to his supplementary employment is vague, we do not find a violation of these Rules.

employment, were read or sent during appellant's work hours. AA Exs. 18, 37. With the exception of a handful of emails that were entered into evidence, the contents of the emails on the lists are unknown. Also, no evidence was presented as to when these emails were read, and the information regarding appellant's work hours is limited, thereby making it impossible to determine whether the emails on the lists were sent during work hours.

With that said, there were seven email chains, pertaining to appellant's supplementary employment, about which the appointing authority provided specific evidence. AA Exs. 19, 20, 21, 32, 34, 35, 36. These emails are sufficient to establish good cause for suspension. It is clear these emails are related to appellant's supplemental employment and that they were sent and/or received at appellant's Commonwealth email address, thereby violating the second condition of his supplementary employment—that he may not use any Commonwealth equipment or property in connection with his supplementary employment. AA Ex. 16 (p. 2). Also, there was credible testimony that three of these emails were sent during work hours, which is a violation of the first condition of appellant's supplemental employment—that he may not engage in supplementary employment during work hours. N.T. pp. 121-124, 127-129, 143; AA Exs. 16 (p. 2), 19, 20, 33.

Misuse of Commonwealth Equipment and Resources

The appointing authority presented evidence appellant received subscription-based emails, emails related to personal credit cards, and non-work-related emails from financial institutions at his Commonwealth email address. The evidence pertaining to these emails is detailed below, along with the Commission's findings.

The appointing authority entered into evidence a list of 507 emails, which it described as a representative sampling of subscription-based emails appellant received at his Commonwealth email address. N.T. p. 163; AA Ex. 38. Based on the information provided on the list, these emails appear to have been received between 2016 and 2019. AA Ex. 38. Approximately one third of the emails on the list are marked “unread.” AA Ex. 38. It is unclear, based on the appointing authority’s evidence, if the unread emails, or any of the emails on the list, were reviewed by appellant during work hours.

At the hearing, appellant testified most of these emails were caught by the spam software and quarantined. N.T. p. 426. Appellant stated he spoke with IT and was directed to simply delete the quarantined emails, which he did after reviewing the headings to ensure no emails from a water supplier were unintentionally caught by the spam software. N.T. p. 426.

Included among the emails appellant received were emails from Sheetz, Inc., Rodale Institute, MROChem.com, USDA Agricultural Marketing Services (hereinafter “USDA”), GNC, Grower’s Secret, and the Organic Farmers Association. AA Ex. 38. Human Resource Analyst 3 Botchie testified she asked appellant about the emails from these entities during the PDC. N.T. pp. 164, 165, 166, 167. However, it is unclear whether appellant was shown specific emails from the list during the PDC, or merely presented with the list that was entered into evidence.

Botchie testified appellant provided the following explanations at the PDC. Botchie stated appellant explained the emails from Sheetz, Inc. were related to his Sheetz reward card. N.T. p. 164. Botchie further indicated appellant

acknowledged, at the PDC, he should not have used his Commonwealth email for the Sheetz reward card or GNC. N.T. pp. 164, 167. However, Botchie recalled appellant asserted the emails from Rodale Institute, MROChem.com, and USDA were related to his employment. N.T. p. 166. Appellant told Botchie the emails from Rodale Institute were related to the prior position he held with the appointing authority, which was Watershed Manager.²⁹ N.T. pp. 164-165. With that said, Botchie stated appellant acknowledged the emails from Grower's Secret were not related to his employment and that use of his Commonwealth email for subscription-based emails is inappropriate. N.T. pp. 167-169.

At the hearing, appellant provided additional context for his responses to Botchie. Regarding the emails from Sheetz, Inc., appellant explained the Department of General Services instructed all employees to obtain Sheetz reward cards so they could take advantage of the rebate on gas when filling up the state vehicles. N.T. pp. 427-428. Appellant stated he never had a Sheetz reward card and speculated this is probably how he came to be on the mailing list for Sheetz. N.T. pp. 427-428. Appellant denied reading or responding to any of the emails from Sheetz. N.T. p. 428.

Appellant also provided additional information regarding Rodale Institute. Appellant explained Rodale Institute conducts environmental research in Eastern Pennsylvania. N.T. p. 427. In 2001 and 2002, the appointing authority awarded a significant amount of money to Rodale Institute as part of a watershed

²⁹ Botchie speculated the emails from Rodale Institute and MROChem.com were not related to appellant's employment because their websites focused on farming. N.T. pp. 165-167. Botchie also believed the USDA emails were not related to appellant's employment because the subject headings were not related to safe drinking water and contained the words "organic" and "farming." N.T. p. 167. With that said, no information regarding appellant's duties as a Watershed Manager was presented. The only reference to appellant's duties as a Watershed Manager was hearsay based on what Botchie learned from Program Manager Diehl. N.T. p. 165. Diehl did not testify regarding this issue.

project. N.T. p. 427. Appellant denied reading or responding to any of the emails from Rodale Institute. N.T. p. 428. Appellant also denied opening or responding to any of the spam emails, and he denied using his Commonwealth email to subscribe to any service. N.T. p. 428.

In addition to the subscription-based emails, Botchie testified she found appellant's personal credit card statements and information regarding personal loans when she did the email capture of his Commonwealth email.³⁰ N.T. pp. 177, 183-185; AA Ex. 47. Like the subscription-based emails, approximately one-fifth of these emails were unread. AA Ex. 47. At the PDC, appellant acknowledged these emails were not work-related and it was inappropriate to receive the emails at his Commonwealth email account. N.T. p. 185.

Section 5(h) of Management Directive 205.34 Amended (Commonwealth of Pennsylvania Information Technology Acceptable Use Policy) provides: "IT Resources are intended for business use and should be used primarily for that purpose." AA Ex. 12 (p. 5). However, limited, occasional, and incidental personal use is permitted under Section 5(h), as well as the appointing authority's Electronic Mail/Internet Acceptable Use Policy, provided it does not interfere with the efficiency of operations and it is not inconsistent with Commonwealth policy or contain inappropriate content. AA Ex. 12 (p. 5), 13 (p. 1).

³⁰ None of the emails, which allegedly contained appellant's credit card statements were entered into evidence. The only email entered into evidence regarding appellant's credit card merely indicated appellant's statement was ready online and provided an account summary of the statement balance, available credit line, minimum payment, and due date. AA Ex. 48.

No evidence was presented that appellant used Commonwealth equipment or resources in a way that interfered with the efficiency of operations. In fact, on his annual EPRs for 2015, 2016, and 2017, appellant was rated “outstanding” based on his work results and work habits. Ap. Exs. 1, 2, 3. Also, there is no evidence any of the alleged non-work-related emails contained inappropriate content. Nor is there any evidence these emails, except for the seven email chains pertaining to appellant’s supplementary employment, were inconsistent with Commonwealth policy.

Furthermore, approximately one third of the emails, which spanned a period of four years, were marked as “unread.” AA Exs. 38, 47. Indeed, we find appellant’s testimony credible that he deleted most of these spam emails, after ensuring they were not from a water supplier and unintentionally caught by the Commonwealth’s spam software. N.T. p. 426. We also find credible appellant’s explanations regarding the emails from Sheetz, Inc. and Rodale Institute. N.T. pp. 427-428. Thus, we find the emails from Sheetz, Inc. are not personal emails because appellant was directed to obtain the Sheetz reward card as part of his Commonwealth employment. N.T. pp. 427-428. Likewise, we find the emails from Rodale Institute are not personal emails since appellant began receiving these emails as a result of the appointing authority awarding Rodale Institute monies as part of a watershed project. N.T. p. 427.

Nonetheless, assuming *arguendo* all of the listed emails were not work-related and read by appellant, this amounts to approximately three personal emails a week.³¹ We find such usage to be limited, occasional, and incidental. Accordingly,

³¹ This calculation is based on the number of weeks between January 1, 2016 and the date of the pre-disciplinary conference, August 15, 2019, because the two lists assembled by the appointing authority spanned from 2016 through

we find appellant did not misuse Commonwealth equipment or resources, except for the emails related to his supplementary employment, which were discussed in the previous section of this adjudication.

Inaccurate Financial Interest Statement

There is no dispute appellant was required to submit financial disclosure forms yearly. N.T. p. 174. Pursuant to the Governor’s Code of Conduct, Management Directive 205.9 Amended, and Management Directive 205.10 Amended (Financial Disclosures Required by the *Public Official and Employee Ethics Act*, 65 Pa.C.S. §§ 1101-1113), employees are required to submit two forms each year—a Code of Conduct Statement of Financial Interest Form and a Statement of Financial Interests Form. AA Exs. 11, 39, 40. The appointing authority presented evidence related to the forms appellant submitted in January 2019 for the 2018 filing year. N.T. pp. 174, 179, 212; AA Exs. 41, 42. Both forms were discussed with appellant at the PDC. N.T. pp. 174, 181, 212, 218. This discussion focused on appellant’s failure to include his supplementary employment and credit card debt on the forms.

In the employment and liability sections of his “Code of Conduct Statement of Financial Interest for 2018 Filing Year,” appellant wrote “N/A,” meaning he did not have anything additional to add in this section. N.T. pp. 176-177, 216; AA Ex. 41 (p. 3). Human Resource Analyst 3 Botchie testified appellant’s supplemental employment should have been included in the employment section, and his personal credit card debt should have been reported in the liabilities section.

2019. During that time period, appellant received 507 subscription-based emails and 165 emails related to personal credit cards and financial institutions. AA Exs. 38, 47.

N.T. pp. 176-177. Conversely, appellant pointed out the form states retail credit accounts, commercial banks, savings and loans and finance company loans are to be excluded. N.T. pp. 429-430; AA Ex. 41 (p. 3).

Likewise, on his Statement of Financial Interests Form, appellant did not list anything in the creditors section, nor did he include his supplementary employment on the form. N.T. pp. 179-180; AA Ex. 42. Botchie testified it is her understanding supplementary employment should be noted even if the employee does not receive consideration or compensation. N.T. p. 217. However, this is not indicated on the form that the appointing authority entered into evidence. AA Ex. 42. The sections of the form where supplementary employment would most likely be reported are captioned: 1) directed or indirect sources of income; 2) office, directorship, or employment in any business; 3) financial interest in any legal entity in business for profit. AA Ex. 42. The appointing authority did not provide any evidence regarding specific instructions for these sections, which would require appellant to list an entity from which he did not receive income. Nor did the appointing authority present any evidence appellant held an office, directorship, employment, or a financial or legal interest in Galovich Farms, which would otherwise require appellant to report his involvement with Galovich Farms on the form.

Nonetheless, Botchie testified appellant indicated at the PDC his failure to include his supplementary employment was an oversight and he believed that he had included it in the past.³² N.T. p. 181. Conversely, at the hearing, appellant

³² Human Resource Analyst 5 Renata Moseley testified she reviewed appellant's financial disclosures from 2008 through 2018, and none of the forms mentioned appellant's supplemental employment with Galovich Farms. N.T. p. 281.

testified he never included his supplemental employment on the forms because the farm did not make a profit and he was never paid for his services. N.T. pp. 432-435. Appellant testified his work on the farm was a hobby and not a source of income. N.T. p. 432. Indeed, the parties stipulated appellant did not have any income from his supplemental employment in 2018. N.T. p. 437.

To support its belief appellant should have included his personal credit card information on the form, the appointing authority entered into evidence an email, dated October 25, 2018, indicating appellant's statement was ready online. AA Ex. 48. This email notification indicated appellant's statement balance was in excess of \$19,000.00. N.T. p. 187; AA Ex. 48. The due date for paying the entire balance or making a minimum payment was November 19, 2019. AA Ex. 48. Botchie asserted this debt should have been included on appellant's financial disclosure forms in the creditors and liabilities sections of the forms because employees are required to report debts over \$6,500.00. N.T. pp. 187, 189. However, no information was provided as to whether this balance remained on appellant's personal credit card at the end of the 2018 filing year.

Appellant was provided a copy of the Ethics Act at the PDC and informed of the requirement to report debts over \$6,500.00. N.T. pp. 218, 430-431. Appellant indicated he was unaware of this regulation prior to filling out the form.³³

³³ Botchie noted employees fill out the forms online and the website has links to various documents, to include the Ethics Act and Code of Conduct. N.T. p. 219. Botchie indicated there is also a Human Resources contact list, which the employee may utilize if he or she needs clarification. N.T. p. 219. However, the Commission recognizes the forms themselves appear to cause confusion in that one of the forms specifically indicates retail credit accounts are excluded.

N.T. p. 431. After becoming aware of the regulation, appellant acknowledged he would be required to include personal credit card information on the form. N.T. pp. 218, 431.

We are not persuaded by the appointing authority's argument that appellant failed to accurately fill out these forms for the 2018 filing year because he did not include his supplementary employment or his personal credit card balance.³⁴ AA Bf., p. 29. First, we find there is no credible evidence to support the appointing authority's belief appellant was required to include his supplementary employment on either form. Upon our review of the forms, we do not see any instructions requiring employees to report activities for which they do not receive income. AA Exs. 41, 42. The appointing authority did not present any credible evidence to the contrary.³⁵

Furthermore, it is undisputed appellant did not have any income from his supplemental employment. N.T. p. 437. There is no evidence appellant held an office, directorship, or employment in Galovich Farms. Nor is there any evidence he had a financial or legal interest in a business for profit. The evidence established

³⁴ In its Brief, the appointing authority indicates appellant's forms for the 2019 filing year were inaccurate. This appears to be a typographical error, as the exhibits referenced in the appointing authority's Brief are for the 2018 filing year. AA Exs. 41, 42.

³⁵ In the Direct or Indirect Sources of Income Section of appellant's Statement of Financial Interests Form, there is a reference to additional instructions on page 2. AA Ex. 42. Page 2 was never entered into evidence, nor was it discussed by the appointing authority's witnesses. As such, we cannot speculate on what those instructions would be. Our decision is constrained to the evidence presented. We further note the appointing authority does not reference in its Brief any instructions or other directives which would require an employee to list services for which they do not receive an income.

Galovich Farms was a hobby for appellant after his father became ill. We find credible appellant's testimony that Galovich Farms did not make a profit and he did not receive any income from the assistance he provided on the farm. N.T. pp. 432-435.

Likewise, we find there is insufficient evidence to establish appellant was required to list his personal credit card debt on the forms. Indeed, the Liabilities Section on the Code of Conduct Statement of Financial Interest Form, specifically instructs employees to exclude retail credit accounts. AA Ex. 41 (p. 3). This is consistent with Section 7.164(6), which also indicates retail credit accounts do not need to be reported. 4 Pa. Code. § 7.164(6).

With that said, we recognize these instructions conflict with Section 1105(b)(4) of the Ethics Act, 65 Pa.C.S.A. § 1105(b)(4) and Section 17.3 of the Ethics Regulations, 51 Pa. Code. § 17.3. Both of these sections require employees to list each creditor who is owed in excess of \$6,500.00. This appears to create confusion for employees such as appellant, who may be unaware of these regulations.

Nonetheless, in this matter, the evidence presented by the appointing authority was insufficient to establish appellant had a debt in excess of \$6,500.00 at the end of 2018. The only evidence of appellant's debt was an email notification indicating appellant's statement balance was in excess of \$19,000.00. N.T. p. 187; AA Ex. 48. The due date for paying the entire balance or making a minimum payment was November 19, 2018. AA Ex. 48. No information was provided as to

whether this balance remained on appellant's personal credit card at the end of the 2018 filing year. Accordingly, we find the appointing authority failed to present sufficient evidence establishing appellant provided inaccurate financial interest statements.

Summary of Findings

Based on the evidence presented, we find the appointing authority substantiated, *in part*, that appellant: 1) inappropriately attempted to forward an internal email from Attorney Carson regarding an ongoing compliance matter; and 2) sent and received emails related to his supplementary employment at his Commonwealth email address. We find the appointing authority did not substantiate the remaining allegations.

We are convinced the partially substantiated allegations are good cause for suspension in that they represent conduct that hampered or frustrated the execution of appellant's duties as Sanitarian Supervisor. *McCain v. Department of Education*, 454 A.2d 667 (Pa. Commw. 1983). However, we do not find these allegations alone provide just cause for removal.

The Commission has authority to modify the penalty to make it consistent with the charges proven.³⁶ We find the behavior substantiated by the appointing authority merits a sixty-day suspension. Good cause for suspension must relate to an employee's competence and ability to perform his or her job duties,

³⁶ The Commission has the power to modify the penalty imposed by the appointing authority, even where the charges brought against the employee are proven. *Bosnjak v. State Civil Service Commission*, 781 A.2d 1280 (Pa. Commw. 2001).

Department of Corrections v. Ehnnot, 532 A.2d 1262 (Pa. Commw. 1987), or must result from conduct that hampers or frustrates the execution of the employee's duties. *McCain, supra*. The appointing authority employed appellant for approximately twenty-eight years, and during that time appellant was never disciplined. We further note on his most recent annual EPR, appellant's performance was rated "outstanding" for the job factors of job knowledge/skills, work results, initiative/problem solving, and work habits, which is the highest rating. Ap Ex. 3. Therefore, pursuant to Section 3003(8)(iii) of the Act, 71 Pa.C.S.A. § 3003(8)(iii), the Commission will order that appellant's discipline be modified to a sixty-day suspension. Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has not presented evidence sufficient to establish just cause for removal under Section 2607 of Act 71 of 2018.
2. The appointing authority has presented evidence sufficient to establish good cause for suspension under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, orders that the removal action imposed by the Department of Environmental Protection against Edward L. Galovich, Jr. be set aside and a sixty-

day suspension be imposed. The Commission also directs that the appointing authority amend its records to reflect a sixty-day suspension. The Commission further directs that the appointing authority reimburse appellant such wages, seniority and emoluments that he would have earned from the conclusion of the sixty-day suspension to the effective date of his reinstatement, less wages earned and benefits received under the Public Laws of Pennsylvania as established by a sworn statement to be submitted by appellant. We further order that within thirty (30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with the modification of the removal action to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: December 21, 2021