

COMMONWEALTH OF PENNSYLVANIA

Theresa M. Snyder	:	State Civil Service Commission
	:	
v.	:	
	:	
State Correctional Institution at Phoenix,	:	
Department of Corrections	:	Appeal No. 30698
Scott Stedjan		Jocelyn G. Schultz
Attorney for Appellant		Attorney for Appointing Authority

ADJUDICATION AFTER RECONSIDERATION

This is an appeal by Theresa M. Snyder challenging her Level One Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from regular Educational Guidance Counselor, Correction Education, employment with the State Correctional Institution at Phoenix, Department of Corrections.¹ A hearing was held on October 27, 2021, 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 Briefs submitted by the parties. The issue before the Commission is whether the appointing authority established good cause for appellant’s Level One ADLS.

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

FINDINGS OF FACT

1. On February 3, 2021, appellant was issued a Level One ADLS equivalent to a one-day suspension, from her regular Educational Guidance Counselor, Correction Education, employment. Comm. Ex. A; N.T. pp. 243, 258, 278, 301, 423.

2. The February 3, 2021 letter provides the following reasons for appellant's Level One ADLS:

Specifically, it was determined that between November 2019 through May 2020 your conduct was unacceptable, not respectful or professional, and made a hostile work environment for a co-worker. This unacceptable conduct included, but was not limited to, making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with other staff members.

This behavior is unacceptable and any infraction(s)/offense(s) of a similar, or related nature following the date of this notice will result in more severe, progressive discipline, up to and including termination. It is our sincere hope that your record will show improvement and that further discipline will not be necessary.

Comm. Ex. A.

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. Exs. C, D.
4. Before the hearing began, the parties elected to proceed solely under Section 3003(7)(i) of Act 71 of 2018. N.T. pp. 19, 342.
5. Appellant is currently employed as an Educational Guidance Counselor at the State Correctional Institution at Phoenix (hereinafter “SCI-Phoenix”) and has worked at SCI-Phoenix since December 2007. N.T. pp. 338, 339.
6. As an Educational Guidance Counselor, appellant is responsible for maintaining efficient and effective written and oral working relationships with staff. N.T. p. 400; AA Ex. 9.
7. Appellant received the appointing authority’s Code of Ethics in writing. N.T. p. 339.
8. Appellant signed, acknowledged, and agreed to abide by the appointing authority’s Code of Ethics on August 9, 2010. N.T. p. 260; AA Ex. 8.

9. The appointing authority's Code of Ethics, Section B-10 provides employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated. N.T. p. 259; AA Ex. 7 (pg. 4).
10. In March 2019, Adult Education Teacher Mary Irvin, a Caucasian female, was waiting for her supervisor, Principal Michael Barr, to conclude his meeting with appellant outside of appellant's office in the Education Department's West Program Services Building. N.T. pp. 45, 49, 374; AA Ex. 1.
11. After the meeting concluded, appellant approached Irvin and told her to move on, but Irvin responded she needed Barr to allow her into the Education Department's classrooms. N.T. pp. 45, 50; AA Ex. 1.
12. After hearing Irvin's response, appellant told Irvin, "just because you're white, does not mean you're right." N.T. pp. 45, 50, 375, 401; AA Ex. 1.
13. Appellant believed Irvin was using her "white privilege." N.T. p. 376.

14. Despite reporting appellant's statement to Barr, and believing he would address appellant's conduct, Irvin noticed Barr did not address appellant's statement and as a result, Irvin began reporting appellant's conduct through her DC-121 form in November 2019. N.T. p. 44; AA Ex. 1.

15. During the time period of November 22, 2019, through May 2020, appellant told Corrections Officer 1 Shalonda Tillery she had to watch out for Irvin because "she's trying to take our men." N.T. pp. 159, 188-189; AA Ex. 5.

16. Tillery understood appellant's reference to "our men" to be African American men. N.T. p. 159; AA Ex. 5.

17. When appellant would see Corrections Officer Keith Mitchell with Irvin inside the Education Department's West Program Services Building, appellant would tell Tillery "they need to stay with their own kind." N.T. pp. 160, 170, 188-189; AA Ex. 5.

18. Tillery understood that appellant meant that Caucasians should only be with Caucasians and African Americans should only be with African Americans. N.T. pp. 160, 170-171.
19. Appellant told Tillery that Irvin thinks she's better than them because she dates African American men. N.T. pp. 170, 188-189; AA Ex. 5.
20. Field Human Resources Officer Scott Distler reviewed Irvin's submitted DC-121 reports and conducted an investigation into appellant's conduct between November 2019 through May 2020. N.T. p. 243.
21. Pursuant to the investigation, Irvin, Mitchell, Corrections Officer 1 Darrel Parker, II, Tillery, appellant, and Business Technology Teacher Darlea Felder participated in interviews and submitted Staff Interview Forms. N.T. pp. 71-72, 139, 156, 249, 253; AA Exs. 2, 3, 4, 5, 6.
22. On November 30, 2020, appellant received her pre-disciplinary conference (hereinafter "PDC") notice outlining her violations of the appointing

authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29, and scheduling her PDC for December 3, 2020. N.T. pp. 258, 259, 269-270, 271; AA Ex. 10.

23. The November 30, 2020, PDC notice letter provides the following reasons supporting the outlined violations:

Specifically, you should be prepared to respond to the allegations that between November 2019 through May 2020 you harassed and made a hostile work environment for a co-worker, (M.I.) to include, but not limited to, making racial and/or discriminatory comments directly at this co-worker and/or when referring to her in conversation. Also, you referred to another co-worker (K.M.) as "Uncle Tom", and disparaged the other co-worker (M.I.) when speaking about her dating black men, how she should only date her own kind, and that she thinks she is better because she is white and dates black men; and you likewise behaved inappropriately toward other co-workers in the Education Department. Also, in November 2019 and in January 2020 you reinstated Inmate [R] back into an education department program in contravention to orders previously given by the principal

barring the inmate from the school, and you did so with the intent to inflict mental anguish, or discomfort, and/or embarrassment on a co-worker.

AA Ex. 10.

24. Deputy Superintendent Nathan Wynder conducted appellant's PDC on December 3, 2020. N.T. pp. 311, 319, 320.
25. After appellant's PDC, Wynder and the panelists concluded appellant violated the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29, and submitted their conclusion. N.T. p. 323.
26. Upon reviewing the investigation's findings, and the PDC panel's conclusion, the SCI-Phoenix Superintendent determined appellant's level of discipline would be a Level-One ADLS for violating the appointing authority's Code of Ethics, Section B-10. Comm. Ex. A; N.T. pp. 243, 276-277, 278, 301.

DISCUSSION

The issue before the Commission is whether the appointing authority established good cause for appellant's Level-One ADLS. In response, the appellant argues she did not have sufficient notice of the grounds for discipline to develop an adequate defense. The Commission will address whether the appointing authority provided sufficient notice to appellant first.

During the course of the hearing and at the conclusion of the appointing authority's presentation, appellant raised a motion to dismiss for the appointing authority's failure to provide sufficient notice of the reasons supporting appellant's Level-One ADLS. N.T. p. 340. The ruling was deferred at the hearing. N.T. p. 342. The appointing authority argued that appellant's insufficient notice argument was waived because it was not raised as an issue within appellant's Appeal Request Form. AA. Bf. p. 25. In support of their argument, the appointing authority relies upon *Martin v. State Civ. Serv. Commn. (Dept. of Community and Econ. Dev.)*, where the Court held the appellant's argument of a deprivation of due process was waived by his failure to raise the issue in his Appeal Request Form to the Commission. *Martin v. State Civ. Serv. Commn. (Dept. of Community and Econ. Dev.)*, 741 A.2d 226, 229-30 (Pa. Commw. 1999). In response, appellant asserts that she properly raised the issue of insufficient notice before the appropriate government unit during the course of the hearing. Ap. Bf. p. 22.

Waiver is the knowing relinquishment or abandonment of a right. *Bosnjak v. State Civ. Serv. Commn.*, 781 A.2d 1280, 1285 (Pa. Commw. 2001). To constitute a waiver of a legal right, there must be a clear, unequivocal and decisive

act of the party with knowledge of such right and an evident purpose to surrender it. *Brown v. City of Pittsburg*, 186 A.2d 399, 401 (1962). Upon reviewing appellant's Appeal Request Form, appellant checked off "violation of Act 71 of 2018 (Civil Service Reform) or Rules." Comm. Ex. B. Also, at the beginning of the hearing, both parties elected to proceed solely under Section 3003(7)(i) of Act 71 and declined to proceed under Section 3003(7)(ii) for appellant's raised traditional discrimination claims. Comm. Ex. B; N.T. pp. 19, 342. Nevertheless, we find the appellant did not waive her issue regarding insufficient notice and the instant case is distinguishable from *Martin v. State Civ. Serv. Commn. (Dept. of Community and Econ. Dev.)*. Unlike in *Martin*, appellant's Appeal Request Form did allege a violation of the Act and Rules and the hearing was previously granted under both Section 3003(7)(i) and Section 3003(7)(ii). Comm. Exs B, C, D. Although appellant elected to proceed solely under Section 3003(7)(i), appellant's clear, decisive act of raising the motion of insufficient notice during the hearing was sufficient to preserve the issue on appeal and as a result, appellant did not waive the notice issue. *Brown, supra*.

Next, the Commission will consider the sufficiency of appellant's notice. Appellant argues the appointing authority's notice fails to describe with adequate detail the grounds for appellant's discipline necessary to prepare a defense. Appellant compares the charges and reasons listed in her pre-disciplinary conference (hereinafter "PDC") notice to the language within her Level-One ADLS letter. Specifically, appellant's PDC notice provides an outline of violations against the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29. AA Ex. 10. The reasons supporting the allegations of violating the appointing authority's Code of Ethics are as follows:

Specifically, you should be prepared to respond to the allegations that between November 2019 through May 2020 you harassed and made a hostile work environment for a co-worker, (M.I.) to include, but not limited to, making racial and/or discriminatory comments directly at this co-worker and/or when referring to her in conversation. Also, you referred to another co-worker (K.M.) as “Uncle Tom”, and disparaged the other co-worker (M.I.) when speaking about her dating black men, how she should only date her own kind, and that she thinks she is better because she is white and dates black men; and you likewise behaved inappropriately toward other co-workers in the Education Department. Also, in November 2019 and in January 2020 you reinstated Inmate [R] back into an education department program in contravention to orders previously given by the principal barring the inmate from the school, and you did so with the intent to inflict mental anguish, or discomfort, and/or embarrassment on a co-worker.

AA Ex. 10. By contrast, appellant’s Level-One ADLS letter informs appellant of her December 3, 2020 PDC, but only provides reasoning for the determination that she violated the appointing authority’s Code of Ethics, Section B-10. Comm. Ex. A. In support of the Level-One ADLS, the February 3, 2021, Level-One ADLS letter states the following reasons:

Specifically, it was determined that between November 2019 through May 2020 your conduct was unacceptable, not respectful or professional, and made a hostile work environment for a co-worker. This unacceptable conduct included, but was not limited to, making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with other staff members.

Comm. Ex. A. Appellant claims 1) the letter does not provide specific dates for the racial or discriminatory comments during the period of November 2019 through May 2020 to allow appellant to respond to the comments; 2) the letter fails to identify the co-worker(s) subjected to the alleged racial or discriminatory comments where the PDC notice lists two individuals; and 3) the language “included but not limited to” signifies appellant’s discipline resulted from allegations for which she did not receive notice. Ap. Bf.

In response, the appointing authority argues it has provided appellant sufficient notice by identifying the relevant section of the Code of Ethics that was also present in appellant’s PDC notice. Moreover, the appointing authority argues this matter is similar to *Bazargani v. State Civ. Serv. Commn.*, where the Court held an employee was given sufficient notice of her suspension because the notice’s terms “proper allegations and pre-disciplinary conferences” placed the employee on notice that her suspension was due to her administrative and monitoring responsibilities discussed during her PDC. *Bazargani v. State Civ. Serv. Commn.*, 711 A.2d 529, 533 (Pa. Commw. 1998). Here, the appointing authority asserts appellant’s PDC notice and Level-One ADLS notice provided her with sufficient information to ascertain the charges in order to prepare a defense because they outline the charge against her, reiterate the relevant six-month period, and refer to racial and discriminatory comments to other co-workers. AA Bf.

Pursuant to §105.3 of the Commission’s Rules and Regulations:

Notices of removal, involuntary demotion or suspension issued to regular employees shall include a clear statement of the reasons therefore, sufficient to apprise the employee

of the grounds upon which the charges are based. Notices determined to be defective may result in the reversal of the personnel action.

4 Pa. Code § 105.3. The purpose of the notice requirement is to satisfy due process by affording an employee reasonable notice of the charges against her so that she will have sufficient opportunity to answer the charges and contest her disciplinary action. *Woods v. State Civ. Serv. Commn.*, 912 A.2d 803, 811–12 (Pa. 2006) citing *Chavis v. Philadelphia County Bd. of Assistance, Dep't of Public Welfare*, 370 A.2d 445, 447 (Pa. Commw. 1977). The notice need not be drafted with the certainty of a bill of information, but it must be framed in a manner which enables the employee to discern the nature of the charges and adequately prepare a defense. *Bosnjak v. State Civ. Serv. Commn.*, 781 A.2d 1280, 1284 (Pa. Commw. 2001) citing *Wood v. Department of Public Welfare*, 411 A.2d 281 (Pa. Commw. 1980).

Upon review of the arguments and appellant's PDC notice and Level-One ADLS letter, we find the appointing authority provided sufficient notice to appellant regarding racial or discriminatory comments directed to co-workers and in referring to co-workers in conversations. When comparing appellant's PDC notice and her Level-One ADLS letter, it is clear that appellant was placed on notice and that her Level-One ADLS was for violating the appointing authority's Code of Ethics, Section B-10 for unacceptable and unprofessional conduct. Comm. Ex. A; AA Ex. 10. Moreover, appellant's PDC notice outlines specific incidents of racial and discriminatory comments made to co-workers, which are directly referred to in appellant's Level-One ADLS letter as "making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with

other staff members.” Comm. Ex. A; AA Ex. 10. Like in *Bazargani*, the Level-One ADLS letter was framed in a manner which enabled appellant to discern the nature of the charge was related to racial and discriminatory comments discussed during her PDC. *Bosnjak, supra*.

However, we find appellant did not receive sufficient notice regarding her conduct in relation to Inmate R. While appellant’s PDC notice refers to appellant reinstating Inmate R into the Education Department program with the intent to inflict mental anguish, discomfort, and embarrassment to a coworker, the Level-One ADLS is void of any such information to allow appellant to adequately prepare a defense. *Woods, supra*. She also did not receive notice that the appointing authority was considering appellant’s interactions with Adult Education Teacher Irvin regarding her encounters with an inmate, who was suspected to have COVID-19, and encounters with appellant by a secondary copier. N.T. pp. 61, 62, 64, 66, 98-99, 109; AA Ex. 1. Upon reviewing appellant’s PDC notice and Level-One ADLS notice, there is no information mentioning the above-mentioned interactions as reasons to support appellant’s Level-One ADLS. Comm. Ex. A; AA Ex. 10. As such, we find appellant did not have sufficient notice to defend against these alleged incidents. *Woods, supra*.

Therefore, the remaining issue in the present appeal is whether the appointing authority established good cause for appellant’s Level-One ADLS based on the alleged racial and discriminatory comments from November 2019 through May 2020. 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 Adult Education Teacher Mary Irvin,² Corrections Officer 1 Darrell Parker, II,³ Corrections Officer 1 Shalonda Tillery,⁴ Deputy Superintendent Joseph Terra,⁵ Deputy Superintendent Nathan Wynder,⁶ and Field Human Resources Officer Scott Distler.⁷ In response, appellant testified on her own behalf and presented the testimony of Business Technology Teacher Darlea Felder.

² Irvin is employed by SCI-Phoenix as an Adult Education Teacher. N.T. p. 34. Irvin's responsibilities and duties include teaching inmates the core classes for them to succeed in a GED program or the Commonwealth's secondary-diploma program. N.T. pp. 36, 186.

³ Parker is employed by the appointing authority as a Corrections Officer 1. N.T. p. 132. Parker's responsibilities include providing the care, custody, and control of inmates and facility operations. N.T. p. 132. Parker would be posted at the facility's Education Department's West Program Services Building at least three times a week. N.T. p. 132. During the time of appellant's reported conduct, Parker was a Corrections Officer Trainee. As a Corrections Officer Trainee, Parker was responsible for moving inmates throughout the facility to their proper locations and checking the inmates' passes to verify they are allowed in the locations. N.T. p. 133.

⁴ Tillery is employed by the appointing authority as a Corrections Officer 1 assigned to the Education Department's West Program Services. N.T. p. 153. As a Corrections Officer 1, Tillery monitors staff and inmates throughout the facility for their safety. N.T. p. 155. Tillery reports for duty Monday through Friday from 8:00 a.m. to 4:00 p.m. N.T. p. 155.

⁵ Terra is employed as a Deputy Superintendent of Centralized Services. N.T. p. 203. Terra is responsible for overseeing and supervising the Culinary Department and Education Department. N.T. pp. 203-204. Terra further supervised former Principal Michael Barr. N.T. p. 219. Terra explained one of his responsibilities as a Deputy Superintendent is to assign fact-finders for investigations into violations of the appointing authority's policies and the Code of Ethics. N.T. p. 206.

⁶ Wynder is employed by the appointing authority as a Deputy Superintendent for Facilities Management. N.T. p. 310. Wynder's responsibilities include overseeing all security personnel within the SCI- Frackville. N.T. pp. 308, 310-311.

⁷ Distler is employed as a Field Human Resources Officer. Before being promoted to the Field Human Resources Officer position, Distler was a Human Resource Analyst. Distler's responsibilities include reviewing and coordinating union-related grievances and overseeing the investigative and disciplinary process for SCI-Phoenix's staff. N.T. p. 242. Distler also maintains employee performance reviews (hereinafter "EPR"). N.T. p. 280. Distler noted appellant's EPR for the time period of November 2019 through November 2020 was completed prior to her Level-One ADLS. N.T. p. 284; AA E 6.

Appellant is employed as an Educational Guidance Counselor at SCI-Phoenix. Appellant began working for the appointing authority at State Correctional Institution at Graterford (hereinafter “SCI-Graterford”) in November 2004. Appellant was promoted to Educational Guidance Counselor in December 2007 and moved to SCI-Phoenix in the same position when SCI-Graterford closed. N.T. p. 338. As an Educational Guidance Counselor, appellant is responsible for enrolling inmates into vocational classes and responsible for maintaining efficient and effective written and oral working relationships with staff. N.T. pp. 395, 400; AA Ex. 9.

Also, appellant is required to abide by the appointing authority’s Code of Ethics, Section B-10, in order to treat her peers and supervisors properly and professionally. N.T. p. 401; AA Exs. 7, 8. Appellant received a copy of the appointing authority’s Code of Ethics and acknowledged her receipt in writing. N.T. p. 339. Appellant agreed, signed, and acknowledged to abide by the appointing authority’s Code of Ethics on August 9, 2010. N.T. p. 260; AA Ex. 8.

Adult Education Teacher Irvin met appellant during the introduction week for new Educational Department Staff. During the introduction week, Irvin approached appellant to inquire how to join the union. Instead of providing details of how to join the union, appellant began yelling at Irvin and telling her she could not join the union. Two days later, appellant called Irvin into her office and gave Irvin the form to join the union. N.T. pp. 38-39. During the meeting in appellant’s office, Irvin recalled appellant warning her about the facility’s staff “because they’re racist.” N.T. p. 39.

On November 22, 2019, Irvin reported appellant's racially charged statement toward her outside of appellant's office in March 2019. N.T. pp. 42, 44; AA Ex. 1. Irvin was waiting outside of appellant's office for Principal Michael Barr,⁸ who was in a meeting with appellant. N.T. p. 49; AA Ex. 1. Irvin explained because she did not receive Academy training, she could not move throughout the facility without an escort. N.T. p. 49; AA Ex. 1. While Irvin was waiting for Barr to conclude his meeting with appellant, appellant left her office, approached Irvin, and yelled at her to move on. Irvin told appellant she did not know what was going on and she needed Mr. Barr to let her into a classroom. Appellant responded, "just because you're white, don't [sic] mean you're right." N.T. pp. 45, 50; AA Ex. 1. After appellant left Irvin, Irvin went to Mr. Barr, who overheard appellant's statement. She told Mr. Barr that "this is never going to be okay." N.T. p. 50. After experiencing appellant's racial and discriminatory comment, Irvin submitted a DC-121 form, known as an Employee Report of Incident.⁹ N.T. pp. 40, 43; AA Ex. 1.

After submitting her DC-121 form, Irvin requested a meeting with Deputy Superintendent Joseph Terra because Barr was not addressing appellant's behavior. N.T. pp. 44, 54, 207, 208; AA Ex. 1. Terra met with Irvin and instructed her to remain professional and to document any further incidents within the facility.¹⁰

⁸ Mr. Barr was a former Principal of SCI-Phoenix's Education Department, who was responsible for supervising appellant and Irvin, and for disciplinary actions for his subordinate staff. N.T. pp. 49, 219, 223, 230. Due to the investigation of appellant's conduct, Mr. Barr voluntarily resigned in lieu of his demotion to Adult Basic Education Teacher. N.T. pp. 229, 303. Terra explained Mr. Barr was being demoted because of his failure to report incidents that were occurring under his supervision of the Education Department, for failing to be an effective leader, and for failing to control the Education Department. N.T. pp. 229-230. Terra acknowledged the incidents leading to Mr. Barr's demotion included appellant's reported behavior and other incidents, as well. N.T. pp. 232-233.

⁹ A DC-121 form allows an employee to report staff or inmate misconduct and incidents within the facility. N.T. p. 42.

¹⁰ After he received Irvin's DC-121s, Terra assigned a fact-finder to investigate the reported conduct. N.T. p. 208. Terra also forwarded Irvin's DC-121s to Human Resource Officer Dana Williams because the reported incidents alleged harassment. N.T. p. 208.

N.T. pp. 54, 209, 221. As a result, Irvin continued to report appellant's discriminatory and harassing conduct from November 2019 through May 2020. N.T. pp. 40, 43; AA Ex. 1.

Irvin and Corrections Officer Tillery described how appellant referred to Irvin's race during conversations with Tillery between November 2019 through May 2020. N.T. pp. 76, 158; AA Ex. 5. When Tillery would speak to Irvin, appellant would wait for Irvin to leave and ask Tillery questions. Tillery recalled appellant asking her why she was talking to Irvin. Tillery would respond that Irvin was new and expressed she wanted to help her. However, Tillery testified "[appellant] would say I have to watch out for her because she's trying to take our men and stuff like that." N.T. pp. 159, 188-189; AA Ex. 5. Tillery explained appellant's reference to "our men" referred to African American men. N.T. p. 159; AA Ex. 5. Appellant also told Tillery that she thought the Adult Education Teacher was not the job for Irvin because "she looks like that type." N.T. p. 196. When Tillery asked appellant to clarify, appellant said she didn't think Irvin could deal with inmates. N.T. pp. 159, 196.

Tillery also provided examples of how appellant's racial statements continued after Irvin separated from her husband and began dating Corrections Officer Keith Mitchell, who is African American. N.T. pp. 160, 170. When Mitchell would enter the Education Department and speak to Irvin, Tillery recalled appellant would tell her that Mitchell was not supposed to be in the building. Tillery responded that she could not stop Mitchell from entering the building because he was a Corrections Officer. Nevertheless, as Mitchell was leaving the Education Department, appellant told Tillery that "they need to stay with their own kind." N.T. pp. 160, 170, 188-189; AA Ex. 5. Tillery emphasized she understood appellant's

statement to mean that Caucasians should only be with Caucasians and African Americans should only be with African Americans. N.T. pp. 160, 170-171. Afterwards, appellant would continually tell Tillery that “Ms. Irvin thinks she’s better than us because she date --- she dates the black men.” N.T. pp. 170, 188-189; AA Ex. 5.

Tillery observed appellant make comments toward Irvin that made Irvin cry in her classroom. N.T. p. 161. When she saw Irvin cry in her classroom, Tillery would comfort her by talking to her and suggesting she begin reporting appellant’s behavior. N.T. pp. 72, 162, 168.

Irvin further expressed how appellant’s behavior toward her has led her to feel hopeless and mistreated, and to consider leaving her job. N.T. p. 73. Irvin testified that she has been distracted from her job because of enduring appellant’s behavior and preserving her own safety in the facility. N.T. pp. 74-75. Irvin emphasized she felt harassed by appellant because of her race being white. N.T. p. 119. Due to appellant’s continuing behavior against her, Irvin took two days of leave to cope with appellant’s behavior. AA Ex. 1.

On May 10, 2020, Irvin reported appellant’s behavior toward herself and Mitchell in the facility’s kitchen. N.T. p. 66; AA Ex. 1. On May 10, 2020, Irvin arrived at the facility’s kitchen to serve the inmates their food due to COVID-19 restrictions. N.T. p. 66. While walking into the kitchen, Irvin was accompanied by Mitchell, who was going to ask his Sergeant a question. N.T. p. 67. Irvin explained that as they were walking into the kitchen, appellant began speaking to Mitchell and Irvin. After hearing appellant’s comment, Irvin continued to walk away while appellant continued talking to Mitchell. Irvin did not hear what appellant said to

Mitchell but did hear appellant yelling at him. N.T. pp. 67, 68. Irvin explained she continued to walk away from appellant in order to relieve the staff member in the kitchen. N.T. p. 68. Irvin recalled Mitchell told her that appellant asked him if he was Irvin's bodyguard. N.T. p. 101; AA Ex. 1. Irvin asserted that appellant's question was an attempt to harass people who were associated with her. N.T. p. 102.

Subsequently, on May 12, 2020, Irvin reported how appellant's conduct led to Mitchell being removed from her classroom. Irvin and Mitchell were in her classroom on their scheduled break. However, Irvin testified Mitchell received a call from his Lieutenant instructing him to leave the classroom because appellant claimed she had a separation against him. N.T. pp. 105-106. Irvin emphasized appellant did not have a separation order against Officer Mitchell. N.T. pp. 69-70; AA Ex. 1. Irvin felt that based on appellant's false claim to the Lieutenant, appellant continued to harass her and make false allegations against individuals who were associated with her. N.T. p. 106; AA Ex. 1.

Similarly, Tillery testified that appellant did not have a separation report or agreement with Mitchell. N.T. p. 169. Tillery recalled that appellant claimed Mitchell harassed her by making a comment while passing her office. However, Tillery testified she was present with Mitchell as he was near appellant's office and did not hear any harassing comments or witness any harassing behavior. N.T. p. 171.

After Irvin's DC-121s were submitted, Field Human Resources Officer Distler conducted an investigation into appellant's misconduct. Distler reviewed the investigation's documents and interviews regarding appellant's conduct between November 2019 through May 2020. N.T. p. 243. Regarding the

investigation into appellant's conduct, interviews were conducted with appellant, Irvin, Mitchell, Parker, Tillery, and Business Technology Teacher Darlea Felder. N.T. pp. 246, 247; AA Exs. 2, 3, 4, 5, 6.

Distler recalled Mitchell's interview and witness statement submitted on June 17, 2020. N.T. p. 249; AA Ex. 3. The focus of Mitchell's interview was regarding an incident on May 10, 2020 in the facility's kitchen between appellant and Mitchell. N.T. p. 250. Specifically, Distler stated Mitchell noted the incident involved appellant calling him a "Uncle Tom." N.T. p. 251; AA Ex. 3. Distler explained the term "Uncle Tom" refers to an African American who does not support other African Americans' ideals but supports Caucasian ideals instead. N.T. p. 252.

After the investigations concluded, Distler reviewed the investigative record,¹¹ created a summary report, and forwarded the investigation summary report and findings to the Superintendent, who determined appellant's PDC was warranted.¹² N.T. pp. 245, 265.

On November 30, 2020, appellant received notice for her PDC scheduled for December 3, 2020.¹³ N.T. pp. 269-270, 271; AA Ex. 10. Deputy Superintendent Wynder participated with Superintendent Laurel Harry from State

¹¹ Distler recalled that due to how the DC-121 reports continually were submitted over time, there was an investigation for each report but ultimately, the investigations were grouped together because the alleged behavior was the same. N.T. p. 244. Because these investigations were grouped together, there was one investigation and one summary report created. N.T. p. 244.

¹² The purpose of a PDC is to provide an employee an opportunity to respond to the allegations that are being levied against her and the PDC panel asks the employee questions based on the investigation's materials. N.T. pp. 273-274.

¹³ Appellant acknowledged she received her PDC notice that outlines violations of the appointing authority's Code of Ethics. N.T. p. 423. Prior to receiving her Level-One ADLS, appellant did not receive any formal discipline from the appointing authority. N.T. p. 339.

Correctional Institution at Camp Hill (hereinafter “SCI-Camp Hill”) and Retired Field Human Resource Officer Mangan from SCI-Camp Hill as PDC panelists for appellant’s PDC on December 3, 2020.¹⁴ N.T. pp. 311-312, 319-320. During her PDC, Wynder and the panelists asked appellant for her responses to the allegations regarding racist comments regarding Irvin and Mitchell. N.T. p. 321. In response to the panelists’ questions, Wynder recalled appellant denied every alleged violation of the Code of Ethics. N.T. pp. 322-323, 331.

After appellant’s PDC, Wynder and the panelists concluded that appellant violated the appointing authority’s Code of Ethics, Sections A-1, B-9, B-10, and B-29. N.T. p. 323. Wynder did not believe appellant’s responses to be credible because there were multiple witnesses to appellant’s alleged misconduct. N.T. p. 324. Notably, Wynder and the panelists considered appellant’s racial comments toward Irvin, racial conversations with Tillery, and appellant’s “Uncle Tom” statement to Mitchell to support their conclusion. N.T. p. 324.

At the conclusion of appellant’s disciplinary process, Distler confirmed Superintendent Jamie Sorber determined the appropriate level of appellant’s discipline was the Level-One ADLS. N.T. pp. 276, 326. Distler explained the Superintendent had the investigation documents, the summary report, and the PDC panel’s conclusion in order to determine appellant’s discipline. N.T. p. 277. On February 3, 2021, appellant was issued her Level-One ADLS letter for violating the

¹⁴ Due to the nature of appellant’s charges, Distler ensured that appellant’s PDC panelists were members from outside SCI-Phoenix’s staff. N.T. p. 265. Distler emphasized the panel was created with members outside of SCI-Phoenix because the appointing authority wanted to ensure impartiality. N.T. p. 272.

appointing authority's Code of Ethics, Section B-10 between November 2019 and May 2020, and not for violating the appointing authority's Code of Ethics, Sections A-1, B-9, or B-29.¹⁵ Comm. Ex. A; N.T. pp. 243, 258, 278, 301, 423.

In response to the appointing authority's presentation, appellant explained her comments to Irvin in March 2019. Appellant was in a meeting with Barr with her office door closed. During the meeting, appellant claimed she heard Irvin knocking on her door. After hearing the knocking, appellant raised her finger while listening to Barr's conversation but according to appellant, Irvin continued to knock on the door. N.T. p. 374. Appellant testified she left the meeting and asked Irvin why she was knocking on the door while she was in a meeting with Barr. Appellant stated Irvin knocked on the door because she needed Barr to provide her with keys for the classroom door. After hearing Irvin's response, appellant admitted she said to Irvin "just because you're white, does not mean you're right." N.T. pp. 375, 401.

Appellant believed Irvin was using her "white privilege" to interrupt the meeting. N.T. p. 376. Appellant characterized her statement of "just because you're white, does not mean you're right" as a form of counseling to her as Irvin's union representative. N.T. pp. 377, 428. Appellant admitted she did not mention the March 2019 incident with Irvin in her staff interview form because she did not think Irvin was upset because of her statement but because Barr was ignoring her. N.T. p. 411; AA Ex. 6. Appellant further explained she denied making this statement to appellant during her PDC because she couldn't remember. N.T. pp. 376, 403.

¹⁵ Distler explained charges that were presented during a PDC may be dropped. N.T. p. 275. After a PDC panel decides whether the charges are substantiated or not substantiated, their decision is reported to the Superintendent, who reviews and determines whether the charges should remain or should be dropped. N.T. pp. 275-276, 286.

In response to Tillery's recollection of their conversations, appellant denied ever mentioning Irvin's race or telling Tillery that races should be separated. Appellant explained she is not racist because her husband is Caucasian, and their child is biracial. N.T. pp. 391, 414. Appellant admitted she did not know that Mitchell and Irvin were dating because she believed that Irvin was married and not separated from her husband. N.T. p. 390. Appellant asserted Irvin informed her that she was married during Irvin's initial orientation and shared their experiences of receiving racial abuse in their former workplaces. N.T. p. 392.

In response to Irvin's and Distler's testimony about her comment to Mitchell on May 10, 2020, appellant and Felder provided their perspective of appellant's interaction with Mitchell. Appellant and Felder explained they were volunteering to help the kitchen staff to serve inmates. N.T. p. 348. While she was assisting in the kitchen with Felder, appellant observed Irvin and Mitchell enter the kitchen. Appellant stated she asked Mitchell if he was here to help. Appellant asserted Mitchell told her that "it's not your fucking business and came up to me and up close." N.T. pp. 349, 382. Appellant believed Mitchell was going to hit her. N.T. p. 382. Appellant recalled after Mitchell responded, he was escorted out of the kitchen by Corrections Officer Vega Lebron but called appellant a racist when he left. N.T. pp. 349, 382-383, 429.

Appellant denied calling Mitchell an "Uncle Tom." N.T. pp. 428-429. Also, Felder affirmed appellant did not make any racial-related comments directed to Officer Mitchell. N.T. p. 350. Felder contended that Irvin's and Mitchell's reports are not true. N.T. p. 351. After encountering Mitchell in the kitchen, appellant

reported the incident in her DC-121 report and submitted it.¹⁶ N.T. pp. 383, 425; AA Ex. 6; Ap. Ex. 2. Appellant expressed she was fearing any further encounters with Mitchell and claimed Mitchell invited her to fight with him. N.T. p. 385.

In response to Irvin's description of appellant having Mitchell removed from her classroom on May 12, 2020, appellant testified that on May 11, 2020, she emailed Mascellino regarding Mitchell. Specifically, appellant witnessed Mitchell walk past her office and looking around the Education Department.¹⁷ N.T. p. 387. Appellant expressed she was fearful of Mitchell and informed Mascellino that she submitted her DC-121 report to Commander Calavari. N.T. pp. 387-388; Ap. Ex. 3. Appellant acknowledged she denied having an incident with Mitchell on May 11, 2022, on her staff interview form. N.T. p. 417; AA Ex. 6. However, appellant contended that Deputy Terra issued a no contact order between appellant and Mitchell. N.T. pp. 388-389, 419. Appellant claimed that pursuant to the no contact order, Mitchell was prohibited from entering the Education Department's West Program Services Building. N.T. p. 389.

Having carefully reviewed the record, we find the appointing authority established good cause to issue appellant's Level One ADLS.¹⁸ Specifically, the Commission finds the testimony of Mary Irvin, Darrell Parker II, Shalonda Tillery,

¹⁶Appellant testified she erroneously entered the wrong date on her DC-121 report where April 10, 2020, should be May 10, 2020. N.T. p. 384; Ap. Ex. 2.

¹⁷ On May 11, 2020, Terra received an email from appellant regarding an alleged incident with Mitchell. Terra confirmed Captain Mascellino conducted a fact-finding meeting regarding an alleged incident between appellant and Mitchell. N.T. p. 227; Ap. Ex. 3. Terra did not participate in Mitchell's fact-finding meeting and did not receive the results of the fact-finding meeting. N.T. p. 27. Terra confirmed Mitchell no longer works at SCI-Phoenix but did not know why he no longer works there. N.T. p. 228.

¹⁸ At the conclusion of the appointing authority's presentation, appellant raised a motion to dismiss on the grounds that the appointing authority failed to present a *prima facie* case of good cause to support appellant's Level-One ADLS. N.T. p. 340. The ruling was deferred at the hearing. N.T. p. 342. After careful review, we deny appellant's motion to dismiss for the reasons mentioned below.

Joseph Terra, Nathan Wynder, and Scott Distler credible¹⁹ and persuasive regarding appellant's racial and discriminatory comments directed to her co-workers, Irvin, and Tillery.

As an Educational Guidance Counselor, appellant is responsible for maintaining efficient and effective working relationships with her fellow co-workers. Also, appellant is responsible for treating her peers professionally at all times. The appointing authority's Code of Ethics, Section B-10 provides employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated. Comm. Ex. A; N.T. p. 259; AA Ex. 7 (pg. 4).

It is clear to this Commission that appellant's racially charged statement toward Irvin in March 2019 that was reported in November 2019 is in direct opposition to her responsibilities and will not be tolerated. Although appellant claims her statement of "just because you're white, does not make you right" is a form of counseling as Irvin's union representative, we are disturbed that appellant would consider this clearly racial statement to be an acceptable form of conduct.

Moreover, we find Tillery's testimony credible about how appellant continually referred to Irvin's Caucasian race and her interactions with African American male officers. While appellant denies ever stating these racially charged and discriminatory statements to Tillery, we are unconvinced. We find appellant made racial and discriminatory comments to Tillery when she referred to Irvin in conversations from November 2019 through May 2020.

¹⁹ 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).

However, upon review of the record, we find there is insufficient direct evidence to support appellant made racial or discriminatory comments to Mitchell on May 10, 2020. Although Distler provided testimony regarding how Mitchell reported appellant calling him an “Uncle Tom,” in his staff interview form, there are hearsay implications to consider. Hearsay is a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Pa. R.E. 801(C).

Under *Walker*, if hearsay evidence is admitted without objection, it will be given its natural probative effect and may support a finding by the agency, if it is corroborated by any competent evidence in the record. *Sule v. Philadelphia Parking Auth.*, 26 A.3d 1240, 1243 (Pa. Commw. 2011) citing *Walker v. Unemployment Compensation Board of Review*, 27 Pa. Commw. 522, 367 A.2d 366, 370 (1976). Nevertheless, it is well-settled that hearsay evidence, properly objected to, is not competent evidence to support a determination of an agency. *Sule v. Philadelphia Parking Auth.*, 26 A.3d 1240, 1243 (Pa. Commw. 2011) citing *Chapman v. Unemployment Compensation Board of Review*, 20 A.3d 603, 610, n. 8; *Myers v. Unemployment Comp. Bd. of Review*, 533 Pa. 373, 625 A.2d 622, 625 (1993); see also *Walker v. Unemployment Comp. Bd. of Review*, 27 Pa. Commw. 522, 367 A.2d 366 (1976).

We note Mitchell was not present to provide testimony regarding whether appellant called him an “Uncle Tom” on May 10, 2020. The only supporting evidence of this statement is Distler’s recollection of Mitchell’s staff interview form collected during the course of the investigation. Although Irvin was present with Mitchell in the kitchen, she acknowledges that she only heard appellant yelling at Mitchell and could not describe what appellant said to him. Furthermore,

appellant and Felder provide contradicting evidence denying appellant ever told Mitchell that he was an “Uncle Tom.” Since the proposed statement is not corroborated by competent evidence in the record and there is direct, contradicting testimony as to whether appellant made a racial statement to Mitchell, we find there is insufficient evidence to support that appellant made a racially charged statement to Mitchell in the facility’s kitchen on May 10, 2020. *Sule, supra*.

In summation, the Commission finds the appointing authority established good cause to issue appellant’s Level-One ADLS. Appellant’s racial and discriminatory comments directed toward Irvin and made during conversations with Tillery negatively reflect her competency and ability to perform her duties as an Educational Guidance Counselor. *White, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence establishing good cause for suspension under Section 2603 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Theresa M. Snyder challenging her Level-One Alternative Discipline in Lieu of a one-day suspension from regular Educational

Guidance Counselor, Correction Education, employment with the State Correctional Institution at Phoenix, Department of Corrections, and sustains the action of the State Correctional Institution at Phoenix, Department of Corrections in issuing the Level-One Alternative Discipline in Lieu of a one-day suspension of Theresa M. Snyder from regular Educational Guidance Counselor, Correction Education, employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: May 20, 2022

COMMONWEALTH OF PENNSYLVANIA

Theresa M. Snyder	:	State Civil Service Commission
	:	
v.	:	
	:	
State Correctional Institution at Phoenix,	:	
Department of Corrections	:	Appeal No. 30698
Scott Stedjan		Jocelyn G. Schultz
Attorney for Appellant		Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Theresa M. Snyder challenging her Level One Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from regular Educational Guidance Counselor, Correction Education, employment with the State Correctional Institution at Phoenix, Department of Corrections.¹ A hearing was held on October 27, 2021, 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 Briefs submitted by the parties. The issue before the Commission is whether the appointing authority established good cause for appellant’s Level One ADLS.

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

FINDINGS OF FACT

1. On February 3, 2021, appellant was issued a Level One ADLS equivalent to a one-day suspension, from her regular Educational Guidance Counselor, Correction Education, employment. Comm. Ex. A; N.T. pp. 243, 258, 278, 301, 423.

2. The February 3, 2021 letter provides the following reasons for appellant's Level One ADLS:

Specifically, it was determined that between November 2019 through May 2020 your conduct was unacceptable, not respectful or professional, and made a hostile work environment for a co-worker. This unacceptable conduct included, but was not limited to, making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with other staff members.

This behavior is unacceptable and any infraction(s)/offense(s) of a similar, or related nature following the date of this notice will result in more severe, progressive discipline, up to and including termination. It is our sincere hope that your record will show improvement and that further discipline will not be necessary.

Comm. Ex. A.

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. Exs. C, D.
4. Before the hearing began, the parties elected to proceed solely under Section 3003(7)(i) of Act 71 of 2018. N.T. pp. 19, 342.
5. Appellant is currently employed as an Educational Guidance Counselor at the State Correctional Institution at Phoenix (hereinafter “SCI-Phoenix”) and has worked at SCI-Phoenix since December 2007. N.T. pp. 338, 339.
6. As an Educational Guidance Counselor, appellant is responsible for maintaining efficient and effective written and oral working relationships with staff. N.T. p. 400; AA Ex. 9.
7. Appellant received the appointing authority’s Code of Ethics in writing. N.T. p. 339.
8. Appellant signed, acknowledged, and agreed to abide by the appointing authority’s Code of Ethics on August 9, 2010. N.T. p. 260; AA Ex. 8.

9. The appointing authority's Code of Ethics, Section B-10 provides employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated. N.T. p. 259; AA Ex. 7 (pg. 4).
10. On November 22, 2019, Adult Education Teacher Mary Irvin, a Caucasian female, was waiting for her supervisor, Principal Michael Barr, to conclude his meeting with appellant outside of appellant's office in the Education Department's West Program Services Building. N.T. pp. 45, 49, 374; AA Ex. 1.
11. After the meeting concluded, appellant approached Irvin and told her to move on, but Irvin responded she needed Barr to allow her into the Education Department's classrooms. N.T. pp. 45, 50; AA Ex. 1.
12. After hearing Irvin's response, appellant told Irvin, "just because you're white, does not mean you're right." N.T. pp. 45, 50, 375, 401; AA Ex. 1.

13. Appellant believed Irvin was using her “white privilege.” N.T. p. 376.
14. During the time period of November 22, 2019, through May 2020, appellant told Corrections Officer 1 Shalonda Tillery she had to watch out for Irvin because “she’s trying to take our men.” N.T. pp. 159, 188-189; AA Ex. 5.
15. Tillery understood appellant’s reference to “our men” to be African American men. N.T. p. 159; AA Ex. 5.
16. When appellant would see Corrections Officer Keith Mitchell with Irvin inside the Education Department’s West Program Services Building, appellant would tell Tillery “they need to stay with their own kind.” N.T. pp. 160, 170, 188-189; AA Ex. 5.
17. Tillery understood that appellant meant that Caucasians should only be with Caucasians and African Americans should only be with African Americans. N.T. pp. 160, 170-171.

18. Appellant told Tillery that Irvin thinks she's better than them because she dates African American men. N.T. pp. 170, 188-189; AA Ex. 5.
19. Field Human Resources Officer Scott Distiler reviewed Irvin's submitted DC-121 reports and conducted an investigation into appellant's conduct between November 2019 through May 2020. N.T. p. 243.
20. Pursuant to the investigation, Irvin, Mitchell, Corrections Officer 1 Darrel Parker, II, Tillery, appellant, and Business Technology Teacher Darlea Felder participated in interviews and submitted Staff Interview Forms. N.T. pp. 71-72, 139, 156, 249, 253; AA Exs. 2, 3, 4, 5, 6.
21. On November 30, 2020, appellant received her pre-disciplinary conference (hereinafter "PDC") notice outlining her violations of the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29, and scheduling her PDC for December 3, 2020. N.T. pp. 258, 259, 269-270, 271; AA Ex. 10.

22. The November 30, 2020, PDC notice letter provides the following reasons supporting the outlined violations:

Specifically, you should be prepared to respond to the allegations that between November 2019 through May 2020 you harried and made a hostile work environment for a co-worker, (M.I.) to include, but not limited to, making racial and/or discriminatory comments directly at this co-worker and/or when referring to her in conversation. Also, you referred to another co-worker (K.M.) as “Uncle Tom”, and disparaged the other co-worker (M.I.) when speaking about her dating black men, how she should only date her own kind, and that she thinks she is better because she is white and dates black men; and you likewise behaved inappropriately toward other co-workers in the Education Department. Also, in November 2019 and in January 2020 you reinstated Inmate [R] back into an education department program in contravention to orders previously given by the principal barring the inmate from the school, and you did so with the intent to inflict mental anguish, or discomfort, and/or embarrassment on a co-worker.

AA Ex. 10.

23. Deputy Superintendent Nathan Wynder conducted appellant's PDC on December 3, 2020. N.T. pp. 311, 319, 320.
24. After appellant's PDC, Wynder and the panelists concluded appellant violated the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29, and submitted their conclusion. N.T. p. 323.
25. Upon reviewing the investigation's findings, and the PDC panel's conclusion, the SCI-Phoenix Superintendent determined appellant's level of discipline would be a Level-One ADLS for violating the appointing authority's Code of Ethics, Section B-10. Comm. Ex. A; N.T. pp. 243, 276-277, 278, 301.

DISCUSSION

The issue before the Commission is whether the appointing authority established good cause for appellant's Level-One ADLS. In response, the appellant argues she did not have sufficient notice of the grounds for discipline to develop an adequate defense. The Commission will address whether the appointing authority provided sufficient notice to appellant first.

During the course of the hearing and at the conclusion of the appointing authority's presentation, appellant raised a motion to dismiss for the appointing authority's failure to provide sufficient notice of the reasons supporting appellant's Level-One ADLS. N.T. p. 340. The ruling was deferred at the hearing. N.T. p. 342. The appointing authority argued that appellant's insufficient notice argument was waived because it was not raised as an issue within appellant's Appeal Request Form. AA. Bf. p. 25. In support of their argument, the appointing authority relies upon *Martin v. State Civ. Serv. Commn. (Dept. of Community and Econ. Dev.)*, where the Court held the appellant's argument of a deprivation of due process was waived by his failure to raise the issue in his Appeal Request Form to the Commission. *Martin v. State Civ. Serv. Commn. (Dept. of Community and Econ. Dev.)*, 741 A.2d 226, 229-30 (Pa. Commw. 1999). In response, appellant asserts that she properly raised the issue of insufficient notice before the appropriate government unit during the course of the hearing. Ap. Bf. p. 22.

Waiver is the knowing relinquishment or abandonment of a right. *Bosnjak v. State Civ. Serv. Commn.*, 781 A.2d 1280, 1285 (Pa. Commw. 2001). To constitute a waiver of a legal right, there must be a clear, unequivocal and decisive act of the party with knowledge of such right and an evident purpose to surrender it. *Brown v. City of Pittsburg*, 186 A.2d 399, 401 (1962). Upon reviewing appellant's Appeal Request Form, appellant checked off "violation of Act 71 of 2018 (Civil Service Reform) or Rules." Comm. Ex. B. Also, at the beginning of the hearing, both parties elected to proceed solely under Section 3003(7)(i) of Act 71 and declined to proceed under Section 3003(7)(ii) for appellant's raised traditional discrimination claims. Comm. Ex. B; N.T. pp. 19, 342. Nevertheless, we find the appellant did not waive her issue regarding insufficient notice and the instant case is distinguishable from *Martin v. State Civ. Serv. Commn. (Dept. of Community and*

Econ. Dev.). Unlike in *Martin*, appellant's Appeal Request Form did allege a violation of the Act and Rules and the hearing was previously granted under both Section 3003(7)(i) and Section 3003(7)(ii). Comm. Exs B, C, D. Although appellant elected to proceed solely under Section 3003(7)(i), appellant's clear, decisive act of raising the motion of insufficient notice during the hearing was sufficient to preserve the issue on appeal and as a result, appellant did not waive the notice issue. *Brown, supra.*

Next, the Commission will consider the sufficiency of appellant's notice. Appellant argues the appointing authority's notice fails to describe with adequate detail the grounds for appellant's discipline necessary to prepare a defense. Appellant compares the charges and reasons listed in her pre-disciplinary conference (hereinafter "PDC") notice to the language within her Level-One ADLS letter. Specifically, appellant's PDC notice provides an outline of violations against the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29. AA Ex. 10. The reasons supporting the allegations of violating the appointing authority's Code of Ethics are as follows:

Specifically, you should be prepared to respond to the allegations that between November 2019 through May 2020 you harried and made a hostile work environment for a co-worker, (M.I.) to include, but not limited to, making racial and/or discriminatory comments directly at this co-worker and/or when referring to her in conversation. Also, you referred to another co-worker (K.M.) as "Uncle Tom", and disparaged the other co-worker (M.I.) when speaking about her dating black men, how she should only date her own kind, and that she thinks she is better because she is white and dates black men; and you likewise behaved inappropriately toward other co-workers in the Education Department. Also, in November 2019 and in January 2020 you reinstated Inmate [R] back into an education

department program in contravention to orders previously given by the principal barring the inmate from the school, and you did so with the intent to inflict mental anguish, or discomfort, and/or embarrassment on a co-worker.

AA Ex. 10. By contrast, appellant's Level-One ADLS letter informs appellant of her December 3, 2020 PDC, but only provides reasoning for the determination that she violated the appointing authority's Code of Ethics, Section B-10. Comm. Ex. A. In support of the Level-One ADLS, the February 3, 2021, Level-One ADLS letter states the following reasons:

Specifically, it was determined that between November 2019 through May 2020 your conduct was unacceptable, not respectful or professional, and made a hostile work environment for a co-worker. This unacceptable conduct included, but was not limited to, making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with other staff members.

Comm. Ex. A. Appellant claims 1) the letter does not provide specific dates for the racial or discriminatory comments during the period of November 2019 through May 2020 to allow appellant to respond to the comments; 2) the letter fails to identify the co-worker(s) subjected to the alleged racial or discriminatory comments where the PDC notice lists two individuals; and 3) the language "included but not limited to" signifies appellant's discipline resulted from allegations for which she did not receive notice. Ap. Bf.

In response, the appointing authority argues it has provided appellant sufficient notice by identifying the relevant section of the Code of Ethics that was also present in appellant's PDC notice. Moreover, the appointing authority argues this matter is similar to *Bazargani v. State Civ. Serv. Commn*, where the Court held

an employee was given sufficient notice of her suspension because the notice's terms "proper allegations and pre-disciplinary conferences" placed the employee on notice that her suspension was due to her administrative and monitoring responsibilities discussed during her PDC. *Bazargani v. State Civ. Serv. Commn.*, 711 A.2d 529, 533 (Pa. Commw. 1998). Here, the appointing authority asserts appellant's PDC notice and Level-One ADLS notice provided her with sufficient information to ascertain the charges in order to prepare a defense because they outline the charge against her, reiterate the relevant six-month period, and refer to racial and discriminatory comments to other co-workers. AA Bf.

Pursuant to §105.3 of the Commission's Rules and Regulations:

Notices of removal, involuntary demotion or suspension issued to regular employees shall include a clear statement of the reasons therefore, sufficient to apprise the employee of the grounds upon which the charges are based. Notices determined to be defective may result in the reversal of the personnel action.

4 Pa. Code § 105.3. The purpose of the notice requirement is to satisfy due process by affording an employee reasonable notice of the charges against her so that she will have sufficient opportunity to answer the charges and contest her disciplinary action. *Woods v. State Civ. Serv. Commn.*, 912 A.2d 803, 811–12 (Pa. 2006) citing *Chavis v. Philadelphia County Bd. of Assistance, Dep't of Public Welfare*, 370 A.2d 445, 447 (Pa. Commw. 1977). The notice need not be drafted with the certainty of a bill of information, but it must be framed in a manner which enables the employee to discern the nature of the charges and adequately prepare a defense. *Bosnjak v. State Civ. Serv. Commn.*, 781 A.2d 1280, 1284 (Pa. Commw. 2001) citing *Wood v. Department of Public Welfare*, 411 A.2d 281 (Pa. Commw. 1980).

Upon review of the arguments and appellant's PDC notice and Level-One ADLS letter, we find the appointing authority provided sufficient notice to appellant regarding racial or discriminatory comments directed to co-workers and in referring to co-workers in conversations. When comparing appellant's PDC notice and her Level-One ADLS letter, it is clear that appellant was placed on notice and that her Level-One ADLS was for violating the appointing authority's Code of Ethics, Section B-10 for unacceptable and unprofessional conduct. Comm. Ex. A; AA Ex. 10. Moreover, appellant's PDC notice outlines specific incidents of racial and discriminatory comments made to co-workers, which are directly referred to in appellant's Level-One ADLS letter as "making racial and/or discriminatory comments directly at co-workers and/or when referring to them in conversation with other staff members." Comm. Ex. A; AA Ex. 10. Like in *Bazargani*, the Level-One ADLS letter was framed in a manner which enabled appellant to discern the nature of the charge was related to racial and discriminatory comments discussed during her PDC. *Bosnjak, supra*.

However, we find appellant did not receive sufficient notice regarding her conduct in relation to Inmate R. While appellant's PDC notice refers to appellant reinstating Inmate R into the Education Department program with the intent to inflict mental anguish, discomfort, and embarrassment to a coworker, the Level-One ADLS is void of any such information to allow appellant to adequately prepare a defense. *Woods, supra*. She also did not receive notice that the appointing authority was considering appellant's interactions with Adult Education Teacher Irvin regarding her encounters with an inmate, who was suspected to have COVID-19, and encounters with appellant by a secondary copier. N.T. pp. 61, 62, 64, 66, 98-99, 109; AA Ex. 1. Upon reviewing appellant's PDC notice and Level-One ADLS notice, there is no information mentioning the above-mentioned interactions as

reasons to support appellant's Level-One ADLS. Comm. Ex. A; AA Ex. 10. As such, we find appellant did not have sufficient notice to defend against these alleged incidents. *Woods, supra*.

Therefore, the remaining issue in the present appeal is whether the appointing authority established good cause for appellant's Level-One ADLS based on the alleged racial and discriminatory comments from November 2019 through May 2020. 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 Adult Education Teacher Mary Irvin,² Corrections Officer 1 Darrell Parker, II,³ Corrections Officer 1 Shalonda Tillery,⁴ Deputy Superintendent Joseph

² Irvin is employed by SCI-Phoenix as an Adult Education Teacher. N.T. p. 34. Irvin's responsibilities and duties include teaching inmates the core classes for them to succeed in a GED program or the Commonwealth's secondary-diploma program. N.T. pp. 36, 186.

³ Parker is employed by the appointing authority as a Corrections Officer 1. N.T. p. 132. Parker's responsibilities include providing the care, custody, and control of inmates and facility operations. N.T. p. 132. Parker would be posted at the facility's Education Department's West Program Services Building at least three times a week. N.T. p. 132. During the time of appellant's reported conduct, Parker was a Corrections Officer Trainee. As a Corrections Officer Trainee, Parker was responsible for moving inmates throughout the facility to their proper locations and checking the inmates' passes to verify they are allowed in the locations. N.T. p. 133.

⁴ Tillery is employed by the appointing authority as a Corrections Officer 1 assigned to the Education Department's West Program Services. N.T. p. 153. As a Corrections Officer 1, Tillery monitors staff and inmates throughout the facility for their safety. N.T. p. 155. Tillery reports for duty Monday through Friday from 8:00 a.m. to 4:00 p.m. N.T. p. 155.

Terra,⁵ Deputy Superintendent Nathan Wynder,⁶ and Field Human Resources Officer Scott Distiler.⁷ In response, appellant testified on her own behalf and presented the testimony of Business Technology Teacher Darlea Felder.

Appellant is employed as an Educational Guidance Counselor at SCI-Phoenix. Appellant began working for the appointing authority at State Correctional Institution at Graterford (hereinafter “SCI-Graterford”) in November 2004. Appellant was promoted to Educational Guidance Counselor in December 2007 and moved to SCI-Phoenix in the same position when SCI-Graterford closed. N.T. p. 338. As an Educational Guidance Counselor, appellant is responsible for enrolling inmates into vocational classes and responsible for maintaining efficient and effective written and oral working relationships with staff. N.T. pp. 395, 400; AA Ex. 9.

Also, appellant is required to abide by the appointing authority’s Code of Ethics, Section B-10, in order to treat her peers and supervisors properly and professionally. N.T. p. 401; AA Exs. 7, 8. Appellant received a copy of the

⁵ Terra is employed as a Deputy Superintendent of Centralized Services. N.T. p. 203. Terra is responsible for overseeing and supervising the Culinary Department and Education Department. N.T. pp. 203-204. Terra further supervised former Principal Michael Barr. N.T. p. 219. Terra explained one of his responsibilities as a Deputy Superintendent is to assign fact-finders for investigations into violations of the appointing authority’s policies and the Code of Ethics. N.T. p. 206.

⁶ Wynder is employed by the appointing authority as a Deputy Superintendent for Facilities Management. N.T. p. 310. Wynder’s responsibilities include overseeing all security personnel within the SCI- Frackville. N.T. pp. 308, 310-311.

⁷ Distiler is employed as a Field Human Resources Officer. Before being promoted to the Field Human Resources Officer position, Distiler was a Human Resource Analyst. Distiler’s responsibilities include reviewing and coordinating union-related grievances and overseeing the investigative and disciplinary process for SCI-Phoenix’s staff. N.T. p. 242. Distiler also maintains employee performance reviews (hereinafter “EPR”). N.T. p. 280. Distiler noted appellant’s EPR for the time period of November 2019 through November 2020 was completed prior to her Level-One ADLS. N.T. p. 284; AA E 6.

appointing authority's Code of Ethics and acknowledged her receipt in writing. N.T. p. 339. Appellant agreed, signed, and acknowledged to abide by the appointing authority's Code of Ethics on August 9, 2010. N.T. p. 260; AA Ex. 8.

Adult Education Teacher Irvin met appellant during the introduction week for new Educational Department Staff. During the introduction week, Irvin approached appellant to inquire how to join the union. Instead of providing details of how to join the union, appellant began yelling at Irvin and telling her she could not join the union. Two days later, appellant called Irvin into her office and gave Irvin the form to join the union. N.T. pp. 38-39. During the meeting in appellant's office, Irvin recalled appellant warning her about the facility's staff "because they're racist." N.T. p. 39.

On November 22, 2019, Irvin reported appellant's racially charged statement toward her outside of appellant's office. N.T. pp. 42, 44; AA Ex. 1. Irvin was waiting outside of appellant's office for Principal Michael Barr,⁸ who was in a meeting with appellant. N.T. p. 49; AA Ex. 1. Irvin explained because she did not receive Academy training, she could not move throughout the facility without an escort. N.T. p. 49; AA Ex. 1. While Irvin was waiting for Barr to conclude his meeting with appellant, appellant left her office, approached Irvin, and yelled at her to move on. Irvin told appellant she did not know what was going on and she needed Mr. Barr to let her into a classroom. Appellant responded, "just because you're

⁸ Mr. Barr was a former Principal of SCI-Phoenix's Education Department, who was responsible for supervising appellant and Irvin, and for disciplinary actions for his subordinate staff. N.T. pp. 49, 219, 223, 230. Due to the investigation of appellant's conduct, Mr. Barr voluntarily resigned in lieu of his demotion to Adult Basic Education Teacher. N.T. pp. 229, 303. Terra explained Mr. Barr was being demoted because of his failure to report incidents that were occurring under his supervision of the Education Department, for failing to be an effective leader, and for failing to control the Education Department. N.T. pp. 229-230. Terra acknowledged the incidents leading to Mr. Barr's demotion included appellant's reported behavior and other incidents, as well. N.T. pp. 232-233.

white, don't [sic] mean you're right." N.T. pp. 45, 50; AA Ex. 1. After appellant left Irvin, Irvin went to Mr. Barr, who overheard appellant's statement. She told Mr. Barr that "this is never going to be okay." N.T. p. 50. After experiencing appellant's racial and discriminatory comment, Irvin submitted a DC-121 form, known as an Employee Report of Incident.⁹ N.T. pp. 40, 43; AA Ex. 1.

After submitting her DC-121 for the November 22, 2019, incident, Irvin requested a meeting with Deputy Superintendent Joseph Terra because Barr was not addressing appellant's behavior. N.T. pp. 44, 54, 207, 208; AA Ex. 1. Terra met with Irvin and instructed her to remain professional and to document any further incidents within the facility.¹⁰ N.T. pp. 54, 209, 221. As a result, Irvin continued to report appellant's discriminatory and harassing conduct from November 2019 through May 2020. N.T. pp. 40, 43; AA Ex. 1.

Irvin and Corrections Officer Tillery described how appellant referred to Irvin's race during conversations with Tillery between November 2019 through May 2020. N.T. pp. 76, 158; AA Ex. 5. When Tillery would speak to Irvin, appellant would wait for Irvin to leave and ask Tillery questions. Tillery recalled appellant asking her why she was talking to Irvin. Tillery would respond that Irvin was new and expressed she wanted to help her. However, Tillery testified "[appellant] would say I have to watch out for her because she's trying to take our men and stuff like that." N.T. pp. 159, 188-189; AA Ex. 5. Tillery explained appellant's reference to "our men" referred to African American men. N.T. p. 159;

⁹ A DC-121 form allows an employee to report staff or inmate misconduct and incidents within the facility. N.T. p. 42.

¹⁰ After he received Irvin's DC-121s, Terra assigned a fact-finder to investigate the reported conduct. N.T. p. 208. Terra also forwarded Irvin's DC-121s to Human Resource Officer Dana Williams because the reported incidents alleged harassment. N.T. p. 208.

AA Ex. 5. Appellant also told Tillery that she thought the Adult Education Teacher was not the job for Irvin because “she looks like that type.” N.T. p. 196. When Tillery asked appellant to clarify, appellant said she didn’t think Irvin could deal with inmates. N.T. pp. 159, 196.

Tillery also provided examples of how appellant’s racial statements continued after Irvin separated from her husband and began dating Corrections Officer Keith Mitchell, who is African American. N.T. pp. 160, 170. When Mitchell would enter the Education Department and speak to Irvin, Tillery recalled appellant would tell her that Mitchell was not supposed to be in the building. Tillery responded that she could not stop Mitchell from entering the building because he was a Corrections Officer. Nevertheless, as Mitchell was leaving the Education Department, appellant told Tillery that “they need to stay with their own kind.” N.T. pp. 160, 170, 188-189; AA Ex. 5. Tillery emphasized she understood appellant’s statement to mean that Caucasians should only be with Caucasians and African Americans should only be with African Americans. N.T. pp. 160, 170-171. Afterwards, appellant would continually tell Tillery that “Ms. Irvin thinks she’s better than us because she date --- she dates the black men.” N.T. pp. 170, 188-189; AA Ex. 5.

Tillery observed appellant make comments toward Irvin that made Irvin cry in her classroom. N.T. p. 161. When she saw Irvin cry in her classroom, Tillery would comfort her by talking to her and suggesting she begin reporting appellant’s behavior. N.T. pp. 72, 162, 168.

Irvin further expressed how appellant's behavior toward her has led her to feel hopeless and mistreated, and to consider leaving her job. N.T. p. 73. Irvin testified that she has been distracted from her job because of enduring appellant's behavior and preserving her own safety in the facility. N.T. pp. 74-75. Irvin emphasized she felt harassed by appellant because of her race being white. N.T. p. 119. Due to appellant's continuing behavior against her, Irvin took two days of leave to cope with appellant's behavior. AA Ex. 1.

On May 10, 2020, Irvin reported appellant's behavior toward herself and Mitchell in the facility's kitchen. N.T. p. 66; AA Ex. 1. On May 10, 2020, Irvin arrived at the facility's kitchen to serve the inmates their food due to COVID-19 restrictions. N.T. p. 66. While walking into the kitchen, Irvin was accompanied by Mitchell, who was going to ask his Sergeant a question. N.T. p. 67. Irvin explained that as they were walking into the kitchen, appellant began speaking to Mitchell and Irvin. After hearing appellant's comment, Irvin continued to walk away while appellant continued talking to Mitchell. Irvin did not hear what appellant said to Mitchell but did hear appellant yelling at him. N.T. pp. 67, 68. Irvin explained she continued to walk away from appellant in order to relieve the staff member in the kitchen. N.T. p. 68. Irvin recalled Mitchell told her that appellant asked him if he was Irvin's bodyguard. N.T. p. 101; AA Ex. 1. Irvin asserted that appellant's question was an attempt to harass people who were associated with her. N.T. p. 102.

Subsequently, on May 12, 2020, Irvin reported how appellant's conduct led to Mitchell being removed from her classroom. Irvin and Mitchell were in her classroom on their scheduled break. However, Irvin testified Mitchell received a call from his Lieutenant instructing him to leave the classroom because appellant claimed she had a separation against him. N.T. pp. 105-106. Irvin emphasized

appellant did not have a separation order against Officer Mitchell. N.T. pp. 69-70; AA Ex. 1. Irvin felt that based on appellant's false claim to the Lieutenant, appellant continued to harass her and make false allegations against individuals who were associated with her. N.T. p. 106; AA Ex. 1.

Similarly, Tillery testified that appellant did not have a separation report or agreement with Mitchell. N.T. p. 169. Tillery recalled that appellant claimed Mitchell harassed her by making a comment while passing her office. However, Tillery testified she was present with Mitchell as he was near appellant's office and did not hear any harassing comments or witness any harassing behavior. N.T. p. 171.

After Irvin's DC-121s were submitted, Field Human Resources Officer Distiler conducted an investigation into appellant's misconduct. Distiler reviewed the investigation's documents and interviews regarding appellant's conduct between November 2019 through May 2020. N.T. p. 243. Regarding the investigation into appellant's conduct, interviews were conducted with appellant, Irvin, Mitchell, Parker, Tillery, and Business Technology Teacher Darlea Felder. N.T. pp. 246, 247; AA Exs. 2, 3, 4, 5, 6.

Distiler recalled Mitchell's interview and witness statement submitted on June 17, 2020. N.T. p. 249; AA Ex. 3. The focus of Mitchell's interview was regarding an incident on May 10, 2020 in the facility's kitchen between appellant and Mitchell. N.T. p. 250. Specifically, Distiler stated Mitchell noted the incident involved appellant calling him a "Uncle Tom." N.T. p. 251; AA Ex. 3. Distiler explained the term "Uncle Tom" refers to an African American who does not support other African Americans' ideals but supports Caucasian ideals instead. N.T. p. 252.

After the investigations concluded, Distiler reviewed the investigative record,¹¹ created a summary report, and forwarded the investigation summary report and findings to the Superintendent, who determined appellant's PDC was warranted.¹² N.T. pp. 245, 265.

On November 30, 2020, appellant received notice for her PDC scheduled for December 3, 2020.¹³ N.T. pp. 269-270, 271; AA Ex. 10. Deputy Superintendent Wynder participated with Superintendent Laurel Harry from State Correctional Institution at Camp Hill (hereinafter "SCI-Camp Hill") and Retired Field Human Resource Officer Mangan from SCI-Camp Hill as PDC panelists for appellant's PDC on December 3, 2020.¹⁴ N.T. pp. 311-312, 319-320. During her PDC, Wynder and the panelists asked appellant for her responses to the allegations regarding racist comments regarding Irvin and Mitchell. N.T. p. 321. In response to the panelists' questions, Wynder recalled appellant denied every alleged violation of the Code of Ethics. N.T. pp. 322-323, 331.

After appellant's PDC, Wynder and the panelists concluded that appellant violated the appointing authority's Code of Ethics, Sections A-1, B-9, B-10, and B-29. N.T. p. 323. Wynder did not believe appellant's responses to be

¹¹ Distiler recalled that due to how the DC-121 reports continually were submitted over time, there was an investigation for each report but ultimately, the investigations were grouped together because the alleged behavior was the same. N.T. p. 244. Because these investigations were grouped together, there was one investigation and one summary report created. N.T. p. 244.

¹² The purpose of a PDC is to provide an employee an opportunity to respond to the allegations that are being levied against her and the PDC panel asks the employee questions based on the investigation's materials. N.T. pp. 273-274.

¹³ Appellant acknowledged she received her PDC notice that outlines violations of the appointing authority's Code of Ethics. N.T. p. 423. Prior to receiving her Level-One ADLS, appellant did not receive any formal discipline from the appointing authority. N.T. p. 339.

¹⁴ Due to the nature of appellant's charges, Distiler ensured that appellant's PDC panelists were members from outside SCI-Phoenix's staff. N.T. p. 265. Distiler emphasized the panel was created with members outside of SCI-Phoenix because the appointing authority wanted to ensure impartiality. N.T. p. 272.

credible because there were multiple witnesses to appellant's alleged misconduct. N.T. p. 324. Notably, Wynder and the panelists considered appellant's racial comments toward Irvin, racial conversations with Tillery, and appellant's "Uncle Tom" statement to Mitchell to support their conclusion. N.T. p. 324.

At the conclusion of appellant's disciplinary process, Distiler confirmed Superintendent Jamie Sorber determined the appropriate level of appellant's discipline was the Level-One ADLS. N.T. pp. 276, 326. Distiler explained the Superintendent had the investigation documents, the summary report, and the PDC panel's conclusion in order to determine appellant's discipline. N.T. p. 277. On February 3, 2021, appellant was issued her Level-One ADLS letter for violating the appointing authority's Code of Ethics, Section B-10 between November 2019 and May 2020, and not for violating the appointing authority's Code of Ethics, Sections A-1, B-9, or B-29.¹⁵ Comm. Ex. A; N.T. pp. 243, 258, 278, 301, 423.

In response to the appointing authority's presentation, appellant explained her comments to Irvin on November 22, 2019. Appellant was in a meeting with Barr with her office door closed. During the meeting, appellant claimed she heard Irvin knocking on her door. After hearing the knocking, appellant raised her finger while listening to Barr's conversation but according to appellant, Irvin continued to knock on the door. N.T. p. 374. Appellant testified she left the meeting and asked Irvin why she was knocking on the door while she was in a meeting with Barr. Appellant stated Irvin knocked on the door because she needed Barr to provide

¹⁵ Distiler explained charges that were presented during a PDC may be dropped. N.T. p. 275. After a PDC panel decides whether the charges are substantiated or not substantiated, their decision is reported to the Superintendent, who reviews and determines whether the charges should remain or should be dropped. N.T. pp. 275-276, 286.

her with keys for the classroom door. After hearing Irvin's response, appellant admitted she said to Irvin "just because you're white, does not mean you're right." N.T. pp. 375, 401.

Appellant believed Irvin was using her "white privilege" to interrupt the meeting. N.T. p. 376. Appellant characterized her statement of "just because you're white, does not mean you're right" as a form of counseling to her as Irvin's union representative. N.T. pp. 377, 428. Appellant admitted she did not mention the November 22, 2019, incident with Irvin in her staff interview form because she did not think Irvin was upset because of her statement but because Barr was ignoring her. N.T. p. 411; AA Ex. 6. Appellant further explained she denied making this statement to appellant on November 22, 2019, during her PDC because she couldn't remember. N.T. pp. 376, 403.

In response to Tillery's recollection of their conversations, appellant denied ever mentioning Irvin's race or telling Tillery that races should be separated. Appellant explained she is not racist because her husband is Caucasian, and their child is biracial. N.T. pp. 391, 414. Appellant admitted she did not know that Mitchell and Irvin were dating because she believed that Irvin was married and not separated from her husband. N.T. p. 390. Appellant asserted Irvin informed her that she was married during Irvin's initial orientation and shared their experiences of receiving racial abuse in their former workplaces. N.T. p. 392.

In response to Irvin's and Distiler's testimony about her comment to Mitchell on May 10, 2020, appellant and Felder provided their perspective of appellant's interaction with Mitchell. Appellant and Felder explained they were volunteering to help the kitchen staff to serve inmates. N.T. p. 348. While she was

assisting in the kitchen with Felder, appellant observed Irvin and Mitchell enter the kitchen. Appellant stated she asked Mitchell if he was here to help. Appellant asserted Mitchell told her that “it’s not your fucking business and came up to me and up close.” N.T. pp. 349, 382. Appellant believed Mitchell was going to hit her. N.T. p. 382. Appellant recalled after Mitchell responded, he was escorted out of the kitchen by Corrections Officer Vega Lebron but called appellant a racist when he left. N.T. pp. 349, 382-383, 429.

Appellant denied calling Mitchell an “Uncle Tom.” N.T. pp. 428-429. Also, Felder affirmed appellant did not make any racial-related comments directed to Officer Mitchell. N.T. p. 350. Felder contended that Irvin’s and Mitchell’s reports are not true. N.T. p. 351. After encountering Mitchell in the kitchen, appellant reported the incident in her DC-121 report and submitted it.¹⁶ N.T. pp. 383, 425; AA Ex. 6; Ap. Ex. 2. Appellant expressed she was fearing any further encounters with Mitchell and claimed Mitchell invited her to fight with him. N.T. p. 385.

In response to Irvin’s description of appellant having Mitchell removed from her classroom on May 12, 2020, appellant testified that on May 11, 2020, she emailed Mascellino regarding Mitchell. Specifically, appellant witnessed Mitchell walk past her office and looking around the Education Department.¹⁷ N.T. p. 387. Appellant expressed she was fearful of Mitchell and informed Mascellino that she submitted her DC-121 report to Commander Calavari. N.T. pp. 387-388; Ap. Ex. 3.

¹⁶Appellant testified she erroneously entered the wrong date on her DC-121 report where April 10, 2020, should be May 10, 2020. N.T. p. 384; Ap. Ex. 2.

¹⁷ On May 11, 2020, Terra received an email from appellant regarding an alleged incident with Mitchell. Terra confirmed Captain Mascellino conducted a fact-finding meeting regarding an alleged incident between appellant and Mitchell. N.T. p. 227; Ap. Ex. 3. Terra did not participate in Mitchell’s fact-finding meeting and did not receive the results of the fact-finding meeting. N.T. p. 27. Terra confirmed Mitchell no longer works at SCI-Phoenix but did not know why he no longer works there. N.T. p. 228.

Appellant acknowledged she denied having an incident with Mitchell on May 11, 2022, on her staff interview form. N.T. p. 417; AA Ex. 6. However, appellant contended that Deputy Terra issued a no contact order between appellant and Mitchell. N.T. pp. 388-389, 419. Appellant claimed that pursuant to the no contact order, Mitchell was prohibited from entering the Education Department's West Program Services Building. N.T. p. 389.

Having carefully reviewed the record, we find the appointing authority established good cause to issue appellant's Level One ADLS.¹⁸ Specifically, the Commission finds the testimony of Mary Irvin, Darrell Parker II, Shalonda Tillery, Joseph Terra, Nathan Wynder, and Scott Distiler credible¹⁹ and persuasive regarding appellant's racial and discriminatory comments directed to her co-workers, Irvin, and Tillery.

As an Educational Guidance Counselor, appellant is responsible for maintaining efficient and effective working relationships with her fellow co-workers. Also, appellant is responsible for treating her peers professionally at all times. The appointing authority's Code of Ethics, Section B-10 provides employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated. Comm. Ex. A; N.T. p. 259; AA Ex. 7 (pg. 4).

¹⁸ At the conclusion of the appointing authority's presentation, appellant raised a motion to dismiss on the grounds that the appointing authority failed to present a *prima facie* case of good cause to support appellant's Level-One ADLS. N.T. p. 340. The ruling was deferred at the hearing. N.T. p. 342. After careful review, we deny appellant's motion to dismiss for the reasons mentioned below.

¹⁹ 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).

It is clear to this Commission that appellant's racially charged statement toward Irvin on November 22, 2019, is in direct opposition to her responsibilities and will not be tolerated. Although appellant claims her statement of "just because you're white, does not make you right" is a form of counseling as Irvin's union representative, we are disturbed that appellant would consider this clearly racial statement to be an acceptable form of conduct.

Moreover, we find Tillery's testimony credible about how appellant continually referred to Irvin's Caucasian race and her interactions with African American male officers. While appellant denies ever stating these racially charged and discriminatory statements to Tillery, we are unconvinced. We find appellant made racial and discriminatory comments to Tillery when she referred to Irvin in conversations from November 2019 through May 2020.

However, upon review of the record, we find there is insufficient direct evidence to support appellant made racial or discriminatory comments to Mitchell on May 10, 2020. Although Distler provided testimony regarding how Mitchell reported appellant calling him an "Uncle Tom," in his staff interview form, there are hearsay implications to consider. Hearsay is a statement that "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Pa. R.E. 801(C).

Under *Walker*, if hearsay evidence is admitted without objection, it will be given its natural probative effect and may support a finding by the agency, if it is corroborated by any competent evidence in the record. *Sule v. Philadelphia Parking Auth.*, 26 A.3d 1240, 1243 (Pa. Commw. 2011) citing *Walker v. Unemployment Compensation Board of Review*, 27 Pa. Commw. 522, 367 A.2d 366, 370 (1976).

Nevertheless, it is well-settled that hearsay evidence, properly objected to, is not competent evidence to support a determination of an agency. *Sule v. Philadelphia Parking Auth.*, 26 A.3d 1240, 1243 (Pa. Commw. 2011) citing *Chapman v. Unemployment Compensation Board of Review*, 20 A.3d 603, 610, n. 8; *Myers v. Unemployment Comp. Bd. of Review*, 533 Pa. 373, 625 A.2d 622, 625 (1993); see also *Walker v. Unemployment Comp. Bd. of Review*, 27 Pa. Commw. 522, 367 A.2d 366 (1976).

We note Mitchell was not present to provide testimony regarding whether appellant called him an “Uncle Tom” on May 10, 2020. The only supporting evidence of this statement is Distiler’s recollection of Mitchell’s staff interview form collected during the course of the investigation. Although Irvin was present with Mitchell in the kitchen, she acknowledges that she only heard appellant yelling at Mitchell and could not describe what appellant said to him. Furthermore, appellant and Felder provide contradicting evidence denying appellant ever told Mitchell that he was an “Uncle Tom.” Since the proposed statement is not corroborated by competent evidence in the record and there is direct, contradicting testimony as to whether appellant made a racial statement to Mitchell, we find there is insufficient evidence to support that appellant made a racially charged statement to Mitchell in the facility’s kitchen on May 10, 2020. *Sule, supra*.

In summation, the Commission finds the appointing authority established good cause to issue appellant’s Level-One ADLS. Appellant’s racial and discriminatory comments directed toward Irvin and made during conversations with Tillery negatively reflect her competency and ability to perform her duties as an Educational Guidance Counselor. *White, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence establishing good cause for suspension under Section 2603 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Theresa M. Snyder challenging her Level-One Alternative Discipline in Lieu of a one-day suspension from regular Educational Guidance Counselor, Correction Education, employment with the State Correctional Institution at Phoenix, Department of Corrections, and sustains the action of the State Correctional Institution at Phoenix, Department of Corrections in issuing the Level-One Alternative Discipline in Lieu of a one-day suspension of Theresa M. Snyder from regular Educational Guidance Counselor, Correction Education, employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: April 22, 2022