

COMMONWEALTH OF PENNSYLVANIA

Kaylie M. Benson : State Civil Service Commission
 :
 v. :
 :
 Pennsylvania Department of :
 Transportation : Appeal No. 30409

Amanda Dalicandro
Indispensable Party¹

Kaylie M. Benson
Pro Se

Nicholas D. Mertens
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Kaylie M. Benson challenging her non-selection for appointment to Roadway Programs Technician 1 employment with the Pennsylvania Department of Transportation. A hearing was held on February 26, 2020, at the Western Regional Office in Pittsburgh, Pennsylvania before Hearing Officer Odelfa Preston.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether appellant established her non-selection for appointment was the result of discrimination by the appointing authority.

¹ In recognition of the due process requirements noted in *Jefferson County Assistance Office, Department of Public Welfare v. Wolfe*, 136 Pa. Commw. 115, 582 A. 2d 425 (1990), the individual currently occupying the challenged position was given the opportunity to participate in the proceedings. Comm. Ex. B. The indispensable party was present and participated in the proceedings. Comm. Ex. B-1; N.T. p. 12.

FINDINGS OF FACT

1. On October 22, 2019, appellant was verbally informed of her non-selection to Roadway Programs Technician 1 employment with the appointing authority. Comm. Ex. A; N.T. p. 15.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. C.
3. Human Resource Assistant Gretchen Wood received a Request to Post a Vacancy form for the Roadway Programs Technician 1 position. N.T. pp. 33, 35; AA Ex. 1.
4. After receiving the request, Wood used the Position Description to prepare the job posting in NEOGOV. The Roadway Programs Technician 1 job posting was open from August 6, 2019 through August 20, 2019. N.T. pp. 37-38; AA Exs. 2, 3.
5. The Roadway Program Technician 1's minimum experience and training requirements (hereinafter "METs") are as follows: one year of experience as a Technical Assistant; **OR** one year of experience in analysis of data utilized in planning and scheduling

of work, materials and equipment and graduation from high school or GED equivalent; **OR** an Associate's Degree in a field of Business Administration, Computer Science, Highway Engineering Technology, or other closely related program; **OR** any equivalent combination of experience and training. N.T. p. 70; AA Ex. 3 (emphasis in original).

6. Appellant applied for the Roadway Programs Technician 1 position on August 7, 2019. AA Ex. 5.
7. Amanda Dalicandro applied for the Roadway Programs Technician 1 position on August 17, 2019. AA Ex. 6.
8. Wood reviewed the candidates' applications and concluded they met the position's METs. N.T. pp. 40-41.
9. On September 4, 2019, Wood provided a list of the eligible candidates to the hiring manager Thomas Boyle. The eligible candidates for the position were Brenda Findley, Jeffery Brooks, Dalicandro, and appellant. N.T. pp. 41-42; AA Ex. 4.

10. Roadway Programs Coordinator Julianne Monteparte, Roadway Programs Manager Ron Howe and Assistant Manager Mike Slope participated as interview panelists for the position. N.T. p. 62.
11. The interview panelists conducted interviews for appellant and Dalicandro on October 1, 2019. AA Ex. 7.
12. After the interviews were conducted, the interview panelists initially selected Findley for the position. However, after Findley withdrew her name from consideration, the interview panelists selected Dalicandro for the position. N.T. pp. 48, 64.
13. Monteparte and Dalicandro did not share a personal friendship before the Roadway Programs Technician 1's hiring process. N.T. p. 73.
14. Once she received information on Dalicandro's selection, Wood completed a Report of Interview Form detailing Dalicandro as the selected candidate for the position. Wood noted appellant was not selected to the Roadway Programs Technician 1 position because a "more qualified candidate [was] selected." N.T. p. 50; AA Ex. 7.

15. On October 28, 2019, Dalicandro received her promotional letter from a non-civil service Clerk 1 employment to Roadway Programs Technician 1 employment. N.T. pp. 53-54; AA Ex. 8.

DISCUSSION

The issue in the present appeal is whether appellant has established her non-selection for appointment to Roadway Programs Technician 1 employment with the appointing authority was the result of discrimination. In her appeal, appellant alleged the appointing authority discriminated against her based upon the indispensable party having a personal relationship with one of the interview panelists and that the indispensable party did not meet the minimum experience and training requirements (hereinafter “METs”) for the position. Comm. Ex. A.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claims of discrimination.

Section 2704 of Act 71 of 2018 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified

service because of race, gender, religion, disability or political, partisan or labor union affiliation or other nonmerit factors.

71 Pa.C.S.A § 2704. The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language.² The prohibition set forth in this section encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on labor union affiliation, race, sex, national origin or other non-merit factors; and second, “technical discrimination” involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). In the instant matter, this appeal involves claims of both traditional and technical discrimination. The Commission will address appellant’s traditional discrimination claim first.

In analyzing claims of discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred. 71 Pa.C.S.A. § 2704; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for*

² Section 905.1 provides:

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

allowance of appeal denied, 524 Pa. 633, 574 A.2d 73 (1990). In particular, an employee claiming disparate treatment must demonstrate that he or she was treated differently than other similarly situated employees. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851.

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate that the proffered merit reason for the personnel action is merely pretextual. *Henderson*, 126 Pa. Commw. at 614-615.

At the hearing, appellant testified on her own behalf and presented the testimony of Highway Foreman 2 Emory Reed Benson.³ In response, the appointing authority presented the testimony of Human Resource Assistant Gretchen Wood⁴ and Roadway Programs Coordinator Julianne Monteparte.⁵

Appellant asserted she felt the hiring process for the Roadway Programs Technician 1 employment was unfair since she has been working for the appointing authority for over three years. N.T. p. 13. She described her activities

³ Emory Reed Benson is employed by the appointing authority as a Highway Foreman 2. N.T. p. 24.

⁴ Wood is employed as a Human Resource Assistant. N.T. p. 30. As a Human Resource Assistant, Wood manages the hiring process from when the appointing authority requests to post a vacancy for a position to when the selected candidate is hired. Pursuant to her responsibilities, Wood is familiar with the appointing authority's hiring procedures and practices. N.T. p. 32.

⁵ Monteparte is employed by the appointing authority as a Roadway Programs Coordinator. N.T. p. 58. Prior to being promoted to this position, Monteparte was a Roadway Programs Technician 2. N.T. p. 59. As a Roadway Programs Coordinator, Monteparte oversees the Roadway Programs Technicians. N.T. p. 60.

while working for the appointing authority. Appellant worked under clerical supervision on a daily basis in the garage and in the storeroom. N.T. p. 14. Appellant also completed the appointing authority's internship program and summer workshop. N.T. p. 14.

In regards to her application for the position, appellant received a score of 99 in comparison to the other applicants' applications for the Roadway Programs Technician 1 position. N.T. pp. 15, 17, 19. Appellant explained she was in a three-way tie for qualifying for the position. According to appellant, appellant's father was advised appellant was in a three-way tie with other candidates and informed appellant of the tie. N.T. p. 19. Appellant was not informed by Human Resources regarding the three-way tie. N.T. p. 20.

Appellant alleged Dalicandro, the indispensable party, was a friend of Julie Monteparte, who was in charge of selecting the candidate for the position. Comm. Ex. A; N.T. p. 21. Appellant acknowledged she does not have any personal knowledge whether Dalicandro and Monteparte are friends. N.T. p. 22. Appellant further admitted to not being privy to any information in Dalicandro's interview with the appointing authority. N.T. p. 22.

When asked, Emory Reed Benson testified he was not advised by anyone regarding a three-way tie for the Roadway Programs Technician 1 position. N.T. p. 26. Benson had no participation in the hiring process for the position. N.T. p. 27. He explained the Roadway Programs Technician 1 position does not support his position as a Highway Foreman 2. N.T. p. 27.

We find appellant's testimony is sufficient to state a *prima facie* case of traditional discrimination based on the allegation that Monteparte was friends with the indispensable party.⁶ Once appellant establishes a *prima facie* case of discrimination, the burden of proof shifts to the appointing authority to present legitimate non-discriminatory reasons for the personnel action. *Henderson, supra*.

In the beginning of the hiring process, Human Resource Assistant Wood received a Request to Post a Vacancy form for the Roadway Programs Technician 1 position. N.T. pp. 33, 35; AA Ex. 1. From a request, Wood is informed about who vacated the position and how the hiring manager would like the position to be posted. N.T. p. 33. Wood testified the hiring manager and supervisor for the Roadway Programs Technician 1 position was Thomas Boyle. N.T. p. 35. After receiving the request, Wood used the Position Description to prepare a requisition in NEOGOV⁷ to post the position internally and externally. N.T. pp. 37-38; AA Ex. 2. The Roadway Programs Technician 1 job posting was open from August 6, 2019 through August 20, 2019. The posted minimum experience and training requirements (hereinafter "METs") were as follows:

One year of experience as a Technical Assistant; **OR** one year of experience in analysis of data utilized in planning and scheduling of work, materials and equipment and graduation from high school or GED equivalent; **OR** an Associate's Degree in a field of Business Administration,

⁶ At the close of appellant's presentation, the appointing authority entered a motion to dismiss for failure of appellant to establish a *prima facie* case of discrimination. N.T. pp. 27-28. Ruling on the motion was deferred at the hearing. N.T. p. 28. The Commission hereby denies the appointing authority's motion to dismiss.

⁷ NEOGOV is an online software program system utilized throughout the hiring process. N.T. p. 37.

Computer Science, Highway Engineering Technology, or other closely related program; **OR** any equivalent combination of experience and training.

N.T. p. 70; AA Ex. 3 (emphasis in original). Once she posted the Roadway Programs Technician 1 job posting, Wood had access to the internal and external applications. Wood reviewed these applications to ensure they met the position's METs. N.T. pp. 40-41. Appellant submitted her application for the position on August 7, 2019 and Dalicandro submitted her application on August 17, 2019. AA Exs. 5, 6.

On September 4, 2019, Wood sent Boyle an email providing a list of the eligible candidates for interviews. The eligible internal candidate was Brenda Findley. The external candidates were Jeffrey Brooks, Dalicandro, and appellant. N.T. pp. 41-42; AA Ex. 4. Each of the candidates Employment Applications were sent to Boyle for review. N.T. p. 47. Wood affirmed Dalicandro had the requisite educational background to be eligible for the position. N.T. p. 52. Wood did not participate in the interview process. N.T. p. 46.

According to Wood, there was an interview panel consisting of three panelists. N.T. p. 46. Monteparte confirmed she participated as an interview panelist for the Roadway Programs Technician 1's interview process. N.T. p. 62. Along with Monteparte, Roadway Programs Manager Ron Howe and Assistant Manager Mike Slope participated as interview panelists for the position. N.T. p. 62. Once the names of the eligible candidates were forwarded to the interview panelists,

Monteparte received the candidates' applications and resumes. N.T. p. 62; AA Exs. 5, 6. Findley, Dalicandro, and appellant were interviewed⁸ on October 1, 2019. AA Ex. 7.

Monteparte described the details of the Roadway Programs Technician 1 position. A Roadway Programs Technician 1 monitors the training program for county employees, the Adopt A Highway program, and inventory within the storeroom. N.T. p. 61. She testified she used the candidates' applications as part of the hiring process to select the most qualified candidate for the position. N.T. p. 63. After each interview, Monteparte recalled how the interview panelists would discuss each candidate's qualifications, experience, application, and interview performance. N.T. p. 74. After the interviews were conducted, the interview panelists initially selected Findley for the position. However, after Findley⁹ withdrew her name for consideration, Monteparte stated the interview panelists selected Dalicandro for the position. N.T. pp. 48, 64.

Monteparte explained Dalicandro had experience at Excelsa Health providing training and customer service. N.T. p. 66; AA Ex. 6. Dalicandro also worked within the appointing authority's radio room as a Clerk Typist 2 providing customer service throughout the winter season handling complaints about State Routes. N.T. p. 67; AA Ex. 6. Monteparte further explained Dalicandro's customer service, while being employed at Texas Roadhouse for over fifteen years, was taken into consideration

⁸ Pursuant to the Report of Interview Form; Jeffrey Brooks accepted another job offer before the interviews were held. AA Ex. 7.

⁹ Findley declined the offer because she was no longer interested in the position. N.T. p. 48.

toward her merits for the position. N.T. p. 68; AA Ex. 6. Monteparte affirmed customer service is critical with monitoring the Adopt A Highway program due to interacting with sponsors for the program. N.T. p. 66.

In response to appellant's allegation that Dalicandro and Monteparte were friends throughout the hiring process, Monteparte denied that they had a personal friendship. N.T. p. 73. Monteparte explained she only met Dalicandro strictly on business matters. N.T. p. 72. Monteparte emphasized appellant was not selected for the Roadway Programs Technician 1 position because she was not the most qualified candidate, even though she was qualified for the position. N.T. p. 65. Specifically, Monteparte explained in comparison to appellant, Dalicandro had "[m]ore experience, years of experience with working with the public and ---at her jobs more experience with training. I'm not saying [appellant] didn't have that experience. Amanda had a lot more experience that she brought to the table for the position." N.T. p. 84. Monteparte testified all three candidates' prior employment experiences, qualifying educational backgrounds, and interview performances were taken into consideration. N.T. pp. 75-76, 83-84. Monteparte also asserted the fact that appellant's father works for the appointing authority was not taken into consideration. N.T. p. 77.

After the interviews were conducted and Findley declined the position, Wood received information that the interview panelists selected Dalicandro for the position. N.T. p. 49. Subsequently, Wood completed a Report of Interview Form detailing Dalicandro as the selected candidate for the position. N.T. p. 50; AA Ex. 7. Within the Report of Interview Form, there is a list of the eligible candidates for the

position. Beside each candidate, there is a comment explaining why the candidate was not selected. Wood noted appellant was not selected to the Roadway Programs Technician 1 position because a “more qualified candidate [was] selected.” AA Ex. 7. Wood testified the Report of Interview Form was approved on October 11, 2019. N.T. p. 51; AA Ex. 7. On October 28, 2019, Dalicandro received her promotional¹⁰ letter from a non-civil service Clerk 1 employment to the Roadway Programs Technician 1 employment. N.T. pp. 53-54; AA Ex. 8.

After the appointing authority presented its case in chief, appellant presented a rebuttal to the appointing authority’s presentation by emphasizing her prior experiences. Appellant testified she was a customer service representative at an auto junction for a period of time. Also, appellant was employed as a company dispatcher, where she trained thirty drivers. During her employment as a company dispatcher, appellant was knowledgeable about Ohio’s, Maryland’s, and West Virginia’s roadways. N.T. pp. 80-81; AA Ex. 5.

Having carefully reviewed the record, the Commission finds the appointing authority has presented legitimate, non-discriminatory reasons to support appellant’s non-selection for appointment to Roadway Programs Technician 1 employment. In support of our conclusion, we find the testimony given by Gretchen Wood and Julianne Monteparte to be credible.¹¹

¹⁰ Since Dalicandro was employed by the appointing authority, her selection was deemed a promotion. N.T. p. 53.

¹¹ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986).

In support of her traditional discrimination claim, appellant alleged Dalicandro and Monteparte were friends, which created a bias in the Roadway Programs Technician 1's hiring process. Monteparte credibly emphasized she did not have a personal friendship with Dalicandro and only met with Dalicandro strictly on business matters. On the contrary, Monteparte credibly testified that the interview panelists considered Dalicandro's work-related experience more qualifying than appellant's experience. In her rebuttal, appellant promoted her own customer service experience but did not demonstrate how Monteparte's proffered explanation was merely pretextual. *Henderson, supra*.

We now turn to appellant's technical discrimination claim. Appellant alleged the indispensable party did not meet the Roadway Programs Technician 1 position's METs. When there is an allegation of technical discrimination, no showing of intent is required. There must be evidence, however, to show appellant was harmed by the technical noncompliance or that because of the peculiar nature of the procedural impropriety that he or she could have been harmed but there is no way to prove that for certain. *Pronko*, 114 Pa. Commw. at 439, 539 A.2d at 462.

In her Appeal Request Form, appellant alleged the selected candidate, Amanda Dalicandro, did not possess a college degree required to be eligible for the position. Comm. Ex. A. In comparison, appellant has a Bachelor's Degree in Marketing. N.T. pp. 14, 17. Appellant admitted she does not know personally whether Dalicandro has the requisite educational background or college degree required for the Roadway Programs Technician 1 position. N.T. pp. 20-21.

To meet the Roadway Programs Technician 1 position's METs, a candidate must meet the following:

One year of experience as a Technical Assistant; **OR** one year of experience in analysis of data utilized in planning and scheduling of work, materials and equipment and graduation from high school or GED equivalent; **OR** an Associate's Degree in a field of Business Administration, Computer Science, Highway Engineering Technology, or other closely related program; **OR** any equivalent combination of experience and training.

AA Ex. 3 (emphasis in original). After reviewing Dalicandro's application, Wood and Monteparte credibly established Dalicandro possessed an Associate's Degree in financial management N.T. pp. 40-41, 69, 70; AA Ex. 6. Considering Dalicandro's Associate's Degree in financial management clearly meets the Roadway Program Technician 1 position's METs, there is no procedural impropriety in relation to either appellant's non-selection or Dalicandro's selection to the position. *Pronko, supra*.

In summation, the appointing authority presented credible, legitimate, non-discriminatory reasons for appellant's non-selection for appointment to Roadway Programs Technician 1 employment. Furthermore, appellant has failed to persuade this Commission that the appointing authority's legitimate, non-discriminatory reasons are merely pretextual. *Henderson, supra*. Appellant also failed to establish evidence showing procedural impropriety resulting from Dalicandro's eligibility and selection to the position. *Pronko, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Kaylie M. Benson challenging her non-selection for appointment to Roadway Programs Technician 1 employment with the Pennsylvania Department of Transportation, and sustains the action of the Pennsylvania Department of Transportation in the non-selection for appointment of Kaylie M. Benson to Roadway Programs Technician 1 employment.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: 12/21/20