

COMMONWEALTH OF PENNSYLVANIA

Norman R. Lester : State Civil Service Commission
v. :
Pennsylvania Liquor Control Board : Appeal No. 30539

Norman R. Lester Meredith A. Millard
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Norman R. Lester challenging his Level-One Alternative Discipline in Lieu of a one-day suspension (hereinafter “ADLS”) from regular Liquor Store General Manager 3B employment with the Pennsylvania Liquor Control Board. A hearing was held on January 28, 2021, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority has established good cause for appellant’s suspension.¹

¹ Under the Level-One ADLS, there was no effect on appellant’s pay, seniority, or other benefits. The Level-One ADLS carries the same weight as if appellant served a one-day suspension. Comm. Ex. A. Consequently, the present appeal will be considered by the Commission as an appeal of a one-day suspension.

FINDINGS OF FACT

1. By letter dated February 26, 2020, appellant was issued a Level-One Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) equivalent to a one-day suspension, from his position as a Liquor Store General Manager 3B, regular status, with the Pennsylvania Liquor Control Board (hereinafter “appointing authority”).

2. In its February 26, 2020 letter, the appointing authority charged appellant with engaging in the following misconduct:

Failure to properly discharge the duties and responsibilities incumbent upon a Liquor Store General Manager 3B in Store #1514 despite prior related instruction and training, in that you failed to properly secure the store change fund at the close of business on January 27, 2020.

Comm. Ex. A.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.²

² Appellant’s request for a hearing on the Level-One ADLS under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination.

4. As a Liquor Store General Manager 3B, appellant is responsible for maintaining security of store funds, among other duties. N.T. pp. 29, 47.
5. Section F of the appointing authority's Store Key and Cage Security Policy BRO-0007 (hereinafter "BRO-0007") sets forth the managerial duties and responsibilities pertaining to the security of the store change fund. AA Ex. 5 (p. 4).
6. Section F of BRO-0007 states in pertinent part:

After closing, the Store Manager/Shift-leader must place all monetary amounts from the change fund in the safe's inner compartment, and then leave the key in the closed but empty Change Fund Box."

AA Ex. 5 (p. 4).
7. All of the appointing authority's managers are trained and instructed on BRO-0007. N.T. p. 100.
8. On January 27, 2020, appellant was responsible for closing Store No. 1514. AA Ex. 9.

9. On January 27, 2020, appellant failed to secure the change fund monies in the safe. N.T. pp. 69, 71-72, 92-93.
10. Appellant's failure to secure the change fund monies was discovered by Assistant Manager Douglas Bickley, when he opened Store No. 1514 on the next business day, which was January 28, 2020. N.T. pp. 22-23.
11. When Bickley opened Store No. 1514 on January 28, 2020, he found the change fund drawer unlocked with approximately \$1000.00 in currency in it. N.T. pp. 23-26, 48-49; AA Exs. 1, 2, 3.
12. During the investigation of this matter, the store surveillance video was reviewed. N.T. pp. 49, 72; AA Ex. 3.
13. The surveillance video depicts appellant doing the end of the day process, which includes checking out the two clerks and verifying the end of the day monies. In settling the clerks' drawers, appellant changed out bills from the change fund drawer. Appellant next closed the change fund drawer, but did not lock it. N.T. pp. 59-61, 149; AA Ex. 3.

14. Surveillance video from the following morning shows Bickley opening the unlocked change fund drawer and observing money still in the drawer. N.T. pp. 62-64, 84; AA Ex. 3.
15. Had appellant followed the closing procedures set forth in BRO-0007, Bickley would have found an empty drawer because the monies in the drawer would have been secured in the safe. N.T. p. 64.
16. The change fund monies were left unsecured overnight because appellant failed to secure the funds in the safe. N.T. p. 65.
17. By letter dated February 6, 2020, appellant was informed a fact-finding meeting would be held on February 20, 2020, regarding his failure to secure funds pursuant to BRO-0007. N.T. pp. 75-76; AA Ex. 8.
18. The fact-finding meeting was held on February 20, 2020, and appellant was provided an opportunity to respond to the charges. N.T. pp. 94-95; AA Ex. 9.

19. During the fact-finding meeting, appellant acknowledged he failed to lock the change fund drawer, as depicted on the surveillance video. N.T. p. 95; AA Ex. 9 (p. 4).
20. During the fact-finding meeting, appellant mentioned a new smart safe was recently installed in the store and the store was short-staffed, which he believed contributed to him not securing the funds. N.T. p. 95; AA Ex. 9.
21. As the Assistant Manager, Bickley dealt with the same staffing issues as appellant, as well as learning to use the new smart safe, yet he continued to properly secure the change fund. N.T. p. 144.
22. The installation of the new smart safe did not change the process for securing the change fund monies at closing. Managers, such as appellant, were still required to secure the change fund monies in the safe's inner compartment after the last clerk was checked out. N.T. pp. 34-35, 38, 140, 148; AA Ex. 5 (p. 4).

23. The only differences between the prior safe and the new smart safe are that a bill acceptor counts the money and the safe is locked by using a code, rather than a key. N.T. pp. 34-35, 37-38, 161.
24. The smart safe, like the previous safe, still has a vault that must be used to secure the money. N.T. pp. 34-35, 38.
25. The appointing authority's Work Rules and Guide to Better Service (hereinafter "Work Rules") provide that failure to follow any policy regarding the handling of cash, or any substitute for cash, or failure to follow proper counter procedures may result in discipline, up to and including removal. AA Ex. 4 (p. 15).
26. On April 15, 2014, appellant signed an acknowledgment form indicating that he read and understood the Work Rules. N.T. p. 99; AA Ex. 10.
27. The Work Rules have not changed since appellant signed the acknowledgment form. N.T. p. 99.
28. Based on appellant's failure to secure the funds, it was recommended that a Level-One ADLS be issued to appellant. N.T. pp. 101-103; AA Ex. 11.

29. The appointing authority consistently issues a Level-One ADLS for first offenses pertaining to store security and store funds because of the seriousness of the offense. N.T. pp. 104, 106.

DISCUSSION

By letter dated February 26, 2020, the appointing authority issued a Level-One Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) to appellant based on his failure to properly discharge his duties and responsibilities as a Liquor Store General Manager 3B on January 27, 2020. Comm. Ex. A. Appellant challenged this action under Section 3003(7)(i) of Act 71 of 2018.³ 71 Pa.C.S.A. § 3003(7)(i). Thus, the sole issue before the Commission is whether the appointing authority has established good cause for the Level-One ADLS.

In an appeal challenging the suspension of a regular status employee, the appointing authority bears the burden of establishing good cause for the personnel action. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1986); 71 Pa.C.S.A. §§ 2603(c), 3003(7)(i). Good cause must be based upon meritorious criteria and be related to one’s competency and ability to execute job duties properly. *White*, 110 Pa. Commw. at 498, 532 A.2d at 951.

³ Act of June 28, 2018, P.L. 460, No. 71, § 1.

In support of its charge, the appointing authority presented the testimony of General Manager 2A Douglas Bickley,⁴ District Manager James Surine,⁵ and Human Resource Analyst 3 Danae Smith.⁶ Appellant argued on his own behalf and also presented testimony from Bickley, Surine, and Smith. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

Summary of Evidence

Appellant is employed by the appointing authority as a Liquor Store General Manager 3B at Store No. 1514. As a Liquor Store General Manager 3B, appellant is responsible for maintaining security of store funds, among other duties.

⁴ Bickley is currently employed by the appointing authority as a General Manager 2A at Store No. 3604. N.T. p. 17. Bickley has served in this position for approximately one year and has worked for the appointing authority for approximately ten years. N.T. p. 18. In January 2020, prior to being promoted to the position of General Manager 2A, Bickley served as the Assistant Manager of Store No. 1514, which is the store where appellant served as the General Manager. N.T. pp. 20-21. As the Assistant Manager of Store No. 1514, Bickley was responsible for opening and closing the store, running shifts, and securing store funds, among other duties. N.T. p. 21. Bickley was responsible for opening Store No. 1514 on January 28, 2020. N.T. p. 22.

⁵ Surine is employed by the appointing authority as a District Manager and has worked for the appointing authority for almost twenty-nine years. N.T. pp. 44-45. In his capacity as District Manager, Surine oversees the retail operation of nineteen stores, which includes hiring, promoting, investigating incidents, issuing discipline, and coordinating merchandising and fulfillment. N.T. p. 46. Surine was responsible for investigating the incident which is the basis of the present appeal. N.T. pp. 46, 48-49.

⁶ Smith is employed by the appointing authority as a Human Resource Analyst 3. N.T. pp. 88-89. Smith has served as a Human Resource Analyst with the Commonwealth for approximately eight years, four of which have been with the appointing authority. N.T. p. 89. Smith's duties include: working with District Managers regarding disciplinary actions and performance management of their subordinate employees; handling grievances; and participating in civil service hearings. N.T. p. 90. Smith was responsible for reviewing the disciplinary action which is the subject of the present appeal. N.T. p. 91.

N.T. pp. 29, 47. The appointing authority's Work Rules and Guide to Better Service (hereinafter "Work Rules") provide that failure to follow any policy regarding the handling of cash, or any substitute for cash, or failure to follow proper counter procedures may result in discipline, up to and including removal. N.T. pp. 68-69, 96-97; AA Ex. 4 (p. 15).

Pursuant to Store Key and Cage Security Policy BRO-0007 (hereinafter "BRO-0007"), "[a]fter closing, the Store Manager/Shift-leader must place all monetary amounts from the change fund in the safe's inner compartment, and then leave the key in the closed but empty Change Fund Box." N.T. pp. 100-101; AA Ex. 5 (p. 4). District Manager James Surine and Human Resource Analyst 3 Danae Smith testified appellant violated these policies on January 27, 2020, when he left monies unsecured in the change fund drawer and failed to secure these monies in the safe overnight. N.T. pp. 69, 71-72, 96, 100-101.

On January 27, 2020, appellant was responsible for closing Store No. 1514. As the closing manager, appellant was required to secure the change fund in the vault of the safe after counting the monies. N.T. pp. 30, 47-48; AA Ex. 5 (p. 4). Appellant failed to secure the change fund monies in the safe as required. N.T. pp. 69, 71-72, 92-93. Appellant's failure to secure the change fund monies was discovered by Assistant Manager Douglas Bickley, when he opened Store No. 1514 on the next business day, which was January 28, 2020. N.T. pp. 22-23.

On January 28, 2020, Bickley was responsible for opening Store No. 1514. N.T. p. 22. At 8:30 a.m. that morning, Bickley went to the smart safe to get the funds ready because the store opened at 9:00 a.m. N.T. p. 23. Bickley unlocked the smart safe and retrieved the logbook and keys to the change fund drawer. N.T. p. 23. Bickley then went to open the change fund drawer and found that it was unlocked. N.T. p. 23. Upon opening the unlocked drawer, Bickley discovered the monies from the prior evening were still in the drawer. N.T. p. 23.

At 8:42 a.m., Bickley sent an email to appellant and District Manager James Surine, informing them that he found the change fund drawer unlocked with approximately \$1000.00 in currency in it.⁷ N.T. pp. 23-26, 48; AA Ex. 1. In addition to sending this email, Bickley reviewed the store surveillance video and drafted a memo to Surine. N.T. pp. 26-27, 48-49; AA Ex. 2. This memo was sent to Surine at 11:18 a.m. on January 28, 2020. N.T. p. 27; AA Exs. 1, 2.

After receiving Bickley's memo, Surine reviewed the surveillance video from the night of the incident and detailed his findings in a memo addressed to Regional Manager Christina Houser.⁸ N.T. pp. 49-50, 72-74; AA Exs. 3, 6, 7. The surveillance video depicts appellant doing the end of the day process, which includes checking out the two clerks and verifying the end of the day monies.⁹ N.T.

⁷ Any discrepancy in security, such as unsecured funds, must be reported to the District Manager. N.T. p. 28.

⁸ Surine sent two memos to Houser about the January 27, 2020 incident. N.T. pp. 72-75; AA Exs. 6, 7. The first memo was dated January 29, 2020, and the second memo was dated February 20, 2020. N.T. p. 74; AA Exs. 6, 7. Surine sent the second memo to correct an error regarding the date of the incident. N.T. p. 74; AA Ex. 7. There is no dispute that the incident occurred on January 27, 2020 and that Bickley reported the incident on January 28, 2020.

⁹ The clerks, who were working on January 27 and 28, 2020, were not interviewed as part of the appointing authority's investigation because they were not responsible for securing the monies and the surveillance video clearly depicted what occurred. N.T. pp. 148-149, 157-158; AA Ex. 3.

p. 59; AA Ex. 3. In settling the clerks' drawers, appellant changed out bills from the change fund drawer. N.T. pp. 60-61; AA Ex. 3. Appellant next closed the change fund drawer, but did not lock it. N.T. pp. 61, 149; AA Ex. 3.

Surveillance video from the following morning shows Bickley opening the unlocked change fund drawer and observing money still in the drawer. N.T. pp. 62-64, 84; AA Ex. 3. Had appellant followed the closing procedures, Bickley would have found an empty drawer because the monies in the drawer would have been secured in the safe. N.T. p. 64. Because appellant failed to secure the funds in the safe, the money was left unsecured overnight. N.T. p. 65.

On February 6, 2020, appellant was informed in writing that a fact-finding meeting would be held on February 20, 2020, regarding his failure to secure funds pursuant to BRO-0007. N.T. pp. 75-76; AA Ex. 8. At the fact-finding, appellant was provided an opportunity to respond to the charges, at which time he acknowledged he failed to lock the change fund drawer, as depicted on the surveillance video. N.T. p. 95; AA Ex. 9 (p. 4).

Based on appellant's failure to secure the funds, it was recommended that a Level-One ADLS be issued to appellant. N.T. pp. 101-103; AA Ex. 11. Smith explained a Level-One ADLS is consistently issued for first offenses pertaining to store security and store funds because of the seriousness of the offense. N.T. pp. 104, 106. In addition, Smith noted it is always the responsibility of the person in charge to properly secure store funds. N.T. pp. 104-105.

While appellant did not dispute he failed to secure the change fund, he argued his failure to secure the monies was the result of being short-staffed and learning to use the recently installed smart safe. AA Ex. 9. No credible evidence was presented that staffing issues contributed to the violation. N.T. pp. 133-139, 144, 151-154; AA Ex. 3. Likewise, there is no credible evidence that the smart safe was responsible.

As the Assistant Manager, Bickley was dealing with the same staffing issues as appellant, as well as learning to use the new smart safe, yet he continued to properly secure the change fund. N.T. p. 144. Additionally, Bickley and Smith explained the only differences between the old safe and the smart safe are: 1) the money is put into the bill acceptor, which counts the money for you; and 2) there is a code you input to secure the safe rather than locking it with a key. N.T. pp. 34-35, 37-38, 161. The smart safe, like the previous safe, still has a vault that must be used to secure the money. N.T. pp. 34-35, 38.

All store funds, except for the change fund, are locked in the vault of the safe when the store is open for business. N.T. p. 21. The change fund is secured in a locked drawer when the store is open. N.T. pp. 22, 26-27. In the morning, money is taken out of the vault and put into the change fund drawer. N.T. pp. 22, 26-27. In the evening, this money is removed and put back in the vault. N.T. pp. 22, 26-27. The installation of the smart safe did not change the closing process because the monies are still secured in the vault after the last clerk is checked out by the person in charge. N.T. p. 148.

Good Cause for the Level-One ADLS

Good cause must relate to an employee's competence and ability to perform his job duties, *Department of Corrections v. Ehnnot*, 110 Pa. Commw. 608, 532 A.2d 1262 (1987), or must result from conduct that hampers or frustrates the execution of the employee's duties. *McCain v. Department of Education*, 71 Pa. Commw. 165, 454 A.2d 667 (1983). Having carefully reviewed the evidence, we find the appointing authority has established the charge against appellant and has established good cause for the Level-One ADLS. In support of our conclusion, we find credible¹⁰ the testimony provided by the appointing authority's witnesses.

Appellant was charged with failure to properly discharge the duties and responsibilities incumbent upon a Liquor Store General Manager 3B. Comm. Ex. A. Pursuant to BRO-0007, appellant was required to place all monetary amounts from the change fund in the inner compartment of the store safe. AA Ex. 5 (p. 4). We find appellant failed to properly discharge this responsibility on January 27, 2020, when he failed to secure the change fund monies in the safe. N.T. pp. 69, 71-72, 96, 100-101; AA Ex. 3.

Additionally, we find the level of discipline was appropriate. The appointing authority's Work Rules set forth the levels of discipline that may be imposed for violations of cash handling procedures, such as BRO-0007. N.T. pp. 68-69, 96-97; AA Ex. 4 (p. 15). Specifically, the Work Rules provide discipline, up to and including removal, may result for failure to follow any policy regarding the handling of cash. N.T. pp. 68-69, 96-97; AA Ex. 4 (p. 15). While this is

¹⁰ 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).

appellant's first offense, violations pertaining to store security and store funds are serious offenses, which rise to a level above a written reprimand. N.T. pp. 104, 106. Moreover, an appointing authority can hold managerial employees, such as appellant, to the highest level of conduct. *Woodbridge v. Commonwealth, Department of Revenue*, 435 A.2d 300, 302 (Pa. Commw. 1981). Thus, we find a Level-One ADLS was appropriate based on appellant's failure to secure store funds in the safe when he closed Store No. 1514 on January 27, 2020.

Furthermore, we are not persuaded by appellant's excuses that he was short-staffed and still learning how to use the smart safe. Assistant Manager Bickley also faced these challenges and he continued to properly secure monies in the safe. N.T. p. 144. Moreover, this was not a situation where appellant was having difficulty operating the safe. Appellant simply did not put the monies in the vault of the safe, as required under BRO-0007. Rather, he left the monies unsecured in an unlocked drawer overnight. N.T. pp. 65, 69, 71-72, 96, 100-101.

We are also not persuaded by appellant's belief that he cannot be held accountable for his failure to secure the funds because BRO-0007 does not "address anything with the new smart safe." N.T. p. 168. While appellant is correct that BRO-0007 does not mention the smart safe, the closing procedures are fundamentally the same. Indeed, the duty appellant failed to discharge—properly securing the store change fund at close of business—has not changed. Managers, such as appellant, must still secure the monies in the safe's inner compartment after the last clerk is checked out. N.T. pp. 34-35, 38, 148; AA Ex. 5 (p. 4). The only differences with the smart safe are that the money is counted by a bill acceptor and

a code, rather than a key, is used to lock the safe. N.T. pp. 34-35, 37-38, 161. Thus, we find the installation of the smart safe did not relieve appellant of his responsibility to secure the change fund in the safe upon closing the store.

Based on the above, we find the appointing authority had good cause to issue the Level-One ADLS to appellant. Specifically, we find the appointing authority presented credible evidence establishing appellant failed to properly discharge his duties and responsibilities when he failed to properly secure the change fund monies in the safe at the close of business on January 27, 2020. We further find this inaction violated the appointing authority's cash handling policies. Specifically, we find appellant violated BRO-0007 when he failed to secure the monies in the safe. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish good cause for suspension under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Norman R. Lester challenging his Level-One Alternative Discipline in Lieu of a one-day suspension from regular Liquor Store General Manager 3B employment with the Pennsylvania Liquor Control Board, and

sustains the action of the Pennsylvania Liquor Control Board in issuing the Level-One Alternative Discipline in Lieu of a one-day suspension of Norman R. Lester from regular Liquor Store General Manager 3B employment.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: May 24, 2021