

COMMONWEALTH OF PENNSYLVANIA

Louis F. Venneri : State Civil Service Commission
v. :
Department of General Services : Appeal No. 30545

Louis F. Venneri : Harry R. Walter, III
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Louis F. Venneri challenging his Level Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from regular Fiscal Management Specialist 3 employment with the Department of General Services.¹ A hearing was held on December 9, 2020, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issues before the Commission are whether the appointing authority established good cause for appellant’s Level Two ADLS and whether appellant established his Level Two ADLS was motivated by discrimination.

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

FINDINGS OF FACT

1. On March 18, 2020, appellant was issued a Level Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with final warning equivalent to a three-day suspension, from his regular Fiscal Management Specialist 3 employment. Comm. Ex. A.

2. The March 18, 2020, letter provides the following reason for appellant’s Level Two ADLS:

Inappropriate Conduct: Specifically, your conduct during a meeting on January 28, 2020 with your supervisor and another manager present was inappropriate. You became very angry, interrupted your supervisor, raised your voice, and pointed your finger at her in an accusatory manner.

Comm. Ex. A (emphasis in original).

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

4. Appellant is employed as a Fiscal Management Specialist 3 by the appointing authority. He has been employed in this position for over seven years. N.T. pp. 152-153.
5. As a Fiscal Management Specialist 3, appellant is a managerial employee who supervises subordinate employees. N.T. pp. 44, 46, 165.
6. Appellant does not have any formal disciplinary history prior to the issued Level Two ADLS. N.T. p. 160.
7. On January 28, 2020, Director of the Bureau of Finance and Risk Management Kristina Landvater and Deputy Secretary for Administration Beverly Hudson conducted a meeting with appellant in Hudson's office. N.T. pp. 29-30, 52-53.
8. The purpose of the January 28, 2020, meeting was to discuss the Public Works Fiscal Team's e-Builder software program and the Chief of the Public Works Fiscal Department's updated position description with appellant. N.T. pp. 30-31, 64.

9. During the January 28, 2020, meeting, appellant became aggressively loud, interrupted Hudson, accused Hudson of being incompetent, and pointed his finger at her to make his point. N.T. pp. 45-46, 51-52, 54-55, 58, 161-162, 177-178.
10. After the January 28, 2020, meeting, Human Resource Analyst 3 Caitlin Witmer was told during a conversation with Hudson about appellant's conduct and requested Hudson and Landvater to provide their witness statements and notes regarding the meeting. N.T. p. 112.
11. Witmer conducted appellant's pre-disciplinary conference (hereinafter "PDC") on March 12, 2020. N.T. pp. 116-117; AA Ex. 1.
12. After appellant's PDC, Witmer recommended appellant receive a Level Two ADLS with a final warning. Comm. Ex. A; N.T. pp 120-121.

DISCUSSION

The issues in the present appeal are whether the appointing authority established good cause for appellant's Level Two Alternative Discipline in Lieu of Suspension (hereinafter "ADLS") and whether appellant established his Level Two

ADLS was motivated by discrimination. Specifically, the appointing authority charged appellant with inappropriate conduct based on his conduct during a meeting with his supervisor and another manager on January 28, 2020. Nonetheless, appellant asserts in his Appeal Request Form that his Level Two ADLS is motivated by discrimination in the form of retaliation for filing a grievance. Comm. Ex. B. The Commission will review the good cause issue first and then address appellant's retaliation claim.

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.

In support of its case in chief, the appointing authority presented the testimony of Director of the Bureau of Finance and Risk Management Kristina Landvater² and Human Resource Analyst 3 Caitlin Witmer.³ In response, appellant⁴ testified on his own behalf. The evidence presented by appellant and the appointing authority is summarized below.

² Kristina Landvater is employed as the Director for the Bureau of Finance and Risk Management for the appointing authority. Landvater has held this position for over four years. N.T. p. 27. Prior to her current position, Landvater was the Chief of the Public Works Fiscal Department in the appointing authority's Public Works Unit. N.T. p. 28. Landvater is appellant's direct supervisor. N.T. p. 53.

³ Caitlin Witmer is employed by the Office of Administration as Human Resource Analyst 3 within the General Government Delivery Center. N.T. p. 101. As a Human Resource Analyst 3, Witmer provides guidance regarding discipline and grievance processing for seventeen agencies, including the appointing authority. N.T. p. 105.

⁴ Appellant is employed as a Fiscal Management Specialist 3 by the appointing authority. N.T. p. 152. He has been employed in this position for over seven years. N.T. p. 153.

On January 28, 2020, Director of the Bureau of Finance and Risk Management Kristina Landvater and Deputy Secretary for Administration Beverly Hudson conducted a meeting with appellant in Hudson's office. N.T. pp. 29-30, 52-53. The purpose of the January 28, 2020, meeting was to discuss the Public Works Fiscal Team's e-Builder software program and the Chief of the Public Works Fiscal Department's (hereinafter "Chief") updated position description. N.T. pp. 30-31, 64. The tone of the meeting's discussion regarding the e-Builder software program was professional as Landvater, Hudson, and appellant examined the program's work processes for different invoices and budgets. During the meeting's discussion regarding the e-Builder software program, appellant's demeanor appeared cordial. N.T. pp. 31-32.

However, Landvater observed appellant's behavior change when the meeting's discussion shifted to revising the Chief's position description.⁵ Landvater explained the Chief position became vacant after her promotion to Director for the Bureau of Finance and Risk Management. Shortly after her promotion, appellant began working temporarily out of class as the Chief.⁶ As such, Landvater and Hudson wanted to discuss revising the position description with appellant because he was performing its duties, which included operating the e-Builder software program. N.T. p. 34.

⁵ A revision of the position description was necessary to ensure the classification, pay grade, and responsibilities reflect the current position's duties. N.T. pp. 37-38. When appellant temporarily worked out of class as the Chief, he did not receive as many direct reports in comparison to when Landvater was in the position. Consequently, Landvater and Hudson wanted to inform appellant that due to the position description's revision, he would likely receive more direct reports. N.T. p. 39.

⁶ Appellant was being compensated for working as a Chief. Prior to being moved to the downtown office, appellant performed supervisory duties. However, after moving to the downtown office, appellant's supervisory duties were shifted and completed by Landvater and Hudson. N.T. p. 36.

During the meeting's conversation about revising the Chief's position description, Landvater asked if appellant would be interested in applying for the position regardless of the position classification and pay level. N.T. p. 40. Immediately after Landvater asked appellant the question, Hudson intervened and said it was unfair for her to ask that question to appellant and unfair for her to expect appellant to answer. N.T. p. 41. After asking her question, Landvater noticed appellant became visibly upset and angry. N.T. pp. 42-43.

After intervening, Hudson began discussing how the Chief's position was important to the organization and how the appointing authority was focusing on human-centered leadership. N.T. p. 44. Simultaneously, Hudson referred to appellant's leadership qualities. Specifically, Hudson began discussing how appellant's leadership could be improved. N.T. p. 44.

While Hudson was commenting about appellant's leadership skills, appellant interrupted her. Appellant asked Hudson why she felt his leadership skills needed improvement and whether she asked his subordinate employees about his leadership skills. N.T. pp. 45-46. Hudson responded that appellant's tone and use of bold and capital letters in emails could be perceived as condescending and offensive. N.T. pp. 46, 48-49, 91-92. Yet again, during Hudson's response, appellant interrupted loudly and asserted he is direct and not condescending in his emails. N.T. p. 46. After the second interruption, Hudson asked appellant to give her the courtesy of finishing her analysis. Appellant quickly calmed down and patiently waited to respond. N.T. p. 50.

After Hudson completed her assessment of appellant's leadership skills, appellant responded loudly and expressed how he did not feel that he was condescending and did not understand why his leadership skills were in question during the meeting. During his rebuttal, appellant accused Hudson of being incompetent and compared Hudson's experience working with the Fiscal team to Landvater's knowledge and experience. N.T. pp. 54-55. Appellant further expressed he would rather report to Landvater than Hudson as his leader. N.T. p. 58. At the end of his response, appellant aggressively pointed his finger at Hudson to make his point. N.T. pp. 51-52. Hudson ended the meeting, thanked appellant for his participation, and asked him to review the position description. N.T. p. 59.

Landvater testified she felt uncomfortable and was shocked by appellant's tone and demeanor during the conversation. N.T. pp. 53, 55. Appellant's demeanor was defensive, and he was clearly agitated. N.T. p. 47. Specifically, Landvater was concerned by how appellant continually pointed his finger at Hudson while loudly claiming "he will get what he deserves and he will do what it takes to get what he deserves because he just felt he was wronged." N.T. p. 57. Landvater explained while she does have experience being the Chief, she was taken back by how appellant questioned the knowledge and experience of a Deputy Secretary for Administration. N.T. p. 56. Landvater emphasized she was concerned who was outside the office because of appellant's loud behavior. N.T. p. 57.

After appellant left, Landvater felt dumbfounded and threatened by appellant's demeanor and his anger toward Hudson. N.T. pp. 60, 69. Landvater admitted she did not take any remedial action toward appellant for his behavior after

the meeting concluded because she was shocked by his conduct. N.T. pp. 69, 91. Landvater also acknowledged appellant has never had any issues with vendors and has acted in a professional manner throughout her seven years of supervision. N.T. p. 70.

After the January 28, 2020, meeting, Human Resource Analyst 3 Witmer was told about appellant's conduct during the January 28, 2020, when Hudson brought it to her attention during a weekly meeting after the incident. N.T. p. 111. In response, Witmer requested Hudson and Landvater to provide their witness statements and notes from the meeting. N.T. p. 112.

After reviewing the meeting's notes and witness statements, Witmer recommended appellant receive a pre-disciplinary conference (hereinafter "PDC").⁷ N.T. p. 114. Witmer conducted appellant's PDC on March 12, 2020. N.T. pp. 116-117; AA Ex. 1. During the PDC, Witmer informed appellant of the inappropriate conduct charge stemming from his behavior during the January 28, 2020, meeting with Hudson and Landvater. N.T. p. 119; AA Ex. 1. Witmer recalled appellant admitted to becoming emotional and agitated during the January 28, 2020, meeting but did not apologize for his conduct. N.T. pp. 119-120.

After appellant's PDC, Witmer recommended appellant receive a Level Two ADLS with a final warning based on his inappropriate conduct. Comm. Ex. A; N.T. pp 120-121. Witmer acknowledged appellant received a Level Two ADLS with a final warning solely because of his inappropriate conduct during the January 28, 2020, meeting. N.T. pp. 123, 125.

⁷ Witmer explained a PDC provides an employee an opportunity to respond to the charges against him. N.T. p. 119.

Witmer described how appellant's conduct during the January 28, 2020, meeting was inappropriate. Witmer relied on the definition of inappropriate workplace behavior set forth in Management Directive 205.33, Work Place Violence. Inappropriate workplace behavior is defined as follows:

Employee actions which are inappropriate or unacceptable for the workplace but which did not rise to the level of workplace violence. Examples include, but are not limited to, time and attendance problems, decreased productivity, inconsistent work patterns, poor-on-the-job relations, unusual/changed behavior, personal conflicts, and disruptive behavior.

N.T. pp. 131-132; AA Ex. 4 (p. 2).⁸ Witmer explained since appellant's loud, aggressive behavior and finger pointing was directed toward a supervisor during the January 28, 2020, meeting, it met the definition of inappropriate workplace behavior. N.T. p. 137.

Witmer also relied on language in Management Directive 505.7, Personnel Rules, which prohibits an employee's insubordinate conduct. N.T. p. 129; AA Ex. 3 (p. 12). Witmer explained appellant's conduct was considered insubordinate when he aggressively questioned Hudson's knowledge and skills. N.T. p. 129.

⁸ While the appointing authority cited to Management Directive 205.33's prohibition against workplace violence, appellant's Level Two ADLS letter does not cite to workplace violence as an applicable charge for his discipline. Comm. Ex. A.

Furthermore, Witmer detailed how she took appellant's prior incidents into consideration when making her recommendation. Management Directive 505.7 instructs that an employee's discipline should be determined on an individual basis, taking into account the seriousness of the offense and the record of the employee's service with the Commonwealth. N.T. pp. 130, 136; AA Ex. 3 (p. 13). Witmer testified she reviewed appellant's work history, the seriousness of his conduct during the January 28, 2020, meeting, and any prior incidents. N.T. p. 141. Witmer described two separate incidents where appellant displayed aggressive and inappropriate behavior. Witmer testified the first incident occurred when appellant had a telephone conversation with Hudson and Deputy Secretary Elizabeth O'Reilly regarding his assignment as Chief temporarily working out of class. N.T. p. 107. Witmer recalled how appellant angrily expressed he wanted his TWOC assignment to continue and how his compensation would continue. N.T. pp. 107-108. Regarding the second incident, Witmer recalled how Deputy Secretary O'Reilly approached appellant to inform him that he was responsible for reviewing his subordinate employee's Right-To-Know Law request. N.T. p. 109. Witmer explained appellant became very loud, agitated, and dismissively walked away from O'Reilly. N.T. p. 110.

In response, appellant believed his Level Two ADLS was too severe. Appellant testified he did not have any formal disciplinary actions against him throughout his seven years working under Landvater's supervision. N.T. p. 160. Appellant explained he never was counseled or was confronted by others regarding how loud he speaks or how he uses his hands during his speech. N.T. p. 159. Appellant recalled the only time he received notice about his behavior and conduct being inappropriate was when he received his PDC notice letter. N.T. p. 163. Appellant stated his loud behavior and conduct was never addressed with him during

his employee performance reviews with Landvater. N.T. p. 164. Appellant further explained he did not intend for his emails that had bold formatting or capital letters to be condescending or derogatory. Appellant emphasized he did not receive any responses from vendors or subordinate employees that his emails were condescending or rude. N.T. p. 165.

Regarding the January 28, 2020, meeting, appellant expressed how he felt ambushed and set up to fail by Landvater's question and Hudson's criticism of his leadership skills during the meeting when the only topics of discussion were the e-Builder program and the Chief of the Public Works Fiscal Department's position description. N.T. pp. 161, 162, 167. Nevertheless, appellant admitted that during the January 28, 2020, meeting, he raised his voice, lost his temper, and pointed his finger at Hudson. N.T. p. 177. Appellant acknowledged questioning whether Hudson was knowledgeable as a supervisor during the meeting. N.T. p. 178. Appellant further admitted he considers the topic of his work performance and compensation a "touchy subject." N.T. p. 161. Appellant admitted he overreacted during the January 28, 2020, meeting with Landvater and Hudson. N.T. p. 162

Having carefully reviewed the record, we find the appointing authority established good cause to issue appellant's Level Two ADLS for inappropriate conduct during the January 28, 2020, meeting. Specifically, the Commission finds the testimony of Kristina Landvater and Caitlin Witmer credible⁹ and persuasive regarding appellant's disrespectful tone and aggressive behavior directed toward

⁹ 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).

Hudson and Landvater during the meeting. Appellant's acknowledged emotional and overreactive responses during the meeting clearly demonstrates disruptive behavior that creates poor on-the-job relations with his supervisors.

As a Fiscal Management Specialist 3, appellant serves in a managerial role over subordinate employees. An appointing authority can require its managerial employees be held to the highest level of conduct. *Woodbridge v. Commonwealth, Department of Revenue*, 435 A.2d 300, 302 (Pa. Commw. 1981). Furthermore, a management employee must strictly adhere to standards and set an example for her subordinates. *Id.* Landvater credibly emphasized how leaders should be thoughtful and empathetic in their responses to their co-workers and subordinate employees. N.T. p. 48. Appellant's disruptive behavior during the meeting demonstrates he did not meet the highest level of leadership or conduct expected as a Fiscal Management Specialist 3. *White, supra.*

Appellant argues the Level Two ADLS with final warning was too severe. In light of his lacking formal disciplinary history, we are persuaded that while appellant's Level Two ADLS is appropriate, the final warning is excessive and should be removed.

Having found the appointing authority established good cause, the Commission now turns to whether appellant has presented evidence sufficient to establish his claim of retaliation. Section 2704 of Act 71 of 2018 (hereinafter "Act") 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 § 2704.¹⁰ The prohibition set forth in Section 2704 encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on race, gender, religion, disability, political, partisan, labor union affiliations, 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 case, appellant alleges his Level Two ADLS was based on retaliation for filing a grievance against Hudson. Comm. Ex. B.

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

¹⁰ The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of the Civil Service Act (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language. 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.

71 P.S. § 741.905a.

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).

A retaliation claim is a specific subcategory of the broader category of non-merit factor discrimination. In a retaliation case, appellant may establish a *prima facie* case by proving 1) he engaged in a protected activity; 2) the appointing authority was aware of the protected activity; 3) that subsequent to participation in the protected activity, appellant was subjected to an adverse employment action by the appointing authority; and 4) that there is a causal connection between participation in the protected activity and the adverse employment action. *Robert Wholey Co., Inc. v. Pennsylvania Human Rel. Commn.*, 606 A2d 982, 983 (Pa. Commw. 1992) citing *Brown Transport Corp. v. Pennsylvania Human Rel. Commn.*, 578 A.2d 555 (Pa. Commw. 1990). When participation in a protected activity and the occurrence of an adverse employment action occurs within close proximity in time, causation is inferred. *Id.* at 984.

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.

While appellant testified he filed a grievance against Hudson prior to the January 28, 2020 meeting, he admitted “I don’t want to state that it was retaliation because I don’t know. I don’t know the circumstances.” N.T. p. 171. For appellant

to establish a *prima facie* case of retaliation, he must present evidence the appointing authority was aware of the protected activity and that there is a causal connection between filing his grievance and his Level Two ADLS. By his own admission, appellant has failed to prove whether the appointing authority was aware of his filed grievance against Hudson, and whether a causal connection exists between his filed grievance and the issued Level Two ADLS.¹¹ *Robert Wholey Co., Inc., supra.* Therefore, the appellant has failed to present a *prima facie* case of discrimination and the claim is dismissed. Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing good cause for suspension under Section 2603 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, orders that the Level Two Alternative Discipline in Lieu of a three-day suspension with final warning imposed by the Department of General Services

¹¹ Moreover, the appointing authority presented credible evidence concerning the legitimate, non-discriminatory reasons for appellant's Level Two ADLS. These reasons, detailed above, were merit-related deficiencies in appellant's conduct as a Fiscal Management Specialist 3, and clearly provided good cause for his discipline. *Henderson, supra.*

against Louis F. Venneri be modified to a Level Two Alternative Discipline in Lieu of a three-day suspension. We further order that within thirty (30) calendar days of the mailed date of this opinion, the Department of General Services, shall submit written notice of compliance with this Order to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: November 22, 2021