

COMMONWEALTH OF PENNSYLVANIA

Crystal L. Wolf : State Civil Service Commission
: :
v. : :
: :
Bureau of Juvenile Justice Services, :
Department of Human Services : Appeal No. 30450

Crystal L. Wolf Jonathan L. Curtis
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Crystal L. Wolf challenging her removal from regular Youth Development Aide employment with the Bureau of Juvenile Justice Services, Department of Human Services. A hearing was held on December 11, 2020, via Skype for Business, before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issues before the Commission are whether the appointing authority had just cause for appellant's removal and whether appellant established her removal was based upon discrimination.

FINDINGS OF FACT

1. On December 9, 2019, appellant was informed she was removed from her regular Youth Development Aide employment with the appointing authority, effective December 13, 2019. Comm. Ex. A.

2. The December 9, 2019 removal letter provides the following reason for appellant's removal:
 - 1.) **Failure to Follow General Instructions and Procedures** (as defined in section 7174 of the Department of Human Services Human Resource Policy Manual) specifically, on August 8, 2019 you were providing supervision to Alpha Unit residents. It was reported, and verified on video, that you were present while resident EW was permitted to repeatedly touch Youth Development Aide Damanda Sweatt on her side and stomach. You were witnessed failing to take action to appropriately deter the resident from touching the staff. You did not report or document that the resident was touching staff, nor did you provide accountability to the resident for his actions. Allowing residents to touch your staff in this manner is a violation of BJJS Professional Ethics and Boundaries Training and BJJS Policy 1.14 Zero Tolerance of Sexual and/or Sexual Harassment.

2.) Failure to Follow General Instructions and Procedures

(as defined in section 7174 of the Department of Human Services Human Resource Policy Manual) specifically, on August 8, 2019 you were providing supervision to Alpha Unit residents. Upon review of the incidents reported in Charge #1 it was discovered that while you were providing supervision to the residents' multiple residents were able to take handfuls of latex gloves and lotion from the table where you were located. One resident was seen putting the gloves down the front of his pants and then showing the bulge to another staff on the unit. This was all done without redirection or accountability from you while the residents were under your supervision.

3.) Failure to Follow General Instructions and Procedures

(as defined in section 7174 of the Department of Human Services Human Resource Policy Manual) specifically, while running groups for Alpha Unit residents it was alleged that you and YDA Sweatt would continually engage in inappropriate conversations with residents where questions would be asked, called "Would you do it". During these conversations you would ask the resident a series of questions, to include: "Would you drink cum out of

a cup?”, “Would you eat pizza with period on it?”, “Would you eat ass?” and other inappropriate and overtly sexual questions. This behavior is a violation of BJJS Professional Ethics and Boundaries Training and BJJS Policy 1.14 Zero Tolerance of Sexual Abuse and/or Sexual Harassment.

4.) Failure to Follow General Instructions and Procedures (as defined in section 7174 of the Department of Human Services Human Resource Policy Manual) specifically, on July 22, 2019 you are seen wearing a smart-watch while on shift. At approximately 1920 hour you walk to Room #5 and hand the watch over to a resident. The watch was in the resident’s possession until approximately 1955 hours. On July 25, 2019 at approximately 20:50 you are again seen giving your watch to a resident who takes it into his room and has it in his possession until approximately 21:10. And then, on July 27, 2019 at approximately 1635 hours a resident takes your smart-watch from you and wears it on his wrist for the next forty-five minutes. Residents were also seen taking and wearing your watch on August 2, 2019, August 7, 2019, and August 9, 2019. Possession of an unauthorized personal communication device is a violation of BJJS Policy 7.06A

Contraband Search Policy. Providing any personal communication device to a resident is inappropriate and a violation of BJJS Professional Ethics and Boundaries Training.

5.) Failure to Follow General Instructions and Procedures (as defined in section 7174 of the Department of Human Services Human Resource Policy Manual) Your actions as set forth below are violations of BJJS Professional Ethics and Boundaries Training; Safe Crisis Management Training and BJJS Policy 1.14 Zero Tolerance of Sexual Abuse and/or Sexual Harassment. In each instance you allowed inappropriate behaviors and/or failed to redirect or report inappropriate behaviors.

Specifically, on July 22, 2019 from approximately 1500 hours to 2033 hours you are seen both allowing residents to touch and horseplay with you and actively touching and horse playing with residents. At one point at approximately 2030 hours a resident unties your shoes and pulls your sweatshirt over your head. Your response to this behavior was to smack the resident with your hand.

Specifically, on August 1, 2019 you were witnessed sharing your personal drink with a resident who is seen drinking from your cup. The drink appears to be an iced coffee brought into the facility with you when you came on shift.

Specifically, on August 9, 2019 you were witnessed allowing a resident to touch your shoulder and face. The resident then rubs his head on your shoulder and chest area. Your response is to pinch his neck and shove him away. Later this same day a resident is permitted to grab your wrist and then take food from you and take a bite. You then continue to eat the same food with no redirection or acknowledgement that the resident's behavior was inappropriate.

Comm. Ex. A (emphasis in original).

3. The appeal was properly raised before this Commission and was heard under Sections 3003(7)(i) and Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. C.

4. Appellant was employed by the appointing authority as a Youth Development Aide. As a Youth Development Aide, appellant was responsible for adhering to the National Institute of Corrections Red Flags Training, the appointing authority's Contraband Search Policy, the appointing authority's Safe Crisis Management

Staff Training Program, the appointing authority's Zero Tolerance of Sexual Abuse and/or Sexual Harassment Policy, and the appointing authority's Code of Ethics. N.T. pp. 26, 52-53, 71, 78, 80-82; AA Exs. 2, 6, 7, 8, 10.

5. Labor Relations Coordinator John Cvejkus conducted an investigation into appellant's conduct while working in the South Mountain Secure Treatment Unit (hereinafter "SMSTU"). N.T. p. 30.
6. During the investigation, Cvejkus reviewed video surveillance of appellant's conduct in SMSTU's Alpha room on July 25, 2019. N.T. p. 30; AA Ex. 1.
7. On July 25, 2019, appellant permitted a resident to touch her arm, another staff member's palm, and allowed the resident to take her smart watch from her wrist. N.T. pp. 30, 36-37, 39-40; AA Ex. 1.
8. During the course of the investigation, Cvejkus reviewed appellant's conduct on August 3, 2019 inside the SMSTU's Alpha room. N.T. pp. 55-56; AA Ex. 3.

9. On August 3, 2019, appellant allowed residents to hug her, touch her hair, and place her into a playful headlock. Appellant only redirected the residents by swatting the hand away. N.T. pp. 55-56; AA Ex. 3.
10. During the course of the investigation, Cvejkus reviewed appellant's conduct on August 8, 2019 inside the SMSTU's Alpha room. N.T. p. 46; AA Ex. 4.
11. On August 8, 2019, appellant left her smart watch on the room's table and allowed a resident to play on the smart watch and walk around the room with the personal communication device. N.T. pp. 49-50; AA Ex. 4.
12. During the investigation, Cvejkus reviewed appellant's conduct on August 8, 2019 inside the SMSTU's Bravo room. N.T. p. 63; AA Ex. 9.
13. On August 8, 2019, appellant did not intervene by stopping residents who touched another staff member. Appellant also permitted a resident access

to rubber gloves, where the resident stuffed the front of his pants with the gloves and approached appellant to show off the protruding bulge. N.T. pp. 60, 63, 65-66; AA Ex. 9.

14. Appellant did not report any of the incidents on July 25, 2019, August 3, 2019, and August 8, 2019. N.T. p. 123.
15. The appointing authority informed Philadelphia County of appellant's conduct because the residents involved were from Philadelphia County. N.T. pp. 118-119.
16. Due to appellant's conduct, Philadelphia Probation and the Philadelphia Court determined they were no longer going to place their court adjudicated youth in the SMSTU. N.T. p. 119.
17. As a result, the other facilities' staff were placed at a greater risk because the residents could have known each other. The facilities were placed under undue strain because they had to ensure they could provide the appropriate services and treatments to SMSTU's transferred residents. N.T. pp. 120-121.

18. Director of the Bureau of Juvenile Justice Services Charles Neff conducted appellant's pre-disciplinary conference. N.T. p. 115.
19. Based on the investigation and appellant's PDC, Cvejkus recommended appellant's removal and Neff agreed with Cvejkus's recommendation. N.T. pp. 87, 122-123.

DISCUSSION

This issue in the present appeal is whether the appointing authority established just cause for appellant's removal from regular Youth Development Aide employment and whether appellant established her removal was the result of discrimination. The appointing authority charged appellant for failing to follow general instructions and procedures on July 22, 2019, July 25, 2019, July 27, 2019, August 2, 2019, August 7, 2019, August 8, 2019, and August 9, 2019. Comm. Ex. A.

The Commission will first consider whether the appointing authority had just cause to remove appellant. The appointing authority bears the burden of proving just cause for removal of a regular status employee and must prove the substance of the charges underlying the removal. *Long. v. Commonwealth of Pennsylvania Liquor Control Board*, 112 Pa. Commw. 572, 535 A.2d 1233 (Pa. Commw. 1988). Factors supporting the just cause removal of a civil service

employee must be related to the employee's job performance and touch in some logical manner upon the employee's competency and ability to perform his job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

In support of its charges, the appointing authority presented the testimony of Labor Relations Coordinator John Cvejkus¹ and Director for the Bureau of Juvenile Justice Services Charles Neff.² In response, appellant testified on her own behalf.

Cvejkus and Neff described the South Mountain Secure Treatment Unit (hereinafter "SMSTU") within the secure treatment facility. The SMSTU provides services to court adjudicated male youth from the ages of ten to twenty-one years. N.T. p. 23. The SMSTU is a secure facility without any means of egress for the court adjudicated youth. N.T. p. 111. The youth adjudicated to the Unit are at high risk of recidivism due to the victimization that occurred to them. As a result, the SMSTU receives the most vulnerable population of court adjudicated youth in the Commonwealth. N.T. p. 112.

¹ As a Labor Relations Coordinator, Cvejkus provides oversight and management of the internal administrative investigation for all facilities within Juvenile Justice Services. Cvejkus also facilitates the disciplinary program and makes recommendations for disciplinary actions. N.T. p 20.

² As the Director for the Bureau of Juvenile Justice Services, Neff oversees the youth development centers, youth forestry camps, and secure treatment units, such as South Mountain Secure Treatment Unit. Neff guides the programming policy, the institution's protocols, and treatment services provided to residents. N.T. p. 109.

The SMSTU provides programs for court adjudicated youth who have been sexually harmed, who have mental health disabilities, and who are placed in a general secure program because of their criminal activity. N.T. pp. 112-113. Neff explained appellant was instructed that the court adjudicated youth are coming into the SMSTU to rehabilitate, learn, and grow in a safe environment. In order to treat the court adjudicated youth, appellant was responsible for discharging her duties with dignity and respect. N.T. p. 113. Neff asserted the appointing authority's policies and procedures provide a Youth Development Aide guidance for how to treat residents and when it is time to stop inappropriate behaviors. N.T. pp. 114-115. Additionally, each employee must preserve the custody and security of the residents by treating each resident with professionalism. N.T. p. 25. An employee must adhere to the National Institute of Corrections Red Flags training. N.T. p. 26; AA Ex. 10. The National Institute of Corrections Red Flags training lists behaviors, events, and actions that would reveal the possibility of staff sexual misconduct. N.T. p. 26; AA Ex. 10. One of the prohibited behaviors under the list is horseplay and sexual interactions between staff and inmates. AA Ex. 10. Cvejkus testified the appointing authority has adopted the National Institute of Corrections Red Flags as part of its ethics and boundaries training in relation to an employee interacting with residents. N.T. p. 26.

Cvejkus described the SMSTU's Alpha and Bravo rooms. The Alpha and Bravo rooms are nearly identical residential living units. The rooms are behind sliding locked doors. Inside each room, there is a common area for residents to congregate. Beyond the common area, there is a staff room. The difference between the Alpha room and the Bravo room is Bravo room has a gym area and it is used as a cafeteria. N.T. p. 28.

Cvejkus conducted an investigation into appellant's conduct as a Youth Development Aide. During the course of the investigation, Cvejkus reviewed video footage of the Alpha room on July 25, 2019. Cvejkus observed appellant allowing a resident to inappropriately touch her. Specifically, appellant allowed a resident to not only touch her arm but also take a smart watch from her left wrist. N.T. p. 30; AA Ex. 1. After obtaining appellant's smart watch, the resident was seen operating the communication device for over twenty minutes. N.T. p. 30, 36-37; AA Ex. 1. The resident also began prolonged touching of another staff member, Ms. Sweatt, by reading Ms. Sweatt's palm and playfully touching her arm. N.T. pp. 39-40; AA Ex. 1. Appellant was seen observing this conduct and failed to redirect the resident's behavior. N.T. pp. 35-36; AA Ex. 1.

During the course of the investigation, Cvejkus reviewed appellant's conduct on August 3, 2019 inside the Alpha room. AA Ex. 3. During the video footage, residents were seen touching appellant, hugging appellant, and placing appellant into a playful headlock while touching her hair. N.T. pp. 55-56; AA Ex. 3. Appellant only redirected the residents by swatting the hand away. Cvejkus emphasized appellant's behavior by allowing resident to freely touch her conveyed she was comfortable with violating the appointing authority's policies and disregarding the norms and expectations of SMSTU. N.T. p. 56.

Cvejkus also described appellant's recorded behavior on August 8, 2019 inside the Alpha room. While inside the Alpha room, appellant left her smart watch on the Alpha room's table. N.T. p. 46; AA Ex. 4. Shortly thereafter, a resident approached the table and picked up appellant's smart watch and operated it without appellant stopping the resident's behavior. N.T. pp. 49-50; AA Ex. 4. After operating the smart watch, the resident attached appellant's smart watch to his wrist

and began walking around Alpha room without any intervention from appellant. N.T. p. 51; AA Ex. 4. Cvejkus recalled during the investigation, there were many instances caught on video of residents being able to use, manipulate, and take appellant's smart watch. N.T. pp. 53-54.

Cvejkus testified policy, ethics, and boundaries training instructs employees that residents are not supposed to touch them. N.T. p. 33. An employee should only touch a resident for positive affirmation, such as a high five or a handshake. N.T. p. 34. Cvejkus explained although a resident touching appellant may appear harmless, the observed behavior appears to be grooming behavior. N.T. p. 34. Grooming behavior occurs when a resident tests the boundaries set forth by the staff to see if they will be enforced. N.T. p. 37. Through grooming behavior, the resident acts without fear of repercussion or consequence, which would occur under normal circumstances. N.T. p. 34. Cvejkus emphasized after a resident's conduct is left unchallenged, the conduct may escalate between the staff and the resident and could lead to sexual misconduct, favors, and emotional dependency. N.T. pp. 38-39. Cvejkus testified appellant permitted grooming behavior by allowing the resident to wear the prohibited communication device. N.T. p. 41.

Cvejkus testified the appointing authority's policy prohibits staff from bringing a communication device into the facility, including smart watches. N.T. p. 41. Pursuant to the Contraband Search Policy, contraband includes unauthorized personal communication devices. AA Ex. 2. Cvejkus explained a resident having unrestricted access to a communication device, such as a smart watch, is a violation of the Contraband Search Policy. N.T. pp. 52-53.

During the course of the investigation, Cvejkus reviewed appellant's conduct on August 8, 2019 inside the Bravo room. AA Ex. 9. Cvejkus testified appellant was seen observing a resident repeatedly touching Ms. Sweatt. Appellant should have prevented the resident from touching Ms. Sweatt or from engaging in any form of horseplay. N.T. p. 63; AA Ex. 9. Furthermore, inside the Bravo room, there is a ping pong table where residents gather by bench-like seating. On top of the ping pong table, there is a bottle of lotion, gloves, and cleaning supplies for staff to use to clean the bathrooms. N.T. p. 60. According to the video surveillance, appellant is seen observing one of the residents grabbing multiple gloves from the ping pong table and placing them into the front of his pants. Then, the resident walked toward appellant and Ms. Sweatt in an effort to show off the bulge. N.T. pp. 65-66; AA Ex. 9. Cvejkus explained appellant should not have allowed a resident to have unfettered access to the gloves. N.T. p. 65.

Cvejkus described how appellant was held to the standards of the Safe Crisis Management Staff Training Program (hereinafter "Safe Crisis Training Program"). The Safe Crisis Training Program is a five-day training that instructs a Youth Development Aide on the core fundamentals and expectations for providing treatment to residents. N.T. p. 70. During the Safe Crisis Training Program, a Youth Development Aide is trained on fostering three relationship building concepts with residents. The three relationship building concepts are effectively communicating with residents, empathetically connecting with residents, and building a relationship within the treatment milieu. N.T. p. 71; AA Ex. 7. Cvejkus explained part of the expectations of providing treatment to residents, a Youth Development Aide should consistently apply the appointing authority's policies and practices to each resident.

Cvejkus asserted appellant failed to consistently treat residents pursuant to her training by allowing residents to freely touch Ms. Sweatt, herself, and inappropriately operate appellant's smart watch. N.T. pp. 73-74; AA Ex. 7.

The Safe Crisis Training Program also provides guidelines for a Youth Development Aide to perform physical interventions for staff and resident safety. The guidelines expressly prohibit engaging in horseplay with a resident. N.T. p. 75; AA Ex. 7. Cvejkus explained appellant did not physically intervene pursuant to her training and even engaged in horseplay with residents as seen on video. N.T. p. 75.

Pursuant to the investigation, Cvejkus also reviewed the appointing authority's Zero Tolerance of Sexual Abuse and/or Sexual Harassment Policy (hereinafter "Zero Tolerance Policy") after watching appellant's conduct on August 8, 2019, inside the Bravo room. N.T. p. 78; AA Ex. 8. The Zero Tolerance Policy defines sexual harassment as "[r]epeated and unwelcome sexual advances, requests for sexual favors, verbal comments, physical conduct, gestures, actions of derogatory/offensive sexual nature or creating an intimidating, hostile or offensive environment, by one person directed toward another." AA Ex. 8. Cvejkus testified the incident inside the Bravo room on August 8, 2019, where a resident stuffed robber gloves inside the front of his pants, exhibits a "heavy sexual connotation there." N.T. p. 78. Additionally, Cvejkus expressed how the incidents where residents inappropriately touched staff, including appellant, are clear examples of violations of the Zero Tolerance Policy. Cvejkus explained when appellant failed to report these incidents, she failed to follow the Zero Tolerance Policy. N.T. pp. 78-79; AA Ex. 8.

Cvejkus further described how the appointing authority's Code of Ethics applied to appellant's conduct as a Youth Development Aide. N.T. pp. 80-82; AA Ex. 6. The appointing authority's Code of Ethics defines how a Youth Development Aide should develop competent, professional performance. Specifically, a Youth Development Aide "should strive to become and remain proficient in professional practice in the performance of professional functions." AA Ex. 6. Cvejkus explained appellant had a duty to "[e]xhibit responsible concern for the well-being of all co-workers and residents by not ignoring any manifestations of illness or unethical conduct." N.T. p. 81; AA Ex. 6. Cvejkus emphasized appellant failed to follow her duty pursuant to the appointing authority's Code of Ethics by choosing to not intervene in each recorded incident and to not report each incident. N.T. p. 82.

After the investigation, Cvejkus considered appellant's conduct in comparison to the appointing authority's Human Resource 7174 Policy for the failure to follow general instructions or procedures charge (hereinafter "HR 7174 Policy"). N.T. p. 84; AA Ex. 5. The HR 7174 Policy states two elements to substantiate the charge. First, the "[e]mployee was aware of, or could reasonably have been expected to have been aware of, the general instruction(s) or procedure(s) in question." AA Ex. 5. Second, the "[e]mployee failed to properly comply with or follow the general instruction or procedure (either by act or omission)." AA Ex. 5. If the elements of the charge are substantiated, removal would be warranted. AA Ex. 5. Cvejkus explained appellant's conduct on July 25, 2019, August 3, 2019, and August 8, 2019 were acts and omissions that failed to properly comply with not only training instructions but also the appointing authority's procedures to provide

treatment to residents. Appellant acted inappropriately by permitting the residents to possess and operate the smart watch. Appellant's omissions included not reporting the resident's inappropriate behavior with Ms. Sweatt. N.T. p. 84.

Regarding matters to be considered in mitigating the charge's disciplinary action, Cvejkus recalled appellant's length and nature of her employment as a Youth Development Aide was short. N.T. p. 84. Moreover, Cvejkus emphasized the degree of harm caused by appellant's conduct to residents, staff members, the public, and to the facility. Cvejkus explained the court adjudicated residents are placed in the facility due to their aggressive, possibly violent, behavioral issues. Due to appellant's conduct, staff members were placed at risk because the residents were able to freely touch staff members and operate a communication device without repercussions. N.T. p. 85.

Regarding the public's impact due to appellant's conduct, Neff emphasized the consequences the Bureau of Juvenile Justice Services suffered because of appellant's misconduct. Neff testified a large portion of the court adjudicated youth that are sent to the South Mountain Secure Treatment Unit are from the Philadelphia area. N.T. pp. 117. Neff recalled the residents seen on video with appellant were from the Philadelphia area. Philadelphia County was informed of appellant's misconduct in relation to its assigned residents because of the appointing authority's transparency with Commonwealth counties. As a result, Philadelphia Probation and the Philadelphia Court decided they were no longer going to place youth in the South Mountain Secure Treatment Unit. N.T. pp. 118-119. Neff explained when the Philadelphia residents were relocated from the South Mountain Secure Treatment Unit into other secure treatment facilities, it placed an undue strain on the other facilities because the appointing authority does not have a

right of refusal. N.T. p. 119. The change in placements created unfortunate consequences. Facilities had to ensure they could provide the proper services for the most vulnerable residents. Additionally, staff members were placed at a greater risk because the residents might know each other from different facilities. N.T. pp. 120-121.

Neff conducted appellant's pre-disciplinary conference (hereinafter "PDC"). N.T. p. 115. Neff reviewed the video surveillance of appellant's conduct in the Alpha and Bravo rooms. N.T. pp. 116-117. During appellant's PDC, Neff recalled that appellant's responses to the charges were "she understood that, you know, some of the situations weren't handled correctly and that she would handle them differently." N.T. p. 116.

Based on the investigation and reviewing the appointing authority's HR 7174 Policy, Cvejkus recommended appellant's removal. N.T. p. 87. Cvejkus affirmed the appointing authority's policies apply equally toward both male employees and female employees. Cvejkus testified gender was not used to differentiate between the application of policies and procedures for disciplinary actions. N.T. p. 92. Cvejkus sent his recommendation to Mr. Neff in order to have program concurrence. N.T. p. 88.

Neff received Cvejkus's recommendation for appellant's removal. Neff agreed to remove appellant from Youth Development Aide employment. Based on his review of the investigation and appellant's responses during her PDC, appellant repeatedly failed to follow the appointing authority's expectations, policies, and procedures when treating the Unit's court adjudicated youth. N.T. p. 122. Neff believed appellant's actions "were so egregious and so repetitive that termination

was warranted.” N.T. pp. 122-123. Because appellant failed to report any of the incidents, the appointing authority did not know what had occurred until the damage had been done. N.T. p. 123.

Once program concurrence was received, Cvejkus submitted the recommendation to the Department of Human Services. After the Department of Human Services reviewed the recommendation, it sent the recommendation to the Office of Administration for final approval. The Office of Administration approved the recommendation and Cvejkus drafted appellant’s removal letter. N.T. p. 88.

In response to the appointing authority’s presentation, appellant testified on her own behalf. Appellant argued her removal was due to discrimination on the basis of her gender. N.T. p. 132. Appellant testified the smart watch seen on video was a step tracker that was approved by her supervisor, Mr. Brown. N.T. p. 132. Appellant claims there were incidents of misconduct by male employees that she reported to her supervisor that did not result in discipline. First, appellant described that a male Counselor had a resident inside of his office. Appellant believed she heard a resident slam into the Counselor’s cabinet through horseplay. Appellant reported the incident to her supervisor, but she is unaware if anything resulted. N.T. p. 134. Second, appellant recalled residents airbrushing fishing lures in the Unit. Appellant acknowledged she never reported residents being allowed to airbrush fishing lures. N.T. p. 136. Third, appellant asserted a male Counselor brought in food from outside the Unit and gave residents his own personal food with the supervisors present on the Unit. N.T. p. 137. Fourth, appellant testified she reported a male staff member verbally threatening her in front of the Unit but does not know of the results of the subsequent investigation. N.T. p. 142. Fifth, appellant alleged there was a male supervisor who wore a hat into the Unit without any

disciplinary action. N.T. p. 138. Appellant admitted the incidents of her misconduct should have been reported. N.T. p. 145. Appellant acknowledged other than her own statements, she does not have any evidence to support her allegations. N.T. pp. 144-145. Appellant further did not deny any of the incidents of her misconduct took place. N.T. p. 145.

Having carefully reviewed the record, the Commission finds the appointing authority met its burden to show just cause to remove appellant based on her conduct on July 25, 2019, August 3, 2019, and August 8, 2019.³ In support of our conclusion, we find credible⁴ the testimony of John Cvejkus and Charles Neff.

Appellant was responsible for treating each resident within the SMSTU with dignity, respect, and professionalism. As a Youth Development Aide, appellant was to adhere to the appointing authority's training instructions, policies and procedures, such as the Safe Crisis Training Program, the Zero Tolerance Policy, and the Code of Ethics. Cvejkus and Neff credibly explained how appellant failed to exhibit responsible concern for the well-being of her co-workers and residents by choosing not to intervene when residents touched herself and Ms. Sweatt in the Alpha and Bravo rooms. Appellant enabled residents to utilize her personal communication device, the smart watch, against the instructions to treat residents

³ Although the appointing authority did not present evidence for each of the dates contained in the removal letter, appellant's removal may be sustained when proof of less than all of the charges is made, so long as the sustained charges would amount to just cause. *Wagner v. Department of Transportation*, 76 Pa. Commw. 78, 463 A.2d 492 (1983).

⁴ 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).

consistently and in contradiction to the appointing authority's Contraband Search Policy. Furthermore, appellant permitted a resident to have unlimited access to rubber gloves in the Bravo room, which led to sexually harassing behavior to take place. Cvejkus and Neff credibly explained how appellant's failure to intervene and report the incidents on July 25, 2019, August 3, 2019, and August 8, 2019, demonstrated her incompetence as a Youth Development Aide. Most disturbingly, residents were removed from the SMSTU due to appellant's failures as a Youth Development Aide. Appellant's errors not only placed her own co-workers and residents within SMSTU at risk but also staff members and residents within subsequent facilities. We find appellant's complete disregard of her responsibilities and duties negatively reflect upon her competency and ability to perform her duties as a Youth Development Aide. *Wood, supra.*

Having found the appointing authority had just cause to remove appellant, the Commission will consider whether appellant established her removal was based upon discrimination. 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).

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.⁵ 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 a claim of traditional discrimination.

In analyzing claims of traditional discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred. 71 Pa.C.S.A. § 2704; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990).

⁵ 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.

Concerning appellant's discrimination claim, appellant has failed to present evidence substantiating a *prima facie* case of discrimination. Appellant asserted her removal was due to discrimination on the basis of her gender. To support her argument, appellant listed multiple alleged incidents where she claimed male employees did not receive discipline after appellant witnessed or reported possible violations of the appointing authority's policies. However, appellant conceded the only support she could provide was her own testimony. Appellant did not call her supervisor to testify to the alleged incidents. Appellant also conceded she did not know the results of any her reports or potential investigations of the alleged conduct. Notably, we find Cvejkus's credible testimony persuasive in that gender was never used to differentiate between equal application of policies and procedures. Moreover, the appointing authority presented credible evidence concerning the legitimate non-discriminatory reasons for which appellant was removed. These reasons, detailed above, were merit-related deficiencies in appellant's performance, and clearly provided just cause to remove appellant. *Henderson, supra.*

Based on the foregoing, the Commission finds the appointing authority had just cause to remove appellant due to her repeated failures to follow the appointing authority's instructions and procedures. The Commission also finds appellant has failed to present evidence to support her claim that her removal was the result of discrimination.

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing just cause for removal under Section 2607 of Act 71 of 2018.
2. Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Crystal L. Wolf challenging her removal from regular Youth Development Aide employment with the Bureau of Juvenile Justice Services, Department of Human Services, and sustains the action of the Bureau of Juvenile Justice Services, Department of Human Services in the removal of Crystal L. Wolf from regular Youth Development Aide employment, effective December 13, 2019.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: 4/29/21