

COMMONWEALTH OF PENNSYLVANIA

Dorothy R. Booker : State Civil Service Commission
v. :
Pennsylvania Liquor Control Board : Appeal No. 30571

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ADJUDICATION

This is an appeal by Dorothy R. Booker challenging her suspension pending investigation for the time period of May 14, 2020 to June 8, 2020 and her demotion from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment. A hearing was held on February 24, 2021, via video 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 good cause to suspend appellant pending her investigation and had just cause for appellant's demotion.

FINDINGS OF FACT

1. On May 14, 2020, appellant was informed she was being suspended pending investigation from regular Liquor Store Assistant Manager 1 employment. AA Ex. 10.

2. On June 8, 2020, appellant was informed she was demoted from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment, effective June 14, 2020. Comm. Ex. A; AA Ex. 13.

3. The June 8, 2020 demotion letter provides the following:
 - 1) Serious violation of safety procedures in Store #5161 despite prior related instruction; in that during the period of April 20 through May 11, 2020 you were repeatedly observed on video working without wearing the required personal protective equipment.
 - 2) Serious violation of safety procedures/Failure to properly discharge the duties and responsibilities incumbent upon a Liquor Store Assistant Manager 1 in Store #5161 despite prior related instruction; in that during, but not

limited to, the period of April 20 through May 11, 2020 you permitted subordinate employees to work without wearing the required personal protective equipment.

3) Conduct unbecoming a Commonwealth employee in Store #5161 despite prior related instruction; in that during the period of April 20 through May 11, 2020, you provided false information to your District Manager regarding store employees wearing the required personal protective equipment.

Comm. Ex. A; AA Ex. 13.

4. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.
5. Appellant was employed with the appointing authority since 2005 and was employed as a Liquor Store Assistant Manager 1 for six years. N.T. p. 166.
6. In mid-March 2020, the appointing authority closed its stores throughout the Commonwealth due to the COVID-19 pandemic. N.T. pp. 26, 68.

7. The appointing authority reopened its stores throughout the Commonwealth in April 2020. In response to the COVID-19 pandemic, the appointing authority established new COVID-19 safety protocols. N.T. p. 69.
8. The COVID-19 safety protocols were distributed to the appointing authority's employees, including appellant, through email correspondence. N.T. pp 28, 70, 72-74, 76, 77-78, 79, 80-81; AA Exs. 2, 3, 4, 5, 6, 7,
9. Pursuant to the COVID-19 safety protocols, each employee was required to wear a protective face mask covering the nose and mouth at all times inside and outside the store, and to observe social distancing by keeping approximately six feet away from each other. N.T. pp. 80-81; AA Ex. 7.
10. On April 21, 2020, Retail Wine Specialist Shawn Terreri complained to appellant about how his fellow employees were not properly wearing their protective face masks while working in Store #5161. N.T. pp. 31, 44, 54-55; AA Ex. 1.

11. In response, appellant, while wearing her protective face mask, instructed the employees to comply with the appointing authority's COVID-19 safety protocols. N.T. pp. 31, 44, 54.
12. On April 22, 2020, Terreri expressed his concern to appellant that employees were not properly wearing their protective face masks in the store's back room. N.T. p. 32.
13. In response, appellant instructed her subordinate employees to adhere to the COVID-19 safety protocols. N.T. p. 32.
14. On April 28, 2020, District Manager Christopher Murphy received a complaint from Terreri about how employees were not complying with the appointing authority's COVID-19 safety protocols. N.T. p. 81.
15. On May 7, 2020, Murphy went to Store #5161 to ask appellant if the employees within the store were wearing their masks. N.T. pp. 82-83; AA Ex. 9.

16. In response, appellant said yes and affirmed the employees were wearing their protective face masks in compliance with the appointing authority's COVID-19 safety protocols. N.T. pp. 82-83, 165; AA Ex. 9.
17. Appellant believed Murphy was asking about her subordinate employee's conduct on May 7, 2020. N.T. p. 165.
18. Murphy conducted an investigation into whether appellant and her subordinate employees were adhering to the appointing authority's COVID-19 safety protocols regarding masks. N.T. p. 83.
19. Pursuant to the investigation, Murphy reviewed video surveillance for the time period of April 20, 2020 to May 11, 2020. N.T. p. 83; AA Ex. 8.
20. Video surveillance showed appellant and her subordinate employees not properly wearing their protective face masks pursuant to the appointing authority's COVID-19 safety protocols on April 21, 2020, April 28, 2020, and April 30, 2020. N.T. pp. 99, 101, 103, 107-108, 112-114, 117; AA Ex. 8.

21. Murphy also noticed there was video surveillance of appellant and her subordinate employees complying with the appointing authority's COVID-19 safety protocols throughout the time period. N.T. pp. 128-129.
22. Following his review of the video surveillance footage, Murphy contacted Human Resources Analyst 3 Edward Anton and determined to suspend appellant pending the investigation. N.T. pp. 136-137; AA Ex. 10.
23. On May 20, 2020, Murphy submitted a memorandum to his supervisor, Regional Manager Christina Hauser, summarizing his findings. N.T. p. 120; AA Ex. 9.
24. After appellant was suspended pending her investigation, Anton received and reviewed a disciplinary packet. N.T. pp. 140-141.
25. Appellant attended her fact-finding meeting on May 27, 2020. N.T. pp. 145-14; AA Ex. 12.

26. Based on the investigation's findings and appellant's fact-finding meeting, Anton recommended appellant be demoted from Liquor Store Assistant Manager 1 position to a Liquor Store Clerk 1 position. N.T. p. 147.

DISCUSSION

The issues in the present appeal are whether the appointing authority established good cause for appellant's suspension pending investigation from May 14, 2020 to June 8, 2020 and whether the appointing authority established just cause for appellant's demotion from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment. Specifically, the appointing authority charged appellant with violating safety procedures in Store #5161 from April 20, 2020 through May 11, 2020 by being observed not wearing required personal protective equipment, allowing subordinate employees to work without wearing their required personal protective equipment, and providing false information to her District Manager regarding store employees wearing their required personal protective equipment. Appellant's demotion included a final warning, where any future failure of competent performance or misconduct as a Commonwealth employee or conduct that results in a serious violation of safety procedures will result in appellant's removal. Comm. Ex. A.

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.

Likewise, under Section 2503 of Act 71 of 2018, an appointing authority may demote an employee to a position in a lower class if the employee does not satisfactorily perform the duties of the position the employee holds, and the employee is able to perform the duties of the lower-class position. 71 Pa.C.S. § 2503(a). Since a demotion of a regular status employee is the removal of the employee from a higher-level position, the appointing authority must establish just cause for removal. *See Pennsylvania Liquor Control Board v. Flannery*, 141 Pa. Commw. 228, 232, 595 A.2d 685, 687 n.2 (1991) (“We approve of the Commission’s application of the just cause standard to a regular demoted employee because a demotion is actually a ‘removal’ from the higher-level position.”) 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 Retail Wine Specialist Shawn Terreri,¹ District Manager Christopher Murphy², and Human Resources Analyst 3 Edward Anton.³ In response, appellant testified on her own behalf.

Retail Wine Specialist Terreri and District Manager Murphy described how Store #5161 operated during the early stages of the COVID-19 pandemic. Due to the COVID-19 pandemic, all stores closed in March 2020 and only provided online orders. N.T. pp. 26, 68. When the appointing authority's stores initially reopened, there were new COVID-19 safety protocols in place in response to the COVID-19 pandemic. Murphy explained all employees are required to wear their protective face masks that cover their noses and mouths at all times. Employees were instructed to sanitize their hands throughout the day and maintain social distancing. N.T. p. 69. The acceptable time employees were permitted to not wear their protective face masks were when they were eating or drinking. N.T. p. 69. Terreri explained when Store #5161 reopened, the business operations and requirements changed in response to the pandemic. Store #5161 only provided online UPS deliveries and remained open for curbside deliveries. N.T. p. 26. Terreri expressed that due to beginning stages of the pandemic, no one really knew anything about the virus. N.T. p. 30.

¹Shawn Terreri is employed as a Retail Wine Specialist at Store #5161. N.T. p. 24.

² Christopher Murphy is employed by the appointing authority as a District Manager. N.T. p. 66. As District Manager, Murphy oversees sixteen stores in Center City and the Southern Philadelphia area, including Store #5161.

³ Edward Anton is employed by the appointing authority as a Human Resources Analyst 3. As a Human Resources Analyst 3, Anton provides guidance to supervisors and managers, and reviews disciplinary recommendations and actions. N.T. p. 135.

Murphy and Terreri recalled the new COVID-19 safety protocols were communicated to supervisors and employees through email correspondence. N.T. pp. 28, 70. On April 16, 2020, Murphy received an email informing him that Store #5161 would be receiving a box full of protective face masks for the store's employees. N.T. p. 72; AA Ex. 2. Murphy forwarded the email to Allen, who would be responsible to provide the email to appellant. N.T. pp. 72-73. Murphy received the box full of protective face masks and dropped them off at Store #5161. N.T. p. 73. On April 21, 2020, Murphy forwarded an email to his subordinate employees, including appellant, describing the appointing authority's new COVID-19 safety protocols. N.T. pp. 74-75; AA Ex. 3. The new protocols⁴ provided "every employee must wear a face mask from the time they arrive at the store, while taking product to customers cars and up to the time they leave the store for the day." N.T. p. 74; AA Ex. 3. On April 23, 2020, Murphy forwarded an email to his subordinate employees, including appellant, reminding everyone to wear masks and observe social distancing. N.T. pp. 76; AA Ex. 4.

On May 2, 2020, Murphy forwarded an email to his subordinate employees, including appellant, regarding the COVID-19 pandemic. Specifically, the forwarded email reminded employees that wearing a mask at the workplace is required. "This mask must cover your nose and mouth and remain in place during your entire shift, including outside delivering a curbside order as well as on the

⁴ The protocols further provide the following: employees are not permitted to make purchases, employees are prohibited from writing credit card numbers on paper, licensee orders are not permitted, cash orders are not permitted, purchase orders more than the six-bottle limit are not permitted, only one six bottle purchase per caller per day, and the till must be reconciled. AA Ex. 3.

phone collecting orders.” N.T. pp. 77-78; AA Ex. 5. On May 6, 2020, Murphy sent an email to his subordinate employees, including appellant, reminding them the new requirement to wear their protective face masks over their nose and mouth. If they failed to comply with the new requirement, then they will be sent home and receive disciplinary action. N.T. p. 79; AA Ex. 6. On May 7, 2020, Murphy forwarded the appointing authority’s Store Operations Safety Strategy to his subordinate employees, including appellant. N.T. p. 80; AA Ex. 7. The Store Operations Safety Strategy requires the following: a mask must be worn at all times inside and outside the building while working; the mask must cover the employee’s nose and mouth; and observe social distancing by keeping approximately six feet away from one another. N.T. pp. 80-81; AA Ex. 7.

Upon returning Store #5161 on April 21, 2020, Terreri observed three of his fellow co-workers were not complying with the new requirements. N.T. pp. 28, 53. Specifically, Terreri saw Mr. Leon Crocket wearing his protective face mask around his chin and Ms. Schaul wearing her mask below her nose. N.T. pp. 54-55. Terreri recalled the appointing authority provided protective face masks for its employees. N.T. p. 56. In response to seeing his fellow co-workers not complying with the new COVID-19 safety protocols, Terreri went to appellant and Liquor Store Manager 1 Nefatiera Allen. After reporting his co-workers, Terreri saw and heard appellant and Allen instruct his co-workers to wear their protective face masks. N.T. pp. 31, 44. Terreri admitted appellant was properly wearing her protective face mask. N.T. p. 54. Later in the afternoon, Terreri participated in an impromptu meeting where Allen reinforced the requirement to wear protective face masks. N.T. p. 61.

On April 22, 2020, Terreri began his shift at Store #5161 and noticed other employees not wearing their protective face masks properly by having them around their chins in the store's back room. Terreri went to appellant to address his concern. Terreri testified appellant went to the back room and instructed her subordinate employees to wear their protective face masks properly. N.T. p. 32. Appellant returned to Terreri and told him that his co-workers were wearing their masks. N.T. p. 32. Later in the day, Terreri saw employees in the back room not wearing their masks. N.T. p. 33.

On April 28, 2020, Terreri recalled an incident in Store #5161. While packing his belongings to leave the store, Terreri began walking away from Mr. Crocket, who he believed stood too close to him. Terreri placed his headphones inside his ears and walked away from Mr. Crocket. As he was walking away, Terreri couldn't hear everything that was being said by Mr. Crocket while pointing at him but heard the phrase "suck my dick." N.T. pp. 34-35, 52. Terreri recalled appellant was in the office on April 28, 2020 and asserted she would have been able to hear the comment. N.T. p. 35.

Later during April 28, 2020, Murphy recalled Terreri raising a complaint of employees not properly wearing their protective face masks at all times. N.T. p. 81. Murphy asked Terreri to submit a memorandum in an email to him. N.T. p. 82; AA Ex. 1. Murphy began to investigate whether appellant and her subordinate employees within Store #5161 were not wearing their protective face masks. N.T. pp. 82, 97.

On April 30, 2020, Terreri believed he overheard appellant discuss with Allen the incident that occurred on April 28, 2020. N.T. p. 37. Terreri explained he felt appellant's conversation with Allen was casual. When Terreri approached appellant and Allen, he recalled Allen tell him that they were talking about him and to go back to work. N.T. pp. 38-39. After these events, Terreri sent an email to District Manager Christopher Murphy on May 6, 2020. Terreri explained he sent the email to Murphy to express his concern about the spread of the COVID-19 virus. N.T. p. 41; AA Ex. 1.

On May 7, 2020, Murphy went to Store #5161 to speak with appellant and Allen. Murphy asked appellant if the employees in the store were wearing their masks. Appellant affirmed the employees were wearing their protective face masks in compliance with the new COVID-19 safety protocols. N.T. pp. 82-83; AA Ex. 9. After speaking with appellant, Murphy reviewed video surveillance of Store #5161 for the time period of April 20, 2020 through May 11, 2020. N.T. pp. 83, 128; AA Ex. 8. Murphy explained a core coordinator would acquire the video footage for him and check the days throughout the time period for violations against the appointing authority's protocols. N.T. p. 127. Murphy admitted he reviewed a range between five to ten days of video footage. N.T. p. 128.

Video surveillance of April 21, 2020 showed appellant sitting at her computer without wearing her protective face mask. N.T. p. 97; AA Ex. 8. At 10:10 a.m., the video footage captured appellant wearing her protective face mask underneath her mouth and walking on the sales floor with two bottles toward the register. N.T. p. 99; AA Ex. 8. At 10:24 a.m., appellant wore a face shield without a protective face mask on as she walked into the office. N.T. p. 101; AA Ex. 8. At 11:58 A.M., appellant sat behind the register while properly wearing a protective

face mask. N.T. p. 101; AA Ex. 8. On April 28, 2020, at 5:21 p.m., video surveillance showed appellant working with a Liquor Store Clerk taking orders over the phone. Murphy explained “it looks like the mask was pulled underneath the nose of appellant.” N.T. p. 103; AA Ex. 8. The Liquor Store Clerk and the Security Guard appeared to have worn their protective face masks. N.T. pp. 107; AA Ex. 8.

Video surveillance of April 30, 2020, at 10:18 a.m. showed appellant sitting in her office without a protective face mask and a Liquor Store Clerk talking with her from outside the register booth without a protective face mask. N.T. pp. 107-108; AA Ex. 8. At 10:44 a.m., appellant is seen walking into the register area from her office without wearing her protective face mask. N.T. p. 112; AA Ex. 8. At 10:50 a.m., appellant and Allen are in appellant’s office without wearing protective face masks and appearing to be within six feet of each other. N.T. pp. 113-114; AA Ex. 8. At 11:05 a.m., video surveillance revealed appellant walking back and forth throughout the office without wearing her protective face mask but eventually wears it when approaching Allen and another Liquor Store Clerk, who did not wear their protective face masks. N.T. p. 117; AA Ex. 8.

After reviewing the video surveillance footage, Murphy concluded the appointing authority’s COVID-19 safety protocols were not being followed at Store #5161, where appellant and her subordinate employees were not wearing protective face masks throughout the day and not maintaining proper social distancing. N.T. p. 119. Subsequently, Murphy contacted Human Resources Analyst 3 Anton. Anton recalled Murphy contacting him regarding Store #5161. Specifically, Anton was informed that Terreri raised his concerns about employees not following the appointing authority’s COVID-19 safety protocols and reported possible bullying, as a result of raising his concerns. N.T. p. 136. After speaking with Murphy, Anton

along with his chain of command decided to suspend appellant and Allen pending investigation on May 14, 2020. N.T. pp. 136-137; AA Ex. 10. Within appellant's suspension pending investigation letter, appellant's fact-finding meeting was scheduled for May 27, 2020. N.T. p. 139; AA Ex. 10.

On May 20, 2020, Murphy also submitted a memorandum to his supervisor, Regional Manager Christina Hauser, summarizing the investigation's findings. N.T. p. 120; AA Ex. 9. Within the memorandum, Murphy recommended appellant receive the appropriate level of disciplinary action due to COVID-19 safety protocols not being followed and enforced in Store #5161 by either employees or management. N.T. p. 123. Specifically, Murphy explained appellant's non-compliance with the COVID-19 safety protocol regarding masks, failure to enforce the protocol to her subordinate employees, and the false information she gave him on May 7, 2020 supported his recommendation. N.T. p. 124. Murphy believed appellant gave him false information when she assured him the COVID-19 safety protocols were being followed. N.T. p. 124; AA Ex. 9.

Murphy acknowledged the video footage presented during the hearing were moments throughout the time period that displayed non-compliance with the appointing authority's COVID-19 safety protocols. N.T. p. 128. Murphy admitted there was video surveillance that showed appellant and her subordinate employees complying with the protocols. N.T. pp. 128-129. Murphy testified while there were issues of compliance with the appointing authority's COVID-19 safety protocols for protective face masks, other supervisors were not demoted in connection with mask compliance.⁵ N.T. p. 129.

⁵ Allen was demoted for not complying with the appointing authority's COVID-19 safety protocols. N.T. p. 130.

After suspending appellant pending investigation, Anton received a disciplinary packet containing witness statements, email correspondence, and videos. N.T. pp. 140-141. Anton further reviewed a memorandum dated May 22, 2020, from Assistant Regional Manager Joseph McGill to Director Angela Schaul recommending appellant's removal from her Liquor Store Assistant Manager 1 position. N.T. p. 143; AA Ex. 11.⁶ Anton reviewed whether appellant had a disciplinary history and found that she did not. N.T. pp. 143, 152. Based on his review of the disciplinary packet and the investigation, Anton found during the period of April 20, 2020 through May 11, 2020, appellant was seen on video not properly wearing her protective face mask and did not enforce the appointing authority's COVID-19 safety protocols to her subordinate employees. Anton also asserted appellant was not truthful to Murphy when he came to Store #5161 on May 7, 2020. N.T. pp. 144-145. On May 27, 2020, appellant attended her fact-finding meeting. N.T. pp. 145-146; AA Ex. 12. Anton recalled appellant admitting to not consistently wearing her protective face mask and did not consistently enforce the appointing authority's COVID-19 safety protocol for masks. N.T. pp. 146-147; AA Ex. 12.

Based on the investigation and appellant's fact-finding meeting, Anton recommended appellant be demoted from Liquor Store Assistant Manager 1 position to a Liquor Store Clerk 1 position. N.T. p. 147. Anton explained he reviewed the

⁶ While the document references Nefateria Allen, Anton explained the placement of Allen's name in the document was a clerical mistake and it should reference appellant. Anton noted how the subject of the memorandum identifies the appellant. N.T. pp. 142-143; AA Ex. 11.

totality of the situation regarding appellant's investigation. Anton testified "it was determined just discipline would be demotion, in that [appellant] demonstrated that she couldn't be trusted by management, that it was given false information regarding the serious pandemic, you know, face mask adherence." N.T. p. 148. Yet, Anton believed appellant could be considered a beneficial employee without any managerial responsibilities. N.T. p. 148. Anton explained appellant failed to exhibit a good example as a managerial employee by adhering and enforcing the appointing authority's COVID-19 safety protocols. N.T. pp. 149. On June 8, 2020, appellant received her demotion letter. Comm. Ex. A; N.T. p. 150; AA Ex. 13.

In response to the appointing authority's case in chief, appellant testified on her own behalf. Appellant has been employed with the appointing authority since 2005 and was a Liquor Store Assistant Manager 1 for six years. N.T. p. 166. Appellant understood she was in a managerial position as a Liquor Store Assistant Manager 1 and that her responsibility was to maintain safety in Store #5161 by ensuring her subordinate employees were following policies and procedures. N.T. pp. 180-181.

Appellant testified she was aware of the COVID-19 pandemic. Yet, appellant expressed she was not prepared and asserted the new situation was new to everyone in the store. N.T. pp. 160-161. Appellant affirmed the appointing authority's stores closed due to the COVID-19 pandemic in March 2020. During the week of April 14, 2020, Murphy contacted appellant and requested whether she was willing to come into the office. Appellant responded no and she would rather use her annual time to take time off from work. N.T. p. 161. During the week of April 20, 2020, Murphy contacted appellant again to request whether she was willing to come into the store as the stores were reopening to the public. N.T. p. 162.

Appellant voluntarily agreed to work at the store during the beginning stages of the COVID-19 pandemic. Appellant recalled Murphy instructing her to wear a protective face mask while working at Store #5161. N.T. p. 162.

Appellant recalled Terreri expressing his concerns of employees not wearing their protective face masks on April 22, 2020. In response, appellant went to the employees and told them to wear their masks. N.T. p. 172. Appellant explained she did not see the incident between Mr. Crocket and Terreri because she was in her office working. N.T. p. 172. When she heard of Mr. Crocket's statement to Terreri, appellant approached Mr. Crocket and told him watch his mouth and to put on his mask. N.T. pp. 173-174.

Appellant acknowledged she did not wear her protective face mask during the times presented in the appointing authority's video surveillance of Store #5161. N.T. pp. 164, 168, 171. Appellant asserted she did not intentionally forget to wear her protective face mask while working at the store. "I just forgot. I'm not used to it. We had to get used to it. And it took time for me to get used to it." N.T. p. 163. Appellant also admitted that she did not hold her subordinate employees accountable for wearing their protective face masks at times. N.T. p. 170. Yet, appellant expressed when she did see her subordinate employees not adhering to the appointing authority's COVID-19 safety protocols, she would tell them to wear their masks. N.T. pp. 170-171. Appellant explained she did not refer any incidents to management because "I was always taught that, you know, you can handle things in house." N.T. p. 174. Appellant acknowledged if there were consistent non-compliance with the appointing authority's COVID-19 safety protocols, then the employee should be referred to management. N.T. pp. 175-176. Appellant understood the appointing authority's COVID-19 safety protocols required

employees to wear protective face masks while working at the store. N.T. p. 167. Appellant expressed remorse and that she takes full responsibility for what occurred. N.T. p. 164.

Appellant explained Murphy came to Store #5161 twice. After Murphy asked if anyone needed masks, appellant responded yes and requested him to bring more masks to the store. On May 7, 2020, Murphy spoke to appellant in the store again. “And he asked me, everybody got their mask on? Well I didn’t know he was talking about all them other times that they had a mask on. I thought he was talking about at that time. And that’s why I told him yes, everybody got their mask on.” N.T. p. 165. Appellant testified her conversation with Murphy on May 7, 2020 was a misunderstanding. N.T. pp. 165, 176.

Having carefully reviewed the record, the Commission finds the appointing authority met its burden to show good cause for appellant’s suspension pending investigation from May 14, 2020 to June 8, 2020. Considering the beginning stages of the pandemic due to the COVID-19 virus, the appointing authority quickly implemented its COVID-19 safety protocols. These newly created protocols attempted to address the uncertainty of the spread of the COVID-19 virus within the appointing authority’s stores throughout the Commonwealth. Notably, these protocols required an employee to cover their nose and mouth with a protective face mask while working inside the store. They further instructed an employee to maintain social distancing by staying six feet away from another person. When asked by Murphy, appellant voluntarily chose to return to work in Store #5161. Appellant understood the appointing authority’s COVID-19 safety protocols and how they applied to her and her subordinate employees. Nevertheless, upon returning to Store #5161 and during the period of April 20, 2020 through May 11,

2020, appellant was seen not properly wearing her protective face mask while working inside Store #5161 on April 21, 2020, April 28, 2020, and April 30, 2020. Appellant further acknowledged not holding her subordinate employees accountable for wearing their protective face masks at all times.

We note as a Liquor Store Assistant Manager 1, appellant is a managerial employee. 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). A management employee must strictly adhere to standards and set an example for her subordinates. As a supervisor, appellant should have consistently applied and reinforced the appointing authority's COVID-19 safety protocols on April 21, 2020, April 28, and April 30, 2020. As such, appellant's failure to consistently adhere to and enforce the appointing authority's COVID-19 safety protocols in Store #5161 negatively reflect upon her competency and ability to perform her job duties as a Liquor Store Assistant Manager 1. *White, supra*.

Nevertheless, the appointing authority failed to meet its burden to show just cause for appellant's demotion from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment. Specifically, we note that the appointing authority failed to establish appellant lied to District Manager Murphy on May 7, 2020. Murphy asserted he asked appellant if the employees in the store were wearing their masks. Appellant responded yes to Murphy's question. Appellant expressed she believed Murphy's question was regarding her subordinate

employees' conduct in the store on May 7, 2020. We find appellant's response to Murphy credible⁷ that she believed her employees were adhering to the appointing authority's COVID-19 safety protocols.

Shortly thereafter, Murphy began to investigate times in Store #5161 where only non-compliance occurred. District Manager Murphy acknowledged that during the investigation of appellant's conduct from April 20, 2020 to May 11, 2020, video surveillance revealed appellant adhering to the appointing authority's COVID-19 safety protocols for wearing protective face masks. Additionally, video surveillance showed appellant's subordinate employees within Store #5161 complying with the COVID-19 protocols. While the initial disciplinary recommendation was for appellant's removal, Anton explained he modified the discipline to a demotion because he believed appellant demonstrated that she could not be trusted by giving false information to Murphy on May 7, 2020.

However, we find appellant did not provide false information to Murphy on May 7, 2020. Appellant's work history reveals she worked diligently as an employee for the appointing authority since 2005. While under the new work environment of the COVID-19 pandemic, appellant credibly explained she would instruct her subordinate employees to adhere to the appointing authority's COVID-19 safety protocols when she saw them not wearing their protective face masks. For instance, appellant properly responded to Terreri's complaints about employees not properly wearing their protective face masks by instructing them to adhere to the policy. Appellant also does not have a progressive disciplinary history.

⁷ 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).

While the appointing authority presented how appellant's misconduct warranted her suspension pending her investigation, appellant's demotion is too severe given she did not lie to Murphy on May 7, 2020.⁸

We conclude appellant did not provide false information to District Manager Murphy on May 7, 2020 regarding whether store employees were wearing their required protective face masks. Furthermore, the video surveillance and appellant's credible testimony illustrates appellant did adhere to the appointing authority's COVID-19 safety protocols from April 20, 2020 through May 11, 2020. Based upon the record, as a whole, the appointing authority failed to establish just cause for appellant's demotion pursuant to the charge that she provided false information as a Liquor Store Assistant Manager 1. *Flannery, supra*. Therefore, we are ordering the appointing authority reinstate appellant to regular Liquor Store Assistant Manager 1 employment and remove the final warning issued to her. Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence establishing good cause for suspending appellant pending her investigation under Section 2603 of Act 71 of 2018.

⁸ Under Section 3003 (8)(ii), if an employee is removed, furloughed, suspended, or demoted, the Commission may modify or set aside the action of the appointing authority. If appropriate, the Commission may order reinstatement, with the payment of the portion of the salary or wages lost, including employee benefits, as the Commission may in its discretion award. 71 Pa. C.S.A. § 3003(8)(iii).

2. The appointing authority has failed to present evidence establishing just cause for imposing appellant's demotion from Liquor Store Assistant Manager 1, regular status, to Liquor Store Clerk 1, regular status, under Section 2607 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members,⁹ dismisses the appeal of Dorothy R. Booker challenging her suspension pending investigation from regular Liquor Store Assistant Manager 1 employment from May 14, 2020 to June 8, 2020 with the Pennsylvania Liquor Control Board and sustains the action the Pennsylvania Liquor Control Board in the suspension pending investigation of appellant from regular Liquor Store Assistant Manager 1 employment from May 14, 2020 to June 8, 2020.

Moreover, the State Civil Service Commission, by agreement of its members, sustains the appeal of Dorothy R. Booker challenging her demotion from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment with the Pennsylvania Liquor Control Board and overrules the action of the Pennsylvania Liquor Control Board in the demotion of appellant from regular Liquor Store Assistant Manager 1 employment to regular Liquor Store Clerk 1 employment. We order the Pennsylvania Liquor Control Board to expunge

⁹ Chairwoman Maria P. Donatucci, who took office June 10, 2021, did not participate in the discussion of or decision for this appeal.

the demotion from the official personnel file and reinstate Dorothy R. Booker to regular Liquor Store Assistant Manager 1 employment within thirty (30) calendar days. We further award appellant reimbursement of such wages and emoluments as she would have earned had she worked as a Liquor Store Assistant Manager 1 from June 9, 2020, less wages earned and benefits received under the Public Laws of Pennsylvania as established by a sworn statement to be submitted by appellant to the appointing authority. We further order that within thirty (30) calendar days of the mailed date of this order, the appointing authority shall submit written notice of compliance with this order to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: 6/24/21