

COMMONWEALTH OF PENNSYLVANIA

Jeffrey G. Huseman, Jr. : State Civil Service Commission  
:   
v. :   
:   
:   
Pennsylvania Department of :   
Transportation : Appeal No. 30375

Christopher Blackwell  
Attorney for Appellant

Denise H. Farkas  
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Jeffrey G. Huseman, Jr. challenging his suspension pending investigation and subsequent removal<sup>1</sup> from regular Highway Equipment Manager 2 employment with Pennsylvania Department of Transportation. A hearing was held November 19, 2020, via video, before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority had just cause to remove appellant from his employment.

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<sup>1</sup> When an appointing authority suspends an employee pending investigation and subsequently removes the employee based upon information obtained through that investigation, the period of suspension will be deemed part of the removal action. *Woods v. State Civil Service Commission (New Castle Youth Development Center, Department of Public Welfare)*, 865 A.2d 272, 274 n. 3 (Pa. Commw. 2004); 4 Pa. Code § 101.21(b)(2). Appellant having been suspended pending investigation, effective October 1, 2019, and having remained on suspension until his removal effective November 15, 2019, we consider the removal, effective as of the date of suspension, the sole personnel action to be reviewed through this appeal.

## FINDINGS OF FACT

1. By letter dated October 1, 2019, appellant was suspended pending investigation from his Highway Equipment Manager 2, regular status position, effective October 1, 2019. The appointing authority charged appellant with inappropriate behavior, violation of the appointing authority's workplace violence policy, and violation of the Governor's Code of Conduct. The appointing authority stated, "Specifically, on September 27, 2019, you were involved in the assault of another employee." Comm. Exs. A, G.
  
2. By letter dated November 7, 2019, appellant was removed from his Highway Equipment Manager 2, regular status position effective November 15, 2019. The appointing authority charged appellant with inappropriate behavior, violating the appointing authority's workplace violence policy, and violating the Commonwealth Workplace Violence Policy. The appointing authority stated:

Specifically, on September 27, 2019, you were involved in the physical assault of another employee.

Comm. Exs. C, G.<sup>2</sup>

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<sup>2</sup> The appointing authority did not charge appellant with violating the Governor's Code of Conduct. N.T. p. 201.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018. Comm. Ex. D.
4. Appellant began employment with the appointing authority on September 1, 2005. Comm. Ex. G.
5. Custodial Worker 1 Beth Bastin is approximately 5'1" tall and weighs approximately 144 pounds. N.T. pp. 31-32.
6. Appellant is approximately 5'11" tall and weighs approximately 195 pounds. N.T. p. 296.
7. Appellant was issued a verbal reprimand for failing to talk to necessary people about harassment or a workplace violence incident. N.T. p. 180.<sup>3</sup>
8. On March 23, 2012, appellant acknowledged receipt of the appointing authority's Working Rules, which contains the appointing authority's workplace violence policy. N.T. p. 143; AA Ex. 7.

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<sup>3</sup> The date of the verbal reprimand is not in the record.

9. On May 15, 2019, appellant signed a copy of the employee conduct and expectations memo acknowledging, in part, receipt of the appointing authority's Working Rules. N.T. pp. 144-145.
10. Appellant and Bastin started a personal, romantic relationship in 2016. Shortly after beginning their relationship, Bastin moved in with appellant. pp. 33-34, 65-66, 89-90, 288.
11. As a Highway Equipment Manager 2, appellant was second in command and would assume leadership if the County Manager was off work. N.T. pp. 167-168.
12. Appellant supervised approximately twenty-four employees and was responsible for enforcing all safety rules. Appellant was required to attend safety training, enforce safety policies, and ensure the safety of his subordinates and the public with whom he interacted. N.T. pp. 133-134, 291.
13. Appellant was required to report any unsafe work incidents. N.T. p. 135.

14. Appellant was required to intervene, investigate, and report inappropriate behavior in the workplace. N.T. pp. 135-136.
15. Before the assault at issue, Accounting Assistant Rebecca Huey knew of several violent incidents between appellant and Bastin, saw text messages the two had exchanged, and observed Bastin at work with hair missing and bruises “pretty much weekly.” N.T. pp. 89, 94-95.
16. Bastin had pulled Huey aside several times during work hours crying about her relationship with appellant. N.T. p. 96.
17. Huey had spoken to Bastin during work hours about leaving the relationship and tried to help Bastin find another place to live because she feared for Bastin’s safety. N.T. p. 106.
18. Huey knew from discussions with Bastin, including conversations at work, that appellant had threatened to have his estranged wife get involved in the disputes between himself and Bastin. N.T. p. 106.

19. Huey informed Bastin's workplace supervisor, Roadway Programs Coordinator Susan Howard, about the violent incidents she learned about between appellant and Bastin. N.T. pp. 100, 104, 111.
20. Approximately nine months after Bastin and appellant began their romantic relationship, Howard noticed problems arising between them. Howard made these observations of Bastin during work hours. N.T. pp. 115-116.
21. Howard observed Bastin arriving at work many times with ripped out hair, black eyes, and choke marks which Bastin stated were caused by appellant. N.T. pp. 114-115, 122.
22. Howard had many conversations with Bastin including during work hours about her relationship with appellant. She offered to get Bastin help and to let Bastin stay with her. She also encouraged Bastin to seek assistance from the State Employee Assistance Program. N.T. pp. 122-123.
23. Shortly before September 27, 2019, Howard noticed a "downhill slide" in the personal relationship between appellant and Bastin. Again, Howard

made these observations in the workplace. As a result of her observations, Howard became worried for her own safety and the safety of her subordinates, who are Bastin's coworkers. In addition, some of her subordinates voiced concerns for their own safety. N.T. p. 118.

24. From Friday, September 27 to Saturday, September 28, 2019, appellant was participating in a fishing tournament at 84 Lakes. Two other appointing authority employees were also attending the tournament. N.T. pp. 39-40, 177, 265.
25. In the evening of Friday, September 27, 2019, Bastin drove up to 84 Lakes to meet up with appellant; she arrived at approximately 9:00 p.m. N.T. pp. 35, 40, 267.
26. Appellant and Bastin were drinking alcohol. N.T. pp. 35, 266, 268-269; AA Ex. 1.
27. At approximately 11:00 p.m. on Friday, September 27, 2019, appellant and Bastin got into appellant's truck and left 84 Lakes to buy more alcohol. N.T. pp. 35, 40, 59, 269; AA Ex. 1.

28. During the drive, appellant and Bastin began arguing. N.T. pp. 35, 41, 59, 269; AA Ex. 1.
29. Appellant pushed Bastin's head into the passenger side window. N.T. pp. 41, 272; AA Ex. 1.
30. Appellant called his estranged wife, Teresa Huseman. When asked, Teresa Huseman stated she was at the Meadows Casino. N.T. pp. 48, 219-220, 274-275.
31. Soon thereafter, appellant and Bastin arrived at the casino parking lot and went to the fourth floor of the parking garage where Teresa Huseman was waiting. N.T. pp. 43, 61, 221-222, 277.
32. Appellant pulled his truck up approximately five feet away from Teresa Huseman's truck. N.T. p. 222.
33. When Bastin got out of appellant's truck, she and Teresa Huseman got into a physical altercation. Teresa Huseman repeatedly punched Bastin in the face and head and pulled Bastin's hair. N.T. pp. 225-232, 279-280.

34. After Teresa Huseman stopped hitting Bastin, appellant backed his truck up so Teresa Huseman could leave the casino parking lot. N.T. p. 233.
35. Appellant and Teresa Huseman departed the scene in their own vehicles and left Bastin injured in the parking lot. N.T. pp. 46, 233-234, 283.
36. Appellant did not provide or seek medical assistance for Bastin even though he knew she was bleeding and injured. N.T. pp. 46, 283, 301-302; AA Ex. 1.
37. Appellant went back to 84 Lakes and retrieved his personal belongings. N.T. p. 283.
38. Bastin received help from strangers who called emergency services. N.T. p. 46; AA Ex. 1.
39. Bastin was taken to a local hospital and transferred to a second hospital. She was treated for head trauma and a black eye. N.T. pp. 47, 50, 78; AA Exs. 1, 2, 3.
40. After the physical altercation at the casino, over the weekend, Huey spoke with Bastin and saw photographs of her injuries. N.T. pp. 92, 99.

41. Huey contacted Howard and told her about the discussion she had with Bastin. N.T. pp. 100, 112.
42. Howard also spoke with Bastin, who stated she had sustained injuries in appellant's truck caused by appellant and additional injuries at the casino parking lot caused by Teresa Huseman. N.T. pp. 113-114, 126.
43. Upon hearing this information from Bastin, Howard became even more concerned for the safety of her subordinates. Howard was concerned appellant would display similar conduct toward Bastin and others during the work day. N.T. pp. 118-120.
44. When Howard's staff learned of the assault, they confronted her at work and informed her they were concerned appellant would display violent behavior in the workplace. N.T. pp. 119-120.
45. Howard contacted the State Employee Assistance Program for advice. N.T. p. 119.
46. On Monday, September 30, 2019, Bastin was not at work; she was off work for several days. N.T. pp. 55-56.

47. Human Resource Officer Mary Machesky received a telephone message from the Assistant District Executive for Maintenance Rob Dean about the appellant's assault on Bastin. N.T. pp. 137-138.
48. After she spoke with Dean and County Maintenance Manager Adam Smith, Machesky reached out to Bastin to make sure she was alright and referred her to the State Employee Assistance Program. N.T. p. 138.
49. Machesky also contacted the local township police to determine if any criminal charges were pending or would be filed against appellant. N.T. pp. 138-139.
50. Machesky gathered witness statements and reviewed the appointing authority's workplace violence policy which is in the Working Rules, the Commonwealth's Workplace Violence Policy, and the Governor's Code of Conduct. N.T. pp. 141, 148.
51. Machesky became aware other employees feared for their own safety in the workplace. N.T. pp. 179, 188.

52. Machesky determined a Pre-Disciplinary Conference (hereinafter “PDC”) with appellant should be scheduled. N.T. pp. 146-148; AA Ex. 8.
53. On Tuesday October 1, 2019, appellant attended his PDC. N.T. p. 148.
54. During the PDC, appellant acknowledged he and Bastin had a personal, romantic relationship and were living together. N.T. p. 149.
55. Appellant told the PDC panel he had gone to the fishing tournament, then he and Bastin got into his truck after he had been drinking and they began to argue. N.T. p. 150.
56. Appellant acknowledged grabbing Bastin by her hair and hitting her face into the dashboard and passenger window. Appellant asserted he acted in self-defense after Bastin began to hit him. N.T. pp. 150-151, 178.
57. In addition, appellant acknowledged he telephoned his estranged wife, Teresa Huseman, arranged to meet her in the casino parking lot, and drove to the casino parking lot. N.T. pp. 150, 152-153, 187.

58. Upon questioning, appellant stated the decision to contact Teresa Huseman was “stupid.” N.T. p. 152.
59. Appellant acknowledged Bastin and Teresa Huseman engaged in a physical altercation in the casino parking lot and he did not physically intervene to stop the assault. N.T. pp. 151, 155.
60. Appellant told the PDC panel he left the casino parking lot without contacting emergency services or providing any medical assistance to Bastin and he returned to the fishing tournament to retrieve his personal equipment. N.T. pp. 154-155, 188.
61. Appellant admitted many of his decisions on September 27, 2019 were “stupid” and not appropriate behavior for somebody in a managerial position. N.T. pp. 150-155.
62. After the PDC, appellant was suspended pending the results of the investigation. N.T. pp. 156-157; Comm. Exs. A, G.

63. Machesky, Human Resource Officer Marsha Hare, County Maintenance Manager Scott Finch<sup>4</sup>, Assistant District Executive for Maintenance Rob Dean, District Executive Joseph Szezur determined it was appropriate to recommend appellant's removal. N.T. pp. 160-161.
  
64. The Bureau of Human Resources and Labor Relations made the decision to remove appellant. N.T. pp. 160-161.

### DISCUSSION

At issue before the Commission is whether the appointing authority had just cause to remove appellant. The appointing authority charged appellant with inappropriate conduct, violating the Commonwealth Workplace Violence Policy, and violating the appointing authority's workplace violence policy which is contained in the Working Rules.

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

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<sup>4</sup> Finch was acting as the county manager during the time frame involved in this appeal. N.T. p. 137.

cause removal of a civil service employee must be related to the employee's job performance and touch in some logical manner upon the employee's competency and ability to perform his job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006). An appointing authority can require its managerial employees to be held to the highest level of conduct. *Woodbridge v. Commonwealth, Department of Revenue*, 435 A.2d 300, 302 (Pa. Commw. Ct. 1981). Furthermore, a management employee must strictly adhere to standards and set an example for his subordinates. *Id.*

The appointing authority presented the testimony of Custodial Worker Beth Bastin, UPMC Presbyterian Hospital Nurse Christopher Schroeder, Accounting Assistant Rebecca Huey, Roadway Programs Coordinator Susan Howard, Labor Relations Coordinator Mary Machesky,<sup>5</sup> and Division Chief for Employee Relations Labor Relations Steven Koscelnak. Appellant testified on his own behalf and presented the testimony of his estranged wife Teresa Huseman.

The parties do not dispute the following facts pertaining to the personal relationship between appellant and Bastin and the assault that occurred on September 27, 2019. Appellant began employment with the appointing authority on September 1, 2005. Comm. Ex. G. In 2016, appellant and Bastin began a personal, romantic relationship and Bastin moved in with appellant. N.T. pp. 33-34, 65-66, 89-90, 288. Bastin is approximately 5' 1" and weighs approximately 144 pounds. N.T. pp. 31-32. Appellant is approximately 5'11" tall and weighs approximately 195 pounds. N.T. p. 296.

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<sup>5</sup> Machesky has since become employed as the appointing authority's Human Resource Officer. At all times relevant to this proceeding, Machesky was the Labor Relations Coordinator. N.T. pp. 131, 139.

From Friday September 27, 2019 to Saturday September 28, 2019, appellant and two additional appointing authority employees were participating in a fishing tournament taking place at 84 Lakes. N.T. pp. 39-40, 177, 265. In the evening of September 27, 2019, Bastin drove up to 84 Lakes to meet up with appellant; she arrived at approximately 9:00 p.m. N.T. pp. 35, 40, 267. Appellant and Bastin were drinking alcohol. N.T. pp. 35, 266, 268-269; AA Ex. 1. At approximately 11:00 p.m., appellant and Bastin got into appellant's truck and left 84 Lakes to buy more alcohol. N.T. pp. 35, 41, 59, 269; AA Ex. 1. During the drive, they began arguing and appellant caused bodily injuries to Bastin including causing her to hit her head against the passenger window. N.T. pp. 41, 272; AA Ex. 1.

Appellant called his estranged wife, Teresa Huseman, who stated she was at the Meadows Casino. N.T. pp. 48, 219-220, 274-275. Appellant drove to the fourth floor of the casino parking lot, where Teresa Huseman was waiting for them. N.T. pp. 43, 61, 221-222, 277. Appellant pulled up to be approximately five feet away from Teresa Huseman's truck. N.T. p. 222. Upon exiting appellant's truck, Bastin and Teresa Huseman engaged in a physical altercation; Teresa Huseman repeatedly punched Bastin in the face and head and pulled Bastin's hair. N.T. pp. 225-232, 279-280. After the two women stopped fighting appellant backed his truck up so Teresa Huseman could leave the parking lot. N.T. p. 233. Appellant and Teresa Huseman left the casino parking lot in their own vehicles and left appellant injured in the parking lot. N.T. pp. 46, 233-234, 283. Appellant went back to 84 Lakes and retrieved his personal belongings. N.T. p. 283.

Appellant did not provide or seek medical assistance for Bastin even though he knew she was injured and bleeding. N.T. pp. 46, 283, 301-302; AA Ex. 1. Bastin received help from strangers who contacted medical emergency services. N.T. p. 46; AA Ex. 1. Bastin was taken to a local hospital and transferred to a second hospital; she was treated for head trauma and a black eye. N.T. pp. 47, 50, 78; AA Exs. 1, 2, 3. Bastin was not at work on Monday September 30, 2019 and missed several days of work. N.T. pp. 55-56.

The assault on September 27, 2019 was the impetus for the disciplinary action. However, the testimony of Accounting Assistant Huey and Roadway Programs Coordinator Howard clearly demonstrates the assault was the latest event in an ongoing pattern of abuse that had repeatedly manifested itself in the workplace. Huey testified she was aware of several violent incidents between appellant and Bastin, saw text messages the two had exchanged, and noticed Bastin at work with hair missing and bruises “pretty much weekly.” N.T. pp. 89, 94-95. In addition, Bastin had pulled Huey aside several times at work crying about her relationship with appellant. N.T. p. 96. Huey spoke to Bastin about leaving the relationship and tried to help her find another place to live because she feared for Bastin’s safety. N.T. p. 106. Prior to the assault at issue, Huey had informed appellant’s supervisor, Roadway Programs Coordinator Susan Howard, about the incidents she learned about between appellant and Bastin. N.T. pp. 100, 104. Huey knew appellant had threatened to have his estranged wife get involved in the disputes between appellant and Bastin. N.T. p. 106. After appellant’s conduct at issue, Huey spoke with Bastin and saw photographs of her injuries. N.T. pp. 92, 99. Huey then contacted Howard. N.T. pp. 100, 112.

Roadway Programs Coordinator Howard is Bastin's supervisor. N.T. p. 111. Howard began noticing problems between Bastin and appellant approximately nine months after they began their personal relationship. N.T. pp. 115-116. She saw Bastin arrive at work with ripped out hair, black eyes, and choke marks. N.T. pp. 114-115, 122. Howard had many conversations with Bastin, including during working hours, about her relationship with appellant, offered to get Bastin help, offered to let Bastin stay with her, and encouraged Bastin to seek assistance from the State Employee Assistance Program. N.T. pp. 122-123. Shortly before this assault, Howard noticed a "downhill slide" in the relationship between appellant and Bastin; she became concerned for her own safety and the safety of her subordinates, who are Bastin's co-workers. N.T. p. 118. In addition, some of her subordinates were expressing concern for their own safety. N.T. p. 118.

After the assault at the casino, Howard spoke to Bastin. Bastin stated appellant injured her while she was in his truck and she sustained additional injuries in the casino parking lot. N.T. pp. 113-114, 126. Upon hearing this information from Bastin, Howard became even more concerned for the safety of the appointing authority employees under her supervision. N.T. p. 118. In particular based on the history of physical abuse against Bastin, Howard was concerned appellant would display similar conduct toward Bastin and others at work. N.T. pp. 119-120. After Howard's staff learned of the assault, they confronted her at work and told her they were worried appellant's violent temperament might overflow into the workplace. N.T. pp. 119-120. Howard contacted the State Employee Assistance Program for guidance. N.T. p. 119.

Human Resource Officer Mary Machesky testified regarding her investigation into appellant's conduct toward Bastin on September 27, 2019. On Monday, September 30, 2019, she received a telephone message from the Assistant District Executive for Maintenance, Rob Dean, about the appellant's assault on Bastin. N.T. pp. 137-138. After she spoke with Dean and County Maintenance Manager Adam Smith, Machesky reached out to Bastin to make sure she was alright and referred her to the State Employee Assistance Program. N.T. p. 138. She also contacted the local township police to determine if any criminal charges were pending or would be filed against appellant. N.T. pp. 138-139. Machesky became aware other employees were fearful for their own safety in the workplace. N.T. pp. 179, 188.

Machesky gathered witness statements and reviewed the appointing authority's workplace violence policy, the Commonwealth's Workplace Violence Policy, and the Governor's Code of Conduct. N.T. pp. 141, 148. The appointing authority's workplace violence policy is contained in the Working Rules. AA Ex. 6. The Working Rules are broken down into "major" and "minor" violations. AA Ex. 6. The "Definition of Major Rule Violations" provides:

Major offenses are any violations of Department or safety rules of such a degree that continued employment of the individual may not be desirable. Major rule violations including the following, are examples of some offenses which may subject an employee to immediate suspension or discharge without warning: ... Any act which might endanger the safety or lives of others...

AA Ex. 6. Appellant acknowledged receipt of the appointing authority's Working Rules on March 23, 2012. N.T. p. 143; AA Ex. 7. On May 15, 2019, appellant signed a copy of the employee conduct and expectations memo acknowledging, in part, receipt of the appointing authority's Working Rules. N.T. pp. 144-145.

Machesky determined a Pre-Disciplinary Conference (hereinafter "PDC") with appellant should be scheduled. N.T. pp. 146-148; AA Ex. 8. On Tuesday October 1, 2019, appellant attended his PDC wherein he acknowledged he and Bastin had a personal, romantic relationship and were living together. N.T. pp. 148-149. Appellant told the PDC panel he had gone to the fishing tournament, he and Bastin got into his truck after he had been drinking, and they began to argue. N.T. p. 150. Appellant acknowledged he grabbed Bastin by her hair and hit her face into the dashboard and passenger window, but claimed he acted in self-defense after Bastin began to hit him. N.T. pp. 150-151, 178.

Appellant further acknowledged he made a "stupid" decision when he telephoned his estranged wife, Teresa Huseman, arranged to meet her in the casino parking lot, and drove to the casino parking lot. N.T. pp. 150, 152-153, 187. Appellant admitted he did not physically intervene to separate Bastin and Teresa Huseman during their physical altercation in the casino parking lot. N.T. pp. 151, 155. Appellant told the PDC panel he left the casino parking lot without contacting emergency services or providing any medical assistance to Bastin and returned to the fishing tournament to retrieve his personal equipment. N.T. pp. 154-155, 188. Appellant admitted many of his decisions on September 27, 2019 were "stupid" and not appropriate behavior for somebody in a managerial position. N.T. pp. 150-155.

After the PDC, appellant was suspended pending the results of the investigation. N.T. pp. 156-157; Comm. Ex. A. Subsequently, Machesky, along with Human Resource Officer Marsha Hare, County Maintenance Manager Scott Finch, Assistant District Executive for Maintenance Rob Dean, District Executive Joseph Szezur determined it was appropriate to recommend appellant's removal. N.T. pp. 160-161. The Bureau of Human Resources and Labor Relations made the decision to remove appellant. N.T. p. 160.

Labor Relations Coordinator Machesky testified about the recommendation and decision to remove appellant from his Highway Equipment Manager 2 position. Both Machesky and Division Chief for Employee Relations/Labor Relations Koscelnak were concerned about appellant's ability to continue effectively serving in a managerial role after his conduct toward Bastin. Specifically, Machesky testified appellant supervised employees and was responsible for enforcing all safety rules and policies, attending safety training, and ensuring the safety of his subordinates and the public with whom he interacted. N.T. pp. 133-134. Appellant was required to intervene, investigate, and report inappropriate behavior in the workplace. N.T. pp. 135-136.

Machesky explained appellant was held a high-level managerial position and was second in command if the county manager was off work. N.T. pp. 167-168. Machesky explained as a managerial employee appellant was held to a higher standard of trust when he interacted with the public, with political parties, and with employees. N.T. p. 168. She explained appellant's managerial position

required him to be trusted to enforce safety rules and well as investigate and address similar incidents if a similar situation happened at the workplace. N.T. pp. 163, 168-169. She further stated, “his position, it requires a certain amount of trust. Employees have [to have] the trust in him. The public must trust him. These behaviors...were so severe...it would definitely impact trust.” N.T. p. 164. Machesky testified appellant has an undated verbal reprimand for failing to talk to necessary people about a harassment or workplace violence incident. N.T. p. 180. This earlier failure to uphold the higher standard of duty associated with his managerial position reinforces the appointing authority’s belief he cannot be trusted to enforce the appointing authority’s safety policies.

Division Chief for Employee Relations/Labor Relations Koscelnak also testified that appellant is held to a higher standard of conduct in his role as a manager. N.T. p. 197. He explained appellant’s managerial job duties require him to enforce the safety regulations and his behavior made the appointing authority doubt his ability to enforce them. N.T. p. 197. Machesky and Koscelnak explained the decision to recommend appellant’s removal was based upon appellant’s admissions during the PDC, the fact that his conduct demonstrated poor decisions which are inappropriate for a person in a managerial position, and the expectations required of an employee holding a managerial position. N.T. pp. 161-162, 196-198.

In response to the charges, appellant admitted that while he and Bastin were in his truck, he put his hand out and pushed Bastin away from him, causing her to sustain physical injuries when her head hit the car window. N.T. p. 272. Appellant acknowledged while he and Bastin were in his truck he contacted his

estranged wife, arranged to meet her in the casino parking lot, and drove to the casino parking lot, and did, in fact, meet with her in the parking lot. N.T. pp. 274-276. When a physical altercation between Bastin and his estranged wife ensued, there is no evidence in the record he made any effort to physically separate the two women. Appellant acknowledged he drove away and left Bastin bleeding in the casino parking lot and did not provide or seek somebody to provide her with any medical assistance even though he knew she was injured and bleeding. N.T. pp. 283, 302.

With respect to his managerial role, appellant testified he supervises twenty-four people. N.T. p. 291. He testified, “It [my behavior] was wrong. It shouldn’t have been done” and asserted he was acting in self-defense. N.T. pp. 281, 298. The Commission finds appellant’s claim he acted in self-defense entirely without merit or credibility.<sup>6</sup> He acknowledged his behavior was not appropriate for a manager. N.T. p. 299. However, he claims he can separate his work behavior and off-duty behavior. N.T. p. 299. Appellant denied any prior history of physical abuse including causing black eyes and ripped out hair to Bastin. N.T. pp. 288, 290, 295.

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<sup>6</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). Appellant is approximately 5’11” tall and weighs approximately 195 pounds. N.T. pp. 31-32. Bastin is approximately 5’1” tall and weighs approximately 144 pounds. N.T. p. 296. The significant size and weight difference renders appellant’s claim of self-defense both unlikely and without merit.

Upon review of the record, the Commission renders the following conclusions. The appointing authority charged appellant with violating the Commonwealth Workplace Violence Policy, the appointing authority's workplace violence policy contained in the Working Rules, and inappropriate conduct.<sup>7</sup> The appointing authority has presented sufficient evidence to support two of the charges. Disciplinary action against a state employee may be sustained upon proof of less than all of the originally designated charges given by the appointing authority, so long as the offenses which are sustained by the Civil Service Commission would amount to just cause for the disciplinary action taken. *Wagner v. Commonwealth, Department of Transportation* 76 Pa. Commw. 78; 463 A.2d 492 (1983).

The appointing authority has presented sufficient evidence to support the charge of violating the appointing authority's workplace violence policy, contained in the Working Rules. Appellant's violent conduct clearly meets the definition of a Major Work Rule Violation because he endangered Bastin's safety and life when he injured her in his truck, made the decision to meet his estranged wife at the casino parking lot, did not physically intervene to separate his estranged wife and Bastin during the assault, and left Bastin injured at the scene without providing or seeking to render medical assistance.

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<sup>7</sup> The Commonwealth's Workplace Violence Policy is provided in Commonwealth Management Directive 205.33, which defines "Workplace violence" in relevant portion as: "Violence that occurs at or **is connected to the workplace**, including any location **if the violence has resulted from an act or decision made during the course of conducting Commonwealth business.**" AA Ex. 4 (emphasis added). The parties stipulated the September 27 to 28, 2019 assault did not involve any Commonwealth business, Bastin is not one of appellant's subordinates, and the assault did not occur in the workplace or during work hours. Comm. Ex. G. Machesky, Koscelnak, Bastin, and appellant all testified the assault did not occur in the workplace and did not involve any act or decision made during the course of conducting Commonwealth business. N.T. pp. 65-66, 68, 131, 181, 204-205, 293. Thus, this charge is not supported by the record.

In addition, appellant's conduct was undoubtedly inappropriate. By his own admission, appellant's conduct during the drive to the casino and after his estranged wife physically assaulted Bastin was not appropriate conduct for an employee in a managerial position. Both Huey and Howard testified they observed Bastin suffering the effects of appellant's physical abuse in the workplace. The Commission finds Huseman's denial of this prior abuse not credible and accepts as true the testimony of Huey, Howard, and Bastin. Appellant's inappropriate conduct caused Bastin to miss several days of work. Furthermore, Howard credibly testified that after Bastin's assault, she was concerned for the safety of her subordinates and that several of her subordinates expressed their concern appellant's violent temperament might overflow into the workplace. Machesky and Koscelnak credibly testified appellant's violent behavior rendered him untrustworthy and they could no longer rely on him to properly execute the managerial duties expected of his Highway Equipment Manager 2 position.

Appellant's violation of the appointing authority's workplace violence policy provided in the Working Rules and inappropriate behavior clearly touch upon his competency and ability to be trusted to conduct himself professionally in the course of performing his managerial job duties. *See, Woods, supra; Woodbridge, supra.* In light of the facts of this case, the Commission finds appellant's removal was urgent and fully justified under the appointing authority's Working Rules. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence establishing just cause for removal under Section 2607 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Jeffrey G. Huseman, Jr. challenging his removal from regular Highway Equipment Manager 2 employment with the Pennsylvania Department of Transportation and sustains the action of the Pennsylvania Department of Transportation in the removal of Jeffrey G. Huseman, Jr. from regular Highway Equipment Manager 2 employment, effective October 1, 2019.

State Civil Service Commission

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: 4/29/21