

COMMONWEALTH OF PENNSYLVANIA

James B. Walkingshaw : State Civil Service Commission  
: :  
v. : :  
: :  
Torrance State Hospital, : :  
Department of Human Services : Appeal No. 30622

Jerome J. Kaharick : Eugene K. Cuccarese  
Attorney for Appellant : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by James B. Walkingshaw challenging his suspension pending investigation and subsequent removal from regular Sexual Responsibility and Treatment Program Aide employment with Torrance State Hospital, Department of Human Services. Hearings were held on May 2, 2022 and June 9, 2022, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the post-hearing Brief submitted by the appellant.<sup>1</sup> The issue before the Commission is whether the appointing authority has established just cause to remove<sup>2</sup> appellant from his position.

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<sup>1</sup> The appointing authority filed its Brief with the Commission on November 15, 2022. As the appointing authority's Brief was submitted past the filing deadline of November 2, 2022, the Commission will not consider the Brief in our determination.

<sup>2</sup> When an appointing authority suspends an employee pending investigation and subsequently removes the employee, the period of suspension will be deemed part of the removal action. *Woods v. State Civil Service Commission (New Castle Youth Development Center, Department of Public Welfare)*, 865 A.2d 272, 274 n. 3 (Pa. Commw. 2004); 4 Pa. Code § 101.21(b)(2). Appellant having been suspended, effective August 26, 2020, pending an investigation, and having remained on suspension until his removal by letter dated April 23, 2021, we consider appellant's removal, effective as of the date of suspension to be the sole personnel action to be reviewed through this appeal.

FINDINGS OF FACT

1. By letter dated August 27, 2020, appellant was advised he had been suspended, effective August 26, 2020, pending the investigation of appellant's alleged inappropriate conduct with another staff member. Comm. Ex. A.
2. By letter dated April 23, 2021, appellant was removed from his position as Sexual Responsibility and Treatment Program Aide, regular status, with Torrance State Hospital, effective April 23, 2021. Comm. Ex. A.
3. The Department of Human Services (DHS) (hereinafter "appointing authority") charged appellant with failure to follow policy or procedure as defined by DHS Policy 7174. Comm. Ex. A.
4. The charges against appellant were based in part on his violation of Executive Order 2002-4, Prohibition of Sexual Harassment in the Commonwealth. This order includes the prohibition of:  

Sexual harassment by any Commonwealth employee against any other employee, applicant for employment, client, or other person

receiving services from or conducting business with the Commonwealth; prohibits acts of sexual harassment by persons not employed by the Commonwealth against employees of the Commonwealth in performance of their duties.

Comm Ex. A; AA Ex. 13.

5. The charges against appellant were also based in part on his violation of Management Directive 505.30, Prohibition of Sexual Harassment in Commonwealth Work Settings, which defines sexual harassment and Commonwealth policy as provided in Executive Order 2002-4, as well as outlines reporting procedures for violations of policy. Comm. Ex. A; AA Ex. 14.
  
6. The charges against appellant were further based in part on his violation of Executive Order 2016-04, Equal Employment Opportunity. This order includes the prohibition of:  

Discrimination against any employee or applicant for employment because of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability.

Comm. Ex. A; AA. Ex. 14.

7. Executive Order 2002-4 and Management Directive 505.30 define sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and/or other verbal, visual, or physical conduct of a sexual nature where:

- a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- b. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; or
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

#### EXAMPLES

Examples of acts of sexual harassment which shall not be tolerated include, but are not limited to the following, particularly when they are repeated or part of a general pattern of behavior:

**Written:** Unwelcome suggestive, sexually explicit, or obscene letters, poems, notes, or invitations.

**Verbal:** Derogatory, sexually explicit, or offensive comments, epithets, slurs or jokes; inappropriate comments about an individual's body or sexual activities; repeated unwelcome

propositions or repeated sexual flirtations; direct or subtle pressures or repeated unwelcome requests for dates or sexual activities.

**Physical:** Impeding or blocking movements, touching, patting, pinching, or any other unnecessary or unwanted physical contact.

**Visual:** Sexually oriented gestures, display of sexually suggestive or derogatory objects, pictures, cartoons, posters, or drawings.

Ex. AA. 13; Ex. AA. 14 (p. 1-2).

8. The charges were based on the following conduct:

Specifically, on August 24, 2020 in the SRTP isolation area while working a 2:1, you asked if you could give a back rub to a female employee. During the back rub you then tried to reach down the back of her pants. In addition, you asked if you could undo the bra of the female employee, you then reached around and felt her breasts above the bra and under it. You also asked if she “shaved down there” and if her boyfriend ever did anything anal with her.

Comm. Ex. A.

9. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.<sup>3</sup>
10. Appellant was hired by the appointing authority in 2009 as a psychiatric aide. N.T. p. 526.
11. In either 2014 or 2015, appellant began his employment with the appointing authority as a Sexual Responsibility and Treatment Program Aide in the Sexual Responsibility Treatment Program (hereinafter SRTP) unit at Torrance State Hospital. Appellant held this position until his termination. N.T. p. 526.
12. The function of the SRTP unit at Torrance State Hospital is to rehabilitate patients who have committed sexual assault against a minor victim before the patient was 18. N.T. p. 75.
13. Nurse C.<sup>4</sup> worked as a registered nurse in the SRTP unit at Torrance State Hospital for about two and a half years. N.T. p. 139.

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<sup>3</sup> Appellant's request for a hearing on the removal under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination.

<sup>4</sup> Due to the sensitive and personal nature of the charges against appellant involving Nurse C., the Commission will not disclose Nurse C.'s full name within this adjudication to preserve her privacy.

14. In August 2020, Nurse C. worked the overnight shift from 11:00 p.m. until 7:30 a.m. N.T. p. 144.
15. Torrance State Hospital temporarily set up a gymnasium for SRTP patients who might contract COVID-19, where new residents reported for two weeks. The hospital assigned a registered nurse and psychiatric aide to the SRTP isolation unit for each shift, including the overnight shift. N.T. pp. 145, 156.
16. No other employees or patients were allowed near the gymnasium other than the assigned registered nurse and psychiatric aide for a shift because the gymnasium was an isolation area. N.T. p. 205.
17. A ten-by-ten plastic square covering hung outside the gymnasium. Plastic curtains hung at the entryways to the gymnasium which had to be unzipped and zipped to go in and out of the isolation area. N.T. pp. 205-208
18. A charge nurse left meals outside the gymnasium door for the psychiatric aide and registered nurse inside the SRTP isolation unit. N.T. p. 205.

19. The duties of the registered nurse and psychiatric aide in the SRTP isolation unit included assessing the patient, taking vital signs, monitoring for signs of COVID-19, and helping monitor the patient through the night. N.T. p. 153.
20. On August 24, 2020, appellant and Nurse C. were the psychiatric aide and registered nurse, respectively, who were assigned to work in the SRTP unit on the overnight shift from 11:00 p.m. to 7:00 a.m. N.T. p. 146, 531.
21. Nurse C. knew appellant about two years prior to August 2020, and she only worked with appellant in the SRTP isolation unit. She classified their relationship as “just professional work, coworker quality.” N.T. pp. 148-149.
22. During appellant and Nurse C.’s overnight shift on August 24, 2020, one patient was stationed in the SRTP isolation unit. N.T. p. 155.
23. The patient got up once to use the restroom in the night, but otherwise appeared to be sleeping throughout the August 24, 2020, overnight shift. N.T. pp. 156-157, 535.

24. The patient in the SRTP isolation unit slept on a cot at one end of the gymnasium basketball court. Appellant and Nurse C. sat at a desk on the other end of the court from where they could observe the patient. N.T. pp. 156-161.
25. Appellant had asked Nurse C. multiple times per week if she wanted a backrub. N.T. p. 183.
26. On one occasion prior to August 24, 2020, Nurse C. had accepted a backrub from appellant while working together in the SRTP isolation unit. During their break together, appellant rubbed Nurse C.'s shoulders and neck for about two to three minutes. N.T. pp. 184-187.
27. Nurse C. did not feel uncomfortable while appellant gave her that previous backrub, and claimed another SRTP aide, Cindy Stewart, was present while appellant gave Nurse C. the backrub. N.T. pp. 187-188.
28. Stewart denied appellant ever offered her a backrub or being present while appellant gave Nurse C. a backrub. Stewart acknowledged she did not witness

what occurred between appellant and Nurse C. in the SRTP isolation unit on August 24, 2020. N.T. pp. 608-609.

29. Nurse C. never specifically requested that appellant give her a backrub. N.T. p. 183.
30. On August 24, 2020, Nurse C. had a migraine and appellant asked her if she wanted a backrub. N.T. p. 179-183.
31. Nurse C. accepted the backrub from appellant while neither of them were on break because she had a migraine and was hoping for some kind of relief. N.T. p. 193.
32. Around midnight during their overnight shift on August 24, 2020, while giving Nurse C. a backrub, appellant tried to reach down Nurse C.'s pants. Nurse C. was wearing jeans and a belt, and appellant was unable to reach down the front of her pants. Appellant tried to reach down the back of Nurse C.'s pants a couple of times. N.T. pp. 191-195.

33. Nurse C. did not verbally object to appellant reaching down her pants or shirt because she was in shock, she did not know what to do, and she froze. N.T. pp. 195-196.
34. Nurse C. was wearing a regular T-shirt with a bra underneath. Appellant reached from the bottom of Nurse C.'s shirt and underneath Nurse C.'s bra with both hands. N.T. pp. 198-199.
35. Appellant asked Nurse C. to take off her bra while his hands were on her breasts. N.T. p. 200.
36. In response to appellant's request she take off her bra, Nurse C. replied her dog had chewed the snap and she could not take it off. N.T. p. 192.
37. When Nurse C. tried to move away from appellant, he said, "No, no, I got it," moved his hands to Nurse C.'s back, and unsnapped Nurse C.'s bra. N.T. pp. 192-201.
38. Appellant reached under Nurse C.'s shirt with both hands and felt her chest. He continued to massage her all over and was physically close to her. At one point, appellant leaned in and smelled Nurse C.'s hair. N.T. p. 192.

39. Appellant asked Nurse C. personal questions such as whether she shaved down there or if she and her boyfriend had anal sex. He stated it was a shame if she and her boyfriend did not. N.T. p. 192.
40. Nurse C. laughed nervously when appellant asked if she shaved down there, which she assumed to mean her genital region. N.T. 202.
41. Appellant asked Nurse C. uncomfortable, personal questions while he was holding her breasts. N.T. p. 201.
42. When appellant made the inappropriate comments to Nurse C., he said them in a hushed voice into her ear, and he was very physically close to her. N.T. p. 214.
43. Appellant asked Nurse C. if he could have three minutes to do something to her. She did not hear exactly what appellant asked, but she perceived it to be sexual in nature. She laughed nervously in response to his question and said no. N.T. pp. 214, 217.

44. Appellant thanked Nurse C. multiple times for allowing him to give her the backrub and asked Nurse C. not to tell his wife about it. N.T. pp. 214-215.
45. Appellant's wife also worked for Torrance State Hospital in the SRTP unit. N.T. p. 242.
46. Appellant asked Nurse C. to wear sweatpants the next day, for which they were both scheduled to work the same overnight shift in the SRTP unit. N.T. p. 215.
47. The incident between appellant and Nurse C. on August 24, 2020, occurred around midnight and lasted around ten to twelve minutes. N.T. p. 190, 194.
48. Nurse C. did not want appellant's physical touches to occur. She did not get up or walk away during the incident because she froze. Her body language was tense and closed off. N.T. p. 203.
49. Nurse C. was afraid of saying no to appellant because she was not sure how appellant would react and because she did not know how the patient in the SRTP isolation unit would react. N.T. p. 203.

50. At the time of the incident, the patient appeared to be sleeping. Nurse C. did not observe the patient move, rollover, or otherwise make movement. N.T. p. 213.
51. As the patient in the SRTP isolation unit was a new admission at a sexual rehabilitation program, Nurse C. did not know anything about him and did not know if the patient would react if she resisted appellant's touches. She did not know how it would escalate or whether the patient would wake up and try to take part, so she remained frozen during the incident. N.T. p. 203.
52. The door to the gymnasium was about ten feet from where appellant gave Nurse C. the backrub. N.T. p. 206.
53. The door was closed throughout the overnight shift, per standard procedure. The plastic covering over the door was opaque and made everything a little blurry. The zipper to the plastic covering was closed per standard procedure. N.T. pp. 209-211.

54. Someone passing by the gymnasium would not have been able to see into the gymnasium through the plastic square outside the door and through the small one-by-one foot window in the door. N.T. pp. 206-212.
55. Appellant was aware of the barriers to see into the SRTP isolation unit and the secluded situation it created. N.T. p. 212.
56. The gymnasium where the SRTP isolation unit is located is in a subterranean room below ground level. Nurse C. did not text anyone during the rest of her overnight shift immediately following the incident because there was no cellular service or landline phone service in the SRTP isolation unit. N.T. pp. 278, 289, 623.
57. Any communication over the work radio is broadcast system wide for everyone to hear in the entire SRTP facility, including SRTP and management staff. Nurse C. deemed it inappropriate for her to use the work radio to communicate her sexual assault for everyone to hear. N.T. pp. 278-280, 290-291.

58. Nobody else observed what happened in the SRTP unit between Nurse C. and appellant on August 24, 2020. N.T. p. 213.
59. Both Nurse C. and appellant finished their entire overnight shift the night of August 24, 2020. N.T. p. 227.
60. On the morning of August 25, 2020, Nurse C. left as soon as relief staff came, around 7:10 a.m. N.T. pp. 228-229.
61. Registered Nurse Tracy Ann Bonney worked for the appointing authority at Torrance State Hospital at the SRTP unit in August 2020. N.T. pp. 300-302.
62. Bonney worked as the charge nurse for the 3:00 p.m. to 11:00 p.m. shift on August 25, 2020, and she was responsible for making the shift assignment for the next day. N.T. p. 235.
63. Nurse C. texted Bonney asking her not to assign Nurse C. to the SRTP isolation unit for the next shift the night of August 25, 2020. N.T. p. 235, 314-315.

64. Nurse C. informed Bonney appellant was “super creepy” and Nurse C. could not work two days in a row with him. N.T. p. 315.
65. Registered Nurse Susan Fekete worked for the appointing authority at Torrance State Hospital in the SRTP unit. N.T. pp. 73-74.
66. On the overnight shift from August 24, 2020, through August 25, 2020, Fekete worked as the charge nurse and was responsible for overseeing all the wards. N.T. pp. 83-86.
67. At the end of the shift on the morning of August 25, 2020, Nurse C. approached Fekete to have her temperature taken per standard procedure. N.T. pp. 97-98, 237.
68. Nurse C. showed Fekete her phone with her text message to Bonney displayed asking not to be assigned with appellant the following overnight shift. Nurse C. showed Fekete this message because Fekete was also able to make changes to the shift assignment. N.T. pp. 98-99, 237.

69. Nurse C. told Fekete she “did not want to work with him [appellant] because he had been super creepy that night.” N.T. pp. 108-109, 237.
70. On August 26, 2020, Nurse C. messaged Fekete explaining what occurred and notifying Fekete she was reporting the incident. N.T. p. 103.
71. Registered Nurse Tara Hays works for the appointing authority at Torrance State Hospital as a nurse supervisor. N.T. p. 330.
72. On or around August 26, 2020, Nurse C. called Hays, informing Hays a coworker was not appropriate with her and she was very upset over the situation. Nurse C. was tearful over the phone and paused frequently as she spoke. N.T. p. 335.
73. Hays instructed Nurse C. to email her boss, Jillian Troyan, as well as Jennifer Rydbom in Human Resources. N.T. p. 335.
74. On August 26, 2020, Nurse C. emailed her Director of Nursing, Jillian Troyan concerning her August 24, 2020, work incident with appellant.

Nurse C. copied Jennifer Rydbom from Human Resources on the email. N.T. pp. 165-167; AA. Ex. 2

75. Rydbom suggested -Nurse C. follow up with the Bureau of Equal Opportunity (hereinafter “BEO”) and gave her links on how to contact them. N.T. p. 167; AA. Ex. 2.
76. On August 26, 2020, Troyan notified appellant he was suspended immediately following the incident. Nurse C. had not seen appellant since the conclusion of their shift the morning of August 25, 2020. Comm. Ex. A; N.T. p. 247; AA. Ex. 2.
77. Following her work incident with appellant, Nurse C. heard coworkers make snide comments and openly discuss what happened in front of residents. Appellant’s wife became unfriendly and hostile toward Nurse C. Several staff members stopped talking to Nurse C and made comments about Nurse C. turning in people for sexual assault.

Nurse C. missed work a few times due to the work environment, as she took days off for her mental health and to get herself together. N.T. pp. 243-247.

78. Since the work incident the night of August 24, 2020, with appellant, Nurse C. has sought therapy and has been put on anti-depressant and anti-anxiety medication. N.T. p. 239.
79. Nurse C. switched jobs because she could not continue to work in the same facility where appellant and his wife worked. N.T. pp. 239-240.
80. On September 3, 2020, Nurse C. was interviewed by BEO investigator, Diaz Johnson regarding the August 24, 2020, work incident. N.T. pp. 169-170.
81. On February 18, 2021, Nurse C. received a letter from BEO stating that Nurse C.'s claims were unsubstantiated. Nurse C. was directed to file any appeal or reconsideration request to Carolyn Ellison, Deputy Secretary of Administration for the appointing authority. N.T. pp. 31, 254-255.

82. On February 18, 2021, Nurse C. emailed Ellison to request reconsideration of the BEO's finding of no probable cause following its investigation of Nurse C.'s discrimination complaint against appellant. N.T. pp. 39-40; AA Ex. 15.
83. On February 23, 2021, Nurse C. sent a letter to Ellison expressing her intention to appeal the decision regarding her discrimination complaint against appellant. N.T. pp. 39-40; AA Ex. 15.
84. On March 25, 2021, Ellison sent a letter notifying Nurse C. that her discrimination complaint had been reconsidered and a re-determination had been made pursuant to Management Directive 410.10 *Guidelines for Investigating and Resolving Internal Discrimination Complaints* (MD410.10). In the March 25, 2021 letter, Ellison concluded there was sufficient evidence to support Nurse C.'s allegations in her complaint. N.T. p. 46.
85. Registered Nurse Celina Vigna works for the appointing authority as Nurse Manager 1 at Torrance State Hospital. N.T. p. 315.

86. A pre-disciplinary conference (hereinafter “PDC”) was held with appellant on April 9, 2021, during which appellant failed to provide an acceptable response to his alleged conduct. Comm. Ex. A.
87. Vigna turned the matter back over to Human Resources and she did not participate in the decision-making process. N.T. p. 381.,
88. Lyle Gardner works for the appointing authority at Torrance State Hospital as Field Human Resource Officer 3. N.T. pp. 385-386.
89. On August 26, 2020, Gardner received an email from Troyan concerning an event that took place on August 24, 2020. N.T. p. 391.
90. Gardner contacted the labor relations section of Human Resources to see if they should suspend appellant pending investigation, to which they concurred. N.T. p. 391.
91. The receipt of Ellison’s March 25, 2021, letter reversing BEO’s earlier finding there was insufficient evidence to support Nurse C.’s allegation triggered the disciplinary process within labor relations. N.T. pp. 398-399.

92. The sexual harassment prevention training was an annual requirement for the appointing authority's employees. Appellant's training record reflected he received sexual harassment and discrimination training by the appointing authority at various times. N.T. p. 402; AA. Ex. 10.
93. On July 6, 2009, appellant signed off on the Commonwealth's sexual harassment policy which was given out during orientation. N.T. pp. 403-404; AA. Ex. 11.
94. Both the Governor's Office Executive Order 2002-4 and Management Directive 505.30 concerning the prohibition of sexual harassment were available to all Commonwealth employees on the DHS website and were both incorporated into appellant's annual sexual harassment training. N.T. pp. 406-408.
95. Commonwealth's policies inform employees the Commonwealth will not tolerate sexual harassment in the workplace under any circumstances. N.T. p. 418.
96. After human resources and labor relations received Vigna's PDC summary and outcome, Gardner's office put together a discipline package and sent it

to their CEO, Stacy Keilman, for review and recommendation concerning the level of discipline to impose. N.T. pp. 409-411.

97. Keilman agreed the appropriate discipline was to remove appellant from employment. N.T. p. 411.
98. Donnatelli Hess within the Executive Offices of the Office of Mental Health Substance Abuse Services gave final approval for appellant's removal. N.T. pp. 412-414.

## DISCUSSION

By letter dated April 23, 2021, the appointing authority removed appellant from his position as a Sexual Responsibility and Treatment Program Aide. Comm. Ex. A. Appellant challenged this action under Section 3003(7)(i) of Act 71 of 2018 (hereinafter "the Act"<sup>5</sup>). 71 Pa.C.S.A. § 3003(7)(i). Thus, the sole issue before the Commission is whether the appointing authority has established just cause for the removal.

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<sup>5</sup> Act of June 28, 2018, P.L. 460, No. 71, § 1.

In an appeal challenging the removal of a regular status employee, the appointing authority bears the burden of proving just cause for the removal 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 (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 charge, the appointing authority presented the testimony of Nurse C.,<sup>6</sup> Deputy Secretary Carolyn Ellison,<sup>7</sup> Registered Nurse Susan Fekete,<sup>8</sup> Registered Nurse Tracy Ann Bonney,<sup>9</sup> Registered Nurse Tara Hays,<sup>10</sup> Nurse

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<sup>6</sup> Nurse C. began working for the appointing authority as a Registered Nurse at Torrance State Hospital in 2015. N.T. p. 139. Beginning in 2018, Nurse C. worked as a Registered Nurse in Torrance Hospital's SRTP unit for about two to three years. N.T. pp. 139-140. Nurse C.'s duties included handling medications, paperwork, preparing consults, assessing patients, serving residents, and supervising the psychiatric aides. N.T. p. 141

<sup>7</sup> Ellison is employed by the appointing authority as Deputy Secretary of Administration at the Department of Human Services. N.T. p. 31. Ellison has held this position since February 2018. N.T. p. 31. In that capacity, Ellison handled Civil Rights compliance for entities licensed by the appointing authority, to include state hospitals. N.T. p. 35. Ellison also oversaw the Bureau of Equal Opportunity, which handled sexual harassment claims up until February 2021. N.T. pp. 33-34.

<sup>8</sup> Fekete is employed by the appointing authority at Torrance State Hospital as a Registered Nurse. N.T. p. 70. Fekete has held this position for approximately three years. N.T. p. 73. Fekete's duties included supervising the psychiatric aides as well as handling scheduling responsibilities. N.T. p. 74.

<sup>9</sup> Bonney is employed by the appointing authority at Torrance State Hospital as a Registered Nurse. N.T. p. 300. Bonney has held this position for approximately three and a half years. N.T. p. 301. As part of her role as charge nurse for the SRTP building, Bonney handled scheduling responsibilities for the SRTP unit. N.T. pp. 307-308.

<sup>10</sup> Hays is employed by the appointing authority at Torrance State Hospital as a Registered Nurse. N.T. p. 328. Hays has held this position for 15 years. N.T. pp. 328-329. In August 2020, Hays worked for the appointing authority as a Registered Nurse Supervisor. N.T. pp. 329-330. In that capacity, Hays oversaw all buildings on Torrance State Hospital grounds and maintained staffing. N.T. p. 331.

Manager 1 Celina Vigna,<sup>11</sup> Field Human Resource Office 3 Lyle Gardner,<sup>12</sup> Forensic Registered Nurse Supervisor Brittany Ann Felentzer,<sup>13</sup> and Sexual Rehabilitation Training Program Aide Cindy Stewart.<sup>14</sup> Appellant testified on his own behalf.

Having carefully reviewed the evidence, we find the appointing authority has established the charges against appellant and established just cause for his removal. In support of our conclusion, we find credible<sup>15</sup> the testimony provided by the appointing authority's witnesses.

Appellant was charged with failure to follow policy or procedure as defined by DHS Policy 7174. Comm. Ex. A. Specifically, the charges against appellant were based on his violation of Executive Order 2002-4 and Management Directive 505.30, the Commonwealth's policies concerning the prohibition of sexual

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<sup>11</sup> Vigna is employed by the appointing authority at Torrance State Hospital as Nurse Manager 1. N.T. p. 351. Vigna has held this position for approximately four years. N.T. pp. 351-352. In that capacity, Vigna oversaw the SRTP building, handled scheduling and staffing, and handled any issues with human resources. N.T. p. 353.

<sup>12</sup> Gardner is employed by the appointing authority at Torrance State Hospital as Field Human Resource Officer 3, Human Resources Director. N.T. pp. 385-386. Gardner has held this position for approximately 11 years. N.T. p. 386. Typically, Gardner's capacity as Human Resources Director did not include his involvement in the disciplinary process. N.T. p. 390. In this instance, as Gardner's labor relations coordinator, Lauren Franko, assisted in the investigation of appellant, Gardner assisted Harrisburg's labor relations section in determining the charges against appellant. N.T. pp. 390, 398-399.

<sup>13</sup> Felentzer is employed by the appointing authority at Torrance State Hospital as Forensic Registered Nurse Supervisor. N.T. p. 465. Felentzer has held this position for approximately two years. N.T. p. 470. In August 2020, Felentzer worked as a Forensic Registered Nurse. N.T. p. 472. In August 2020, Felentzer also served as secretary of the SCIU Healthcare BA Union. N.T. p. 473.

<sup>14</sup> Stewart is employed by the appointing authority at Torrance State Hospital as a Sexual Responsibility Treatment Program Aide. N.T. p. 593. Stewart has held this position since 2010. N.T. p. 593. Stewart worked with both appellant and Nurse C. in her capacity as an SRTP aide. N.T. p. 596.

<sup>15</sup> 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).

harassment. *See* Findings of Fact Nos. 3-5. These violations arose from appellant's inappropriate conduct toward Nurse C. during their overnight shift together from August 24, 2020, through August 25, 2020, in the SRTP isolation unit. *See* Finding of Fact No. 8; Comm. Ex. A.

Appellant was assigned as the psychiatric aide to the overnight shift in the SRTP isolation unit on August 24, 2020. Nurse C. was assigned to the same shift as the registered nurse. During that shift, appellant and Nurse C. had to monitor only one patient in the isolation unit. That patient slept for the majority of the overnight shift, only getting up once to use the bathroom. No other workers were allowed in and out of the isolation unit during that shift, as the gymnasium had been sectioned off for COVID-19 quarantine use. It was hard for anyone outside the isolation unit to see inside the gymnasium, as an opaque, zipped plastic covering was hung just outside the only door to the unit. Appellant had worked in the SRTP isolation unit on multiple prior occasions, and he was aware of the barriers to see into the gymnasium as well as the secluded situation it created. *See* Findings of Fact Nos. 15-23, 53-55.

Under the pretense of giving Nurse C. a backrub to help with her migraine, appellant made unwanted, inappropriate contact with Nurse C. This inappropriate conduct included touching Nurse C. underneath her clothes without her consent as well as asking Nurse C. personal questions regarding her sex life with her boyfriend. *See* Findings of Fact Nos. 30-42. This conduct clearly constitutes sexual harassment pursuant to Commonwealth policy, as appellant made sexually explicit comments, made inappropriate comments about Nurse C.'s sexual activities,

and made unwanted physical contact with Nurse C. *See* Finding of Fact No. 8. At no time did Nurse C. consent to appellant's physical contact beyond a backrub. In response to the unwanted physical contact, Nurse C. froze and did not verbally object to appellant's conduct. *See* Finding of Fact No. 48. Nurse C. explained she did not verbally object to appellant's conduct because she was not sure how either appellant or the patient would react if she said no. *See* Findings of Fact Nos. 49-50. Notably, the patient in the SRTP isolation unit was at Torrance State Hospital for rehabilitation for a prior sexual assault. *See* Finding of Fact No. 51. Nurse C.'s failure to object to appellant's conduct did not equal consent.

Immediately following her shift on the morning of August 25, 2020, Nurse C. began reporting appellant's conduct and requested she not be assigned to work with appellant again in the SRTP isolation unit. *See* Findings of Fact Nos. 63-72. As a result, appellant was suspended pending an investigation. *See* Finding of Fact No. 76. At his PDC, appellant gave a categorical denial in response to Nurse C.'s allegations against him. N.T. pp. 377-378, 547. We do not find credible appellant's assertion that nothing inappropriate occurred between him and Nurse C. on August 24, 2020. Nurse C. credibly testified about what occurred on August 24, 2020, and she timely reported the incident to numerous Torrance State Hospital staff members. Although one of the appointing authority's witnesses, Cindy Stewart, testified she never saw appellant give Nurse C. a backrub, she acknowledged she did not witness the incident in the SRTP isolation unit between appellant and Nurse C. *See* Finding of Fact No. 28. Thus, Stewart's testimony does not serve to either bolster appellant's testimony or hinder Nurse C.'s testimony concerning the events in the SRTP isolation unit on August 24, 2020.

Lyle Gardner reviewed the HR Policy 7174 tables of discipline in consideration of appellant's conduct and determined mitigation factors, such as appellant's length of service with the appointing authority since 2009, were not sufficient to warrant a lower level of discipline. N.T. p. 417; AA Ex. 12. Not only did appellant undergo annual sexual harassment training, but he signed off on the Commonwealth's sexual harassment training policy. *See* Findings of Fact Nos. 92-93. Gardner explained all Commonwealth policies inform employees the Commonwealth will not tolerate sexual harassment in the workplace under any circumstances. Although this was appellant's first offense, his actions were egregious enough to require his removal from employment. N.T. pp. 417-418.

Based on the above, we find the appointing authority had just cause to remove appellant. Appellant's inappropriate conduct toward Nurse C. affected his ability to perform his job duties, particularly as the SRTP unit was established to rehabilitate individuals who, before eighteen, sexually assaulted minors. *Woods*. Moreover, we find the appointing authority presented credible evidence establishing appellant's inappropriate conduct toward Nurse C. violated the Commonwealth's sexual harassment policies. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish just cause for removal under Section 2607 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of James B. Walkingshaw challenging his removal from regular Sexual Responsibility and Treatment Program Aide employment with Torrance State Hospital, Department of Human Services., and sustains the action of Torrance State Hospital, Depart of Human Services in the removal of James B. Walkingshaw from regular Sexual Responsibility and Treatment Program Aide employment, effective August 26, 2020.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Pamela M. Iovino  
Commissioner

Mailed: March 20, 2023