

COMMONWEALTH OF PENNSYLVANIA

William J. Molnar : State Civil Service Commission
 :
 v. :
 :
 Allegheny County Assistance Office, : Appeal No. 30739
 Department of Human Services :
 :

William J. Molnar Amy Carnicella
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by William J. Molnar challenging his Level Two Alternative Discipline in Lieu of a Three-Day Suspension (hereinafter “ADLS”) with Final Warning from regular Clerk 2 employment with the Allegheny County Assistance Office, Department of Human Services (hereinafter “appointing authority”). A hearing was held on January 20, 2022, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony, the exhibits introduced at the hearing, and the briefs of the parties. The issue before the Commission is whether the appointing authority had good cause for the Level Two ADLS with Final Warning.

FINDINGS OF FACT

1. By letter dated June 7, 2021, appellant was notified of the Level Two ADLS with Final Warning from his position of Clerk 2, regular status, with the appointing authority. Comm. Ex. A.

2. The appointing authority's June 7, 2021 letter stated:

The reason for this action is a violation of Failure to Follow General Instructions or Procedures as defined in DHS Personnel Manual 7174 (Discipline). Specifically, as you admitted during your fact finding on April 29, 2021, you improperly accessed department client files by accessing your friend, Christina Grguras', file which is a violation of the Employee Code of Conduct related to Client Information and Case Processing as described in under Safeguarding Confidential Information. On February 19, 2019 you signed document[s] stating that you read and agreed to abide by the terms of the abovementioned policy. You failed to follow the instructions or procedures in the section entitled "Expectations of OIM – Employees" by accessing Ms. Grguras information without being verified and authorized by your supervisor to do so. You also failed to follow Management Directive 205.34, Commonwealth of

Pennsylvania Information Technology Acceptable Use Policy, that you signed on February 19, 2019, by accessing data for which you did not have authorization from your supervisor [to] view.

Comm. Ex. A.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.¹

4. At appellant's February 19, 2019 new-hire orientation, appellant was provided copies of both the appointing authority's Employee Code of Conduct Regarding Client Information and Case Processing (hereinafter, "Code of Conduct") and Management Directive 205.34, Commonwealth Acceptable Use Standards for Information Technology (IT) Resources (hereinafter, "IT Policy"). N.T. pp. 171-172, 223-226; AA Exs. 7, 9, 12.

¹ Appellant's request for a hearing under Section 3003(7)(ii) was denied due to an insufficient allegation of discrimination.

5. On February 19, 2019, appellant signed a “Memorandum of Understanding: Code of Conduct” acknowledging he had read and agreed to abide by the terms outline in the Code of Conduct. N.T. pp. 171-172, 223-226; AA Exs. 7, 8, 9.
6. On February 19, 2019, appellant signed “Commonwealth IT Resource Acceptable Use Policy User Agreement” acknowledging he read and agreed to abide by the IT Policy. N.T. pp. 171-172, 223-226; AA Exs. 9, 12, 13.
7. Appellant received refresher trainings on the Code of Conduct on October 31, 2019, October 20, 2020, and October 28, 2021. N.T. pp. 171-172, 223-226; AA Ex. 9.
8. Over the last two years, during the pandemic, appellant would often gather blank applications from the appointing authority including applications for the Low Income Home Energy Assistance Program (hereinafter, “LIHEAP”). N.T. pp. 212-213.
9. Appellant would distribute these blank applications amongst the people in Mt. Washington, where he lived. N.T. p. 213.

10. In mid-March 2021, appellant was distributing applications at the Eagles Club in Mt. Washington. N.T. pp. 213, 215.
11. The Eagles Club bar manager, Christina Grguras, told appellant she was having trouble contacting LIHEAP. N.T. p. 214.
12. Specifically, Grguras needed to provide LIHEAP with a copy of her utility bill. N.T. p. 214.
13. Appellant told Grguras “just forward me a copy of your bill, I’ll scan it into your records the next day when I go to work, and I’ll follow up with any parties to see if they can review your situation.” N.T. pp. 214-215.
14. Appellant provided Grguras both his work email and personal email, and told her to use either email to forward to him her utility bill. N.T. pp. 214-215, 221.
15. A general resource account/email exists for clients to submit questions and documents to the appointing authority. N.T. p. 222.

16. On March 26, 2021, Grguras emailed appellant a copy of her utility bill to both appellant's work email and personal email stating, "Sorry I couldn't find an old bill had to wait for a new one to come in thanks again buddy." N.T. p. 215; AA Exs. 1, 3.
17. Appellant used Grguras' identifying information to obtain Grguras' record number. N.T. pp. 218-219.
18. Every client is assigned a record number that controls all aspects of the client's case. N.T. p. 218.
19. Upon obtaining Grguras' record number, appellant physically recorded the record number on Grguras' utility bill and scanned it into the system. N.T. pp. 215, 217-218; AA Ex. 3.
20. After scanning Grguras' utility bill and "reviewing the situation," appellant accessed Grguras' case and obtained her caseworker's name. N.T. pp. 218-219.
21. Appellant's caseworker was Income Maintenance Caseworker Scott Tkach. N.T. pp. 58-61, 219.

22. On March 26, 2021, appellant forwarded Grguras's email to Tkach with the following message:

I'm a clerk 2 in Platt Mailroom with a friend who was denied Li-Heap assistance up to this point supposedly because Li-Heap insists she doesn't have a gas bill in People's Gas name. She provided her latest bill via this email which clearly shows she is a customer with them.

Would you be a point of contact regarding this to help her out on this or is there an alternative representative I can pass this along to in order to have her application/status reviewed please?

N.T. pp. 112-113, 219-220; AA Ex. 1.

23. On March 26, 2021, appellant also forwarded Grguras' email to LIHEAP Supervisor Traci Sylves with the following message:

Hello, You were referred to me by my coworker and friend Patrice Mcneely. I'm a clerk 2 over in the DHS Platt Mailroom location with her.

I have a friend who was denied Li-Heap assistance up to this point supposedly because Li-Heap insists she doesn't have a gas bill in People's Gas name. She provided her latest bill via email which clearly shows she is a customer with them.

Would you be a point of contact regarding this to help out on this or is there an alternative representative I can pass this along to in order to have her application/status reviewed please?

N.T. pp. 19-22; AA Ex. 2.

24. On March 26, 2021, both Tkach and Sylves received appellant's email. N.T. pp. 27-36, 63-64.
25. Sylves was uncomfortable dealing with the email because it violated the Code of Conduct, and she immediately forwarded the email to her manager, Dorothy McCarthy. N.T. pp. 29-30, 41-42
26. Upon receiving appellant's email, Tkach was highly concerned because he observed multiple breaches of standard operating procedure. N.T. pp. 68-70.
27. Tkach contacted his chain of command regarding appellant's email within minutes of its receipt. N.T. pp. 70-71.
28. On April 29, 2021, Administrative Officer 1 Edward Schall conducted a fact-finding regarding this matter. N.T. 105-106, 109-110.

29. The fact-finding was attended by Schall, appellant, Clerical Supervisor 1 Hataratis², and Union Representative Barry Liska. N.T. p. 110.
30. At the fact-finding, appellant acknowledged Grguras was a friend, and he accessed her file. N.T. pp. 112-113, 216-217, 227; AA Exs. 1, 2.
31. On May 19, 2021, a Pre-Disciplinary Conference (hereinafter, “PDC”) was conducted by Schall. N.T. pp. 118-119.
32. The PDC was attended by Schall, appellant, Clerical Supervisor 1 Julie Gilliam, and Union Representative Steven Riccardi. N.T. p. 118.
33. At the PDC, appellant admitted he received a gas bill from Grguras, he sent emails regarding the gas bill, and accessed Grguras’ personal information. N.T. pp. 121, 217-221.
34. Schall provided all the information gathered at the PDC to Human Resources Analyst 2 Kenneth Price. N.T. pp. 138-139.

² No testimony was presented as to Clerical Supervisor 1 Hataratis’ first name.

DISCUSSION

At issue before the Commission is whether the appointing authority has established good cause for the Level-Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with Final Warning.

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.

The appointing authority presented the testimony of Low Income Home Energy Assistance Program (hereinafter, “LIHEAP”) Supervisor Tracy Sylves, Income Maintenance Caseworker Scott Tkach, Administrative Officer 1 Edward Schall, and Human Resources Analyst 2 Kenneth Price. Appellant testified on his own behalf.

Before addressing the facts of the case, we will review the applicable rules and policies appellant is alleged to have violated. The appointing authority has charged appellant with Failure to Follow General Instructions and Procedures by violating the Employee Code of Conduct (hereinafter, “Code of Conduct”) and Management Directive 205.34 of Pennsylvania Information Technology Acceptable

Use Policy (hereinafter, "IT Policy"). AA Exs. 6, 7, 11. In order to establish appellant failed to follow general instructions the appointing authority must prove the "[e]mployee was aware of, or could reasonably have been expected to have been aware of, the general instruction(s) or procedure(s) in question," and the "[e]mployee failed to properly comply with or follow the general instructions or procedure (either by act or omission)." AA Ex. 6. A first violation for Failure to Follow General Instructions or Procedures after probation will result in discharge if the violation is serious in nature or a 1-3 day suspension. Additionally, if a three-day suspension is imposed, it will include a final warning. AA Ex. 6.

We will now outline the specific procedures appellant allegedly violated. The Code of Conduct states:

Unless there is a legitimate operational need, verified and authorized by a supervisor or manager, employees will not perform inquires on cases containing individuals with whom the employee is a friend or a family member or co-worker or on cases when doing so would create the appearance of a conflict of interest.

If any employee becomes aware of a potential conflict of interest, he or she will report the situation immediately to his or her supervisor.

Ex. AA-7.

Additionally, the IT Policy states "Authorized Users may not attempt to access any data or programs contained on commonwealth systems for which they do not have authorization or explicit consent." AA Ex. 12. "IT Resources must never be used in a manner that violates other commonwealth directives and policies"

including the Code of Conduct. AA Ex. 11. “The improper use of IT Resources by employees or volunteers may result in disciplinary action, up to and including termination of employment. . . .” AA Ex. 12.

Having addressed the specific rule and procedures, we will now turn to the facts of this case. The facts are not in dispute. In March of 2021, appellant was playing darts at the Eagles Club in Mt. Washington, Pittsburgh Pennsylvania. N.T. p. 213. Appellant was also distributing LIHEAP applications at the Eagles Club. N.T. p. 213. The Eagles Club bar manager, Christina Grguras, told appellant she was having trouble contacting LIHEAP, and needed to provide LIHEAP a copy of her utility bill. N.T. p. 214. Appellant gave Grguras both his personal email and work email. N.T. pp. 214-215, 221. Appellant told Grguras “just forward me a copy of your bill, I’ll scan it into your records the next day when I go to work, and I’ll follow up with any parties to see if they can review your situation.” N.T. 214-215, 221.

On March 26, 2021, Grguras emailed appellant a copy of her utility bill to both appellant’s work email and personal email stating, “Sorry I couldn’t find an old bill had to wait for a new one to come in thanks again buddy.” N.T. p. 215; AA Exs. 1, 3. Appellant used Grguras’ identifying information to obtain Grguras’ record number. N.T. pp. 218-219. Appellant testified, every client is assigned a record number that controls all aspects of the client’s case. N.T. p. 218. Upon obtaining Grguras’ record number, appellant physically recorded the record number on Grguras’ utility bill and scanned it into the system. N.T. pp. 215, 217-218; AA Ex. 3. Appellant then accessed Grguras’ case and obtained her caseworker’s name and

contact information. N.T. pp. 218-219. Appellant's caseworker was Tkach. N.T. pp. 58-61, 219. On March 26, 2021, appellant forwarded Grguras' email to Tkach and Sylves. N.T. pp. 19-22, 219-220; AA Exs. 1, 2.

Tkach testified he received appellant's email on March 26, 2021 at 10:29 a.m. N.T. p. 64. Tkach was highly concerned after reading appellant's email because he observed multiple breaches of standard operating procedures and the Code of Conduct. N.T. pp. 68-69. Tkach testified the email violated safeguarding of client information because the email was coming from a personal email and the utility bill was not submitted through the Image Trust System.³ N.T. pp. 68-69. Additionally, appellant's email violated the Code of Conduct because appellant identified Grguras as his "friend" and employees are not to work on any items where they know the client personally. N.T. pp. 68-69. Tkach reported appellant's email to his chain of command within minutes of its receipt. N.T. pp. 70-71.

Sylves also testified she received appellant's email on March 26, 2021. Upon reviewing appellant's email, Sylves testified she was uncomfortable dealing with the email because it violated the Code of Conduct. N.T. pp. 29-30, 41-42. Sylves explained under the Code of Conduct employees are not permitted to get involved in any cases with friends or family or coworkers, and incidents should be reported to one's supervisor. N.T. p. 39. Sylves immediately forwarded appellant's email to her manager, Dorothy McCarthy. N.T. pp. 29-30, 41-42.

³ Tkach testified that images are to be submitted through the Image Trust System. N.T. p. 68.

Human Resource Analyst 2 Price testified as to how appellant's conduct violated the appointing authority's rules and procedures, and why the Level 2 ADLS with Final Warning was warranted. Price testified appellant admitted through his emails to Tkach and Sylves that Grguras was a friend, and the Code of Conduct clearly states employees shall not work on friends', families' or known acquaintances' cases. N.T. p. 190. Price further testified appellant violated policy by not notifying his chain of command regarding his personal relationship with Grguras, and by not instructing Grguras to apply for LIHEAP through the proper channels. N.T. p. 192. Appellant's conduct and resulting violations created a conflict of interest. N.T. p. 192. Finally, Price testified a Level 2 ADLS with Final Warning in lieu of a three-day suspension was warranted because appellant's violations were egregious. Further, appellant had worked for the appointing authority since February 19, 2019 and was knowledgeable of the appointing authority's policies. N.T. pp. 193-194. Price testified under the circumstances it was believed a final warning was justified, and under the appointing authority's disciplinary policy the only way to include the final warning was to impose the three-day suspension. N.T. p. 196. The final warning stipulates an employee can be discharged if the employee engages in the same conduct in the future. N.T. p. 196.

In response to the charges, appellant acknowledges he engaged in the alleged conduct, but asserts he should receive reduced charges and/or discipline. Ap. Brief p. 4. Appellant acknowledges he was wrong for giving Grguras his personal email and work email. N.T. pp. 221-222. Appellant acknowledges he could have avoided this situation by directing Grguras to submit her information to the general resource account. N.T. p. 222. Appellant acknowledges he should have notified his

chain of command upon receiving Grguras' information. N.T. p. 223. Finally, appellant acknowledges he should not have accessed Ms. Grguras' information, and testified "[i]n hindsight, I should have gone to a supervisor or an outside person to ask them to [access her file]." N.T. 227.

We will now address why appellant asserts his charges and/or discipline should be reduced. First, appellant asserts that while he did refer to Grguras as a "friend" she was more of an acquaintance. N.T. 216. Appellant testified he only knew Grguras from the bar, and at the time of hearing, he would only interact with her on Facebook once in a while. N.T. pp. 216-217. In appellant's brief, he provides the following example to describe his relationship with Ms. Grguras: "I have a 'friend' at the gas station for example [...] I see her for coffee once in a while but we do not hang out socially or interact at any point outside of those random encounters. Exactly the situation here with myself and Ms. [Grguras]." Ap. Brief p. 3- 4. Second, appellant asserts in his brief he did not break confidentiality because he was given permission by Grguras to access her file. Ap. Brief p. 3. Finally, appellant summed up his direct testimony stating "I have done that for many people, not realizing that it [w]as a conflict of interest. And I've since stopped doing it." N.T. p. 220.

Upon review of the record, the Commission finds the appointing authority has presented good cause for issuing appellant's Level 2 ADLS with Final Warning. Appellant was made aware of the Code of Conduct and IT Policy when he acknowledged receiving and understanding both policies at his February 19, 2019 orientation. Appellant admitted he referred to Grguras as a "friend" when he emailed

Tkach and Sylves, but now says Grguras was/is only an “acquaintance.” Appellant maintains this argument despite admitting he continues to communicate with Grguras through Facebook. Whether Grguras is a “friend” or “acquaintance” is of no import. The Code of Conduct specifically states employees will not perform inquires on cases when doing so would create the appearance of a conflict of interest. Appellant’s decision to act on a case where he became acquainted with the client while playing darts at a bar certainly created the appearance of a conflict of interest. Further, appellant violated both the IT Policy and Code of Conduct because he did not notify his chain of command about his relationship with Grguras, and, therefore, did not have authorization to access her file. Appellant’s assertion he did not violate confidentiality because Grguras allegedly authorized him to access her file is a misunderstanding of the Code of Conduct and IT Policy. Simply put, where a conflict of interest exists between an employee and client, the employee is not authorized to access the client’s file unless the conflict is disclosed to the employee’s supervisor and the supervisor gives authorization.⁴ Accordingly, the appointing authority had good cause to issue the Level 2 ADLS with Final Warning.

We also find the Level 2 ADLS with Final Warning was the appropriate level of discipline as opposed to a one or two day suspension that would not have included a final warning. Appellant has worked at the appointing authority since 2019 and is knowledgeable of its policies. Additionally, appellant still does not understand what constitutes a conflict of interest. In his brief, appellant equates his relationship with Grguras to a relationship with a “friend” he has coffee with once

⁴ A fair reading of the appointing authority’s applicable policies as to conflicts of interest is to protect both the client and the appointing authority from even the appearance of conflicts of interest, which cannot be accomplished if one side could unilaterally waive the perceived conflict without the knowledge of the other party.

in a while.⁵ Appellant states these relationships are exactly the same and attempts to argue this analogy shows there was no conflict of interest with Grguras. We agree both relationships are similar but disagree with appellant's conclusion. Both relationships constitute a conflict of interest or at least create the appearance of a conflict of interest. Finally, appellant admitted during the hearing he did this before when he testified "I have done that for many people, not realizing that it [w]as a conflict of interest." For all these reasons, the final warning is necessary to be impactful on appellant's future conduct. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish good cause for the Level 2 ADLS in Lieu of Three-Day Suspension with Final Warning under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of William J. Molnar challenging his Level-Two Alternative Discipline in Lieu of Three-Day Suspension with Final Warning from regular Clerk 2 employment with the Allegheny County Assistance Office,

⁵ Specifically, appellant stated: "I have a 'friend' at the gas station for example [...] I see her for coffee once in a while, but we do not hang out socially or interact at any point outside of those random encounters. Exactly the situation here with myself and Ms. [Grguras]." Ap. Brief p. 3.

Department of Human Services, and sustains the action of the Allegheny County Assistance Office, Department of Human Services, in issuing the Level-Two Alternative Discipline with Final Warning in Lieu of a three-day suspension of William J. Molnar from regular Clerk 2 employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: September 27, 2022