

COMMONWEALTH OF PENNSYLVANIA

John R. Jordan : State Civil Service Commission
: :
v. : :
: :
Pennsylvania Department of : :
Transportation : Appeal No. 30768

John R. Jordan Denise H. Farkas
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by John R. Jordan challenging his suspension pending investigation and subsequent removal¹ from regular Senior Civil Engineer Supervisor (Transportation) employment with the Pennsylvania Department of Transportation. A hearing was held on April 25, 2022, via video, before Chairwoman Maria Donatucci.

The Commissioners have reviewed the Notes of Testimony and the exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority had just cause to remove appellant from his employment.

¹ When an appointing authority suspends an employee pending investigation and subsequently removes the employee based upon information obtained through that investigation, the period of suspension will be deemed part of the removal action. *Woods v. State Civil Service Commission (New Castle Youth Development Center, Department of Public Welfare)*, 865 A.2d 272, 274 n. 3 (Pa. Commw. Ct. 2004); 4 Pa. Code §§ 101.21(b)(2), 605.2(b)(2). Appellant having been suspended pending investigation, effective June 24, 2021, and having remained on suspension until his removal effective August 23, 2021, we consider the removal, effective as of the date of suspension, the sole personnel action to be reviewed through this appeal.

FINDINGS OF FACT

1. By letter dated June 25, 2021, appellant was suspended pending investigation from his regular Senior Civil Engineer Supervisor (Transportation) employment, effective June 24, 2021. The appointing authority charged appellant with allegations of time and attendance violations, violations of the appointing authority's Working Rule #5 prohibiting the falsification of payroll records or payroll information, and failure to perform managerial duties. Comm. Ex. A.

2. By letter dated August 18, 2021, appellant was removed from regular Senior Civil Engineer Supervisor (Transportation) employment, effective August 23, 2021. The appointing authority charged appellant as follows:

The reasons for your removal are your time and attendance violations, Violation of the Department Major Working Rule #5 falsifying payroll records or payroll information, and failure to perform managerial duties. On April 8, and 9, 2021, you committed time and attendance violations and falsified your payroll when you entered 7.5 working hours on each day but were observed to have worked only 6.5 hours each day, without notifying your supervisor of

an absence or obtaining approval to use leave; additionally, on April 8, 2021, you failed to properly perform you [sic] managerial duties when you allowed subordinate employees to inaccurately record their lunch periods and then approved their inaccurate payrolls.

Comm. Ex. B; N.T. pp. 110-111; AA Ex. 12.

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.² Comm. Ex. E.
4. Appellant was employed as a Senior Civil Engineer Supervisor. As a Senior Civil Engineer Supervisor, appellant is responsible for supervising his subordinate crew members, communicating with his subordinates and supervisor, and being present at his assigned job location during his assigned work schedule. N.T. pp. 22, 25-27, 35; AA Ex. 1.
5. Appellant received training courses regarding his supervisory duties, such as time and attendance requirements and entering and approving payroll entries. N.T. pp. 91-93, 138, 176; AA Ex. 9.

² Appellant's request for a hearing on the removal under Section 3003(7)(ii) of Act 71 of 2018 was denied.

6. Appellant signed, acknowledged, and agreed to abide by the appointing authority's Working Rules. N.T. p. 86; AA Ex. 8B.
7. The appointing authority's Working Rule #5 prohibits falsifying payroll records or payroll information. N.T. p. 84; AA Ex. 8A (p. 2).
8. Appellant previously received a one-day suspension on February 2, 2021 for his failure to communicate to his supervisor and leaving his job unannounced. N.T. pp. 31-36, 36, 81-82, 140; AA Exs. 2A, 2B.
9. On April 8, 2021, appellant, his subordinate foreman Brian Hosbach and his subordinate Operator Timothy Culley took an extended lunch break at Mike and Tony's restaurant for over an hour. N.T. pp. 39-40, 42, 69-70, 72.
10. Appellant and his subordinate crew members were only permitted to have a half-hour lunch break. N.T. p. 39.
11. Appellant's subordinates cannot extend their lunches because under their union agreement, they are only permitted to have a half-hour lunch. N.T. p. 41.

12. For the April 8, 2021 lunch, Hosbach entered into payroll that he had a half-hour lunch from 11:30 a.m. to 12:00 p.m. N.T. pp. 55-56; AA Ex. 6 (p. 1).
13. For the April 8, 2021 lunch, Culley entered into payroll that he worked seven and a half hours without taking any leave for his lunch. N.T. p. 56; AA Ex. 6 (p. 8).
14. Appellant approved Hosbach's and Culley's inaccurate payroll entries. N.T. pp. 56-57; AA Ex. 6 (p. 11).
15. Appellant submitted a request to Assistant District Executive Lori Musto to work both the dayshift on April 8, 2021 and transition to the nightshift starting on April 8, 2021 and ending on April 9, 2021. N.T. p. 42.
16. Appellant's dayshift for April 8, 2021 was scheduled to begin at 7:00 a.m. and end at 3:00 p.m. N.T. pp. 49, 50.

17. According to appellant's automated vehicle locator (hereinafter "AVL") records, appellant left for work at 6:46 a.m. and arrived for work on April 8, 2021 at 7:29 a.m. N.T. pp. 49, 102-103; AA Exs. 5.
18. Appellant's computer records, known as a spunk report, reflects appellant locked his computer into the workstation at 7:33 a.m. N.T. pp. 49, 102-103; AA Exs. 5, 10A, 10B.
19. For the end of his dayshift on April 8, 2021, appellant's spunk report indicates appellant removed his computer from his workstation at 2:54 p.m. N.T. pp. 50-51, 103, 105; AA Exs. 5, 10A, 10B.
20. Appellant's AVL records show appellant left his worksite at 2:56 p.m. N.T. pp. 50-51, 103, 105; AA Exs. 5, 10A, 10B.
21. Appellant entered into his payroll record the following: he worked from 7:00 a.m. to 11:30 a.m. and 12:30 p.m. to 3:30 p.m. N.T. pp. 58, 59, 107; AA Ex. 7.
22. Appellant charged 7.5 hours of work for his dayshift on April 8, 2021. N.T. pp. 59-60, 107.; AA Ex. 7.

23. Appellant's nightshift beginning on April 8, 2021 and ending on April 9, 2021 was scheduled to start at 9:00 p.m. and end 5:00 a.m. N.T. p. 52.
24. Appellant's AVL records show appellant arrived at his workstation at 9:09 p.m. on April 8, 2021. N.T. pp. 52, 104; AA Exs. 5, 10A, 10B.
25. Appellant's spunk report shows he logged onto his computer at 9:11 p.m. N.T. pp. 52, 104; AA Exs. 5, 10A, 10B.
26. Appellant's spunk report revealed appellant logged off his computer at 3:52 a.m. on April 9, 2021. N.T. p. 106; AA Exs. 10A, 10B.
27. After appellant logged off his computer, his AVL record indicated appellant left his assigned worksite at 4:09 a.m. and did not return home until 4:42 a.m. N.T. pp. 53, 106; AA Ex. 5.
28. For his nightshift, appellant entered into his payroll record that he began working at 9:00 p.m. and stopped working at 5:00 a.m. N.T. pp. 61, 107; AA Ex. 7.

29. Appellant did not submit leave to make up the time for his shifts. N.T. p. 60.
30. Appellant did not communicate to his supervisor, Musto, of any changes to his work schedule. N.T. p. 107.

DISCUSSION

The issue before the Commission is whether the appointing authority had just cause to remove appellant. The appointing authority charged appellant with time and attendance violations, violation of the appointing authority's Working Rule prohibiting the falsification of payroll records or payroll information, and failure to perform his managerial duties. Comm. Ex. B.

In an appeal challenging the removal of a regular status employee, the appointing authority bears the burden of proving just cause for the removal and must prove the substance of the charges underlying the removal. *Long v. Commonwealth of Pennsylvania Liquor Control Board*, 112 Pa. Commw. 572, 535 A.2d 1233 (1988). Factors supporting the just cause removal of a civil service employee must be related to the employee's job performance and touch in some logical manner upon the employee's competency and ability to perform his job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

In support of its charges, the appointing authority presented the testimony of Human Relations Coordinator Nicole Haney,³ Assistant District Executive Lori Musto,⁴ Human Resource Officer 3 Jacob Smith,⁵ and Human Resource Analyst 5 Steven Koscelnak.⁶ In response, appellant testified on his own behalf.

Appellant began his employment with the appointing authority as a Civil Engineer Trainee in 2014. N.T. p. 22. As a Civil Engineer Trainee, appellant rotated throughout various departments until he was promoted to a Civil Engineer in 2015. N.T. p. 22. Appellant worked as a Civil Engineer until he was promoted to Senior Civil Engineer Supervisor in 2018.⁷ N.T. pp. 22-23, 138.

As a Senior Civil Engineer Supervisor, appellant oversees and supervises the foremen and crews throughout Allegheny County, which includes managing winter maintenance activities and summer maintenance activities. As a

³ Nicole Haney is employed as a Human Relations Coordinator. N.T. p. 67.

⁴ Lori Musto is employed as an Assistant District Executive for Maintenance. N.T. p. 20. Prior to her current position, Musto was a Senior Civil Maintenance Manager for Allegheny County. N.T. p. 21.

⁵ Jacob Smith is employed by the Office of Administration as a Human Resource Officer 3. N.T. pp. 74, 76. As a Human Resource Officer 3, Smith provides and manages human resource services and consultation to the appointing authority's District 11. N.T. p. 76. In February 2021, Smith was a Human Resource Analyst 3 and acting as the Employee Relations Coordinator for District 11. Smith was responsible for providing guidance to District 11 in a disciplinary process. N.T. pp. 79, 80-81.

⁶ Steven Koscelnak is employed by the Office of Administration (hereinafter "OA") as a Human Resource Analyst 5 that is assigned to the infrastructure and economic development delivery center. N.T. p. 122. Koscelnak's responsibilities include ensuring disciplinary actions are consistent and reviewing investigatory information and disciplinary determinations. N.T. p. 125.

⁷The appointing authority used Senior Civil Engineer Supervisor and Assistant Highway Maintenance Manager interchangeably. N.T. p. 24. We will refer to appellant's position as Senior Civil Engineer Supervisor for the purposes of our decision.

result, appellant is responsible for participating in decisions regarding public safety on the roads, such as snow removal, maintenance of roadways, roadway repairs, and drainage concerns. N.T. pp. 25-26; AA Ex. 1.

As a Senior Civil Engineer Supervisor, appellant was required to attend training courses related to supervisory duties, such as the absence management for supervisors class,⁸ an assistant highway maintenance manager academy class,⁹ the PennDOT Leadership Academy for Supervisor class (hereinafter “PLAS”),¹⁰ and time and attendance classes. N.T. pp. 91-93, 138, 176; AA Ex. 9. Notably, appellant received training on entering and approving payroll entries and the appointing authority’s Working Rules. N.T. p. 176; AA Ex. 9.

After his training, appellant signed, acknowledged, and agreed to abide by the appointing authority’s Working Rules. N.T. p. 86; AA Ex. 8B. Specifically, the appointing authority’s Working Rules prohibit falsifying payroll records or payroll information. N.T. p. 84; AA Ex. 8A (p. 2). Additionally, appellant is responsible for adhering to time and attendance policies. As such, to perform his managerial duties and responsibilities, appellant must be present at his assigned job location in Allegheny County at the beginning of his shift. N.T. pp. 27, 35.

⁸Absence management is a training course instructing supervisory employees about the importance of leave policies, how to apply leave policies, when to approve leave, and what to approve. N.T. p. 91, 94; AA Ex. 9 (p. 2).

⁹The assistant highway maintenance manager academy is a training course instructing supervisory employees about the importance of maintaining accurate payroll records and entries. N.T. p. 92; AA Ex. 9 (p. 3).

¹⁰ The PennDOT Leadership Academy for Supervisor (hereinafter “PLAS”) class is a training course instructing supervisory employees about time and attendance policies, and payroll records. N.T. pp. 92-93; AA Ex. 9.

Appellant is also responsible for communicating with his subordinate employees and his supervisor. N.T. p. 26. For instance, appellant is responsible for communicating with his supervisor if he leaves his position before the end of his work schedule. N.T. p. 178. Assistant District Executive Musto explained it was important for appellant to communicate with her because as his supervisor, she is responsible for Allegheny County's roads. N.T. p. 29.

Despite receiving training regarding time and attendance and the importance of communicating to his supervisors and subordinates, appellant's disciplinary history reflects he received a one-day suspension for his failure to communicate with his supervisor and leaving his job unannounced on February 2, 2021. Specifically, on February 2, 2021, appellant abandoned his job assignment during winter operations, allowed his subordinate foreman to return home for the day, and never communicated with his supervisor. Although appellant's reasoning for abandoning his assignment was because of a family emergency, Musto emphasized Bridgeville's roads did not receive snow removal during the snowstorm and accidents occurred throughout Monroeville.¹¹ N.T. pp. 31-32, 153.

As a result of appellant's abandonment of his assignment and failure to manage the snow crews, appellant initially received a one-day suspension with final warning. N.T. pp. 32-33; AA Ex. 2A. On February 24, 2021, appellant signed an Agreement and Release that resulted in appellant receiving a one-day suspension with a warning that "any future incident of the same or similar nature will result in

¹¹ If appellant had communicated with Musto that he had a family emergency and needed to leave, Musto testified she would have permitted him to leave and assign a replacement for his shift. N.T. p. 35.

further disciplinary action, up to and including termination.” N.T. pp. 34-35, 82, 140; AA Exs. 2A, 2B. Appellant received his one-day suspension letter on March 23, 2021 for time and attendance violations, failure to perform managerial duties, and violation of department safety policy. N.T. pp. 34, 81-82; AA Ex. 2B.

After appellant received his one-day suspension, Assistant District Executive Musto communicated to all Senior Civil Engineer Supervisors the importance of communicating with their supervisors about their positions and when they leave before their shifts concluded. N.T. pp. 35-37; AA Ex. 3. Musto further explained appellant struggled with performing repairs and balancing the lifestyle of maintenance. He appeared to be overwhelmed with his fundamental job duties. N.T. p. 28. As a result, Musto informed appellant of his work performance issues in his employee performance review and placed appellant on a work plan. N.T. p. 28. During appellant’s work plan, appellant began to improve within a short period of time before he returned to struggle with his responsibilities. N.T. p. 29. Appellant continued to struggle with communicating with his subordinate employees and identifying issues. N.T. p. 29.

On April 8, 2021, Musto was approached by District Executive Cheryl Moon-Sirianni who witnessed appellant and his subordinate foreman and crew having their lunches for an extended period of time at the restaurant called Mike and Tony’s. N.T. p. 39. Similarly, Human Relations Coordinator Haney joined Moon-Sirianni at Mike and Tony’s and witnessed appellant and his subordinate employees having their lunches for an extended period of time, as well. N.T. pp. 69-70, 72.

Musto explained appellant, his subordinate foreman, and his subordinate operator were permitted to have a half-hour lunch. N.T. p. 39. Musto discovered appellant and his subordinates extended their lunch period to over an hour. N.T. pp. 39, 42. Appellant never requested to have an extended lunch period. N.T. p. 40. However, Musto emphasized appellant's subordinate foreman and operator would not have the ability to extend their lunches. They could not extend their lunches because pursuant to a union agreement with the appointing authority, they are only permitted to have a half-hour lunch and could not make up the time at the end of the day. N.T. p. 41.

Musto reviewed appellant's subordinate foreman, Brian Hosbach's payroll. According to Hosbach's payroll entry for April 8, 2021, he charged a half hour lunch from 11:30 a.m. to 12:00 p.m. AA Ex. 6 (p. 1). Musto noted Hosbach was seen with appellant at Mike and Tony's for over an hour. N.T. p. 55. Musto explained Hosbach entered into the payroll system that he worked seven and a half hours and did not take any leave after his lunch period. N.T. p. 56; AA Ex. 6 (p. 6).

Musto also reviewed Operator Timothy Culley's payroll entry for April 8, 2021. Musto noted Culley is appellant's subordinate crewman, who joined appellant for lunch on April 8, 2021. N.T. p. 56. According to Culley's payroll entry, Culley entered he worked seven and a half hours and did not take any leave after his lunch on April 8, 2021. N.T. p. 56; AA Ex. 6 (p. 8). Musto testified appellant approved Hosbach's and Culley's payroll entries into the SAP system. N.T. pp. 56-57; AA Ex. 6 (p. 11). Musto emphasized when appellant approved Hosbach's and Culley's payroll entries for April 8, 2021, he committed a violation of his managerial duties because he approved their lunchtimes when they were not working. N.T. p. 57.

During the investigation into whether appellant approved his subordinate's April 8, 2021 extended lunch, Musto discovered that appellant entered into payroll that he worked the extra half-hour of his lunch period on April 8, 2021. N.T. p. 42. In response to discovering appellant's payroll entry, Musto and Human Resource Officer 3 Smith reviewed appellant's automated vehicle locator (hereinafter "AVL") records,¹² appellant's spunk report,¹³ and appellant's payroll entries and learned appellant did not charge the appropriate amount of time for his work shifts on April 8, 2021 or April 9, 2021. N.T. pp. 42, 97-98; AA Exs. 5, 7, 10A, 10B.

Regarding appellant's shifts between April 8, 2021 and April 9, 2021, appellant asked to work the nightshift starting on the night of April 8, 2021. Musto permitted appellant to begin the nightshift after his April 8, 2021, dayshift. N.T. p. 42. Musto told appellant that if he needed to leave to inform her because she was concerned about appellant shifting from a dayshift to a nightshift on the same day. As a result, Musto instructed appellant if he wanted to take leave, then he should let her know and he would be able to make up the time the next day. N.T. pp. 42-43, 53.

Appellant's dayshift for April 8, 2021 began at 7:00 a.m. and ended at 3:00 p.m. N.T. pp. 49, 50. However, according to appellant's AVL records, appellant left for work at 6:46 a.m. and arrived for work at 7:29 a.m. Shortly

¹² An AVL record provides an employee's travel log along with timing entries for when the employee begins driving their assigned vehicle and arrives at their assigned destination. N.T. p. 47; AA Ex. 5.

¹³ A spunk report reflects an employee's computer activity, such as logging in and logging off throughout a workday. N.T. p. 98; AA Exs. 10A; 10B. The timeframe of appellant's spunk report was from April 6, 2021 through April 12, 2021. N.T. p. 99; AA Exs. 10A, 10B.

thereafter, the spunk report reflects appellant locked his computer into the workstation at 7:33 a.m., which corresponds with appellant's AVL records. N.T. pp. 49, 102-103; AA Exs. 5, 10A, 10B. Consequently, appellant was twenty-nine minutes late to work. N.T. pp. 49-50. At the end of his dayshift, appellant's spunk report reveals appellant removed his computer from his workstation at 2:54 p.m. and appellant's AVL records reflect appellant left the worksite at 2:56 p.m.¹⁴ Appellant did not arrive home until 3:30 p.m. N.T. pp. 50-51, 103, 105; AA Exs. 5, 10A, 10B.

A review of appellant's payroll records reveal he inaccurately entered his work time. Despite arriving late and leaving early on April 8, 2021, appellant's payroll records show appellant worked from 7:00 a.m. to 11:30 a.m. and from 12:30 p.m. to 3:30 p.m. N.T. pp. 59, 107; AA Ex. 7. Although appellant's shift should have ended at 3:00 p.m., appellant's payroll reflected he worked until 3:30. N.T. pp. 45, 51. Smith and Musto confirmed that while appellant entered he worked a seven and a half hour workday, appellant only worked six and a half hours according to his AVL records and spunk report. N.T. pp. 59-60, 107; AA Exs. 5, 7, 10B.

Appellant's nightshift began on April 8, 2021 at 9:00 p.m. and ended on April 9, 2021 at 5:00 a.m. N.T. p. 52. Yet, appellant's AVL records reflect appellant arrived at his workstation at 9:09 p.m. Afterwards, appellant's spunk report showed appellant logged onto his computer at 9:11 p.m. N.T. p. 52, 104; AA Exs. 5, 10A, 10B. As a result, appellant was nine minutes late for work. N.T. p. 52; AA Exs. 5, 10A, 10B. Moreover, appellant's spunk report showed appellant logged

¹⁴ Appellant's spunk report also reflects appellant's computer did not have any activity between 2:54 p.m. and 9:11 p.m. on April 8, 2021. N.T. pp. 104-105; AA Ex. 10A; 10B.

off his computer at 3:52 a.m. on April 9, 2021.¹⁵ N.T. p. 106; AA Exs. 10A, 10B. Afterwards, appellant's AVL record confirmed appellant left the worksite at 4:09 a.m. and he did not return home until 4:42 a.m. N.T. pp. 53, 106; AA Ex. 5.

Similar to his dayshift, appellant indicated in his payroll records he worked seven and a half hours. Appellant entered into payroll he worked from 9:00 p.m. to 5:00 a.m. N.T. pp. 61, 107; AA Ex. 7. While Musto believed appellant completed the nightshift, she discovered that appellant's payroll entry and his AVL records show that he did not. N.T. pp. 61-62; AA Exs. 5, 7. In fact, appellant worked approximately six and a half hours on April 9, 2021. N.T. p. 107.

Musto confirmed appellant did not enter leave to make up his time for either shift. She also noted that appellant did not communicate any changes to his work schedule to her. N.T. p. 60. As a result, appellant overcharged one hour for his dayshift and nightshift. N.T. p. 107.

On April 16, 2021, appellant received a pre-disciplinary conference (hereinafter "PDC") notice scheduling his PDC later that day. N.T. p. 44; AA Ex. 4. Appellant's PDC notice listed the following charges: time attendance violations, failure to perform managerial duties, and falsifying payroll records or payroll information. N.T. p. 44. Musto and Smith attended and conducted appellant's PDC and appellant was provided an opportunity to respond to the charges. N.T. pp. 44, 80, 130.

¹⁵ Smith confirmed that appellant did not work on his computer until April 11, 2021. N.T. p. 106; AA Exs. 10A, 10B. When employees do not shut down their computers and the computers continue to run after their scheduled time is over, the IT professionals do not consider the computer activity after the schedule is over. N.T. pp. 113-114.

After appellant's PDC, Smith received documents from appellant asserting his lunch on April 8, 2021 was a working lunch. N.T. p. 88. Appellant also contended that he made up work on April 9, 2021 for arriving late and leaving early on April 8, 2021 and April 9, 2021. N.T. p. 97.

While appellant provided documentation asserting that he worked to make up the time, Smith confirmed that the investigation's results and computer records did not prove that he worked. N.T. pp. 96, 108. For example, Smith reviewed appellant's phone records for April 8, 2021 and April 9, 2021. N.T. p. 117. Smith testified that appellant did not make up for the lost time for April 8, 2021 and April 9, 2021 through working on his work issued cellphone. N.T. pp. 117-118. Yet, Smith considered appellant's submitted documents during his review. N.T. p. 88.

On June 25, 2021, appellant received his suspension pending investigation letter. N.T. p. 109; AA Ex. 11. The reasons supporting appellant's suspension pending investigation was for time and attendance violations, violating the appointing authority's Working Rule prohibiting falsifying payroll records or payroll information, and failing to perform his managerial duties. AA Ex. 11.

Smith explained that between appellant's PDC and appellant's suspension pending investigation, he was reviewing the investigation findings and records, and consulting with managers to determine the appropriate disciplinary action. N.T. pp. 109-110. Human Resource Analyst 5 Koscelnak reviewed the appointing authority's investigatory findings, including appellant's PDC, appellant's

AVL records, appellant's computer records, appellant's training transcripts, and appellant's phone records, to determine the appropriate level of discipline. N.T. pp. 95, 126. Based on her review, Koscelnak believed appellant falsified payroll records. Koscelnak emphasized as a Senior Civil Engineer Supervisor, appellant was responsible for the "expenditure of taxpayers money funds and payments." N.T. p. 127.

As a result, Koscelnak determined appellant be removed instead of receiving discipline with a final warning because of appellant's training and responsibilities as a managerial employee. N.T. p. 128. Specifically, appellant is held to a higher standard of trust and responsibility because of his managerial role. N.T. p. 128. Koscelnak noted she compared prior disciplinary determinations with similar facts to appellant's charges to ensure the determination was consistent. N.T. p. 126. Koscelnak confirmed that the appointing authority has removed employees for falsifying payroll records in the past. N.T. pp. 128, 129. Consequently, on August 18, 2021, appellant was notified of his removal from regular Senior Civil Engineer Supervisory employment with the appointing authority. Comm. Ex. B; N.T. pp. 110-111; AA Ex. 12.

In response to the appointing authority's presentation, appellant argued that his April 8, 2021 lunch should have been considered a working lunch. Specifically, appellant stated that during the April 8, 2021 lunch, the foreman, the operator, and appellant worked on project items, such as inlet reviews and schematic drawings. N.T. pp. 142, 154, 163-164; Ap. Ex. 7. Appellant contended that while the appointing authority characterized his April 8, 2021 lunch as an extended lunch,

he, as a manager, should make the decisions of what should be considered work and when he could complete meaningful work. N.T. pp. 142, 168. Appellant did not inform his supervisor that he was taking a working lunch because it was “spur of the moment.” N.T. p. 169. Appellant argued “I don’t believe that I needed to ask to continue working regardless of the location.” N.T. p. 169. Appellant explained that throughout his work experience as a Civil Engineer Trainee to his former Assistant Geotechnical Project Manager position, it was common to have a working lunch. N.T. p. 141. Appellant acknowledged he and his subordinates were at Mike and Tony’s restaurant longer than a half hour and that his subordinates were only permitted to have a half hour lunch. N.T. p. 156, 167.

Furthermore, appellant argued when he asked his direct supervisor for a set schedule, her response was the agency was too busy to set a schedule for him. Appellant also stated he requested to be removed from the intensity of working both the dayshift and nightshift. Appellant testified his request was denied. N.T. p. 143. Appellant emphasized that he was being stretched too thin for being asked to successfully oversee the 7:00 a.m. to 3:00 p.m. crew and the 9:00 p.m. to 5:00 a.m. crew. N.T. p. 143. Appellant believed it would be nearly impossible for a Senior Civil Engineer Supervisor to supervise for sixteen hours in one day¹⁶. N.T. pp. 142-144. Yet, appellant acknowledged he contacted Musto to change his shift from dayshift to nightshift. N.T. p. 174.

¹⁶ In support of his work performance, appellant noted he received positive employee performance reviews throughout his employment as a Senior Civil Engineer Supervisor. Specifically, appellant noted how he was positively rated in communication sections. N.T. pp. 148-151; Ap. Exs. 3, 4, 5.

In response to his payroll entries, appellant argued that he entered his time for his dayshift and nightshift at 3:00 a.m. and his entries were a result of human error. N.T. pp. 155, 170, 172, 175. Despite arguing that his payroll entries were considered human errors, appellant contended he did not falsify his subordinates' payroll records and did nothing wrong. N.T. p. 177. Additionally, appellant acknowledged he did not take any leave to cover his early departures from work. N.T. p. 172. Appellant contended he does not believe he is required to inform his supervisor of when he left early from his worksite. N.T. p. 173. However, appellant admitted that his supervisor instructed him to inform her when he was leaving early. N.T. p. 166. Appellant also acknowledged the accuracy of his AVL records or his work schedule. N.T. pp. 167, 174.

Having carefully reviewed the record, we find the appointing authority established just cause to warrant appellant's removal. Specifically, the Commission finds the testimony of Lori Musto, Nichole Haney, Jacob Smith, and Steven Koscelnak credible¹⁷ and persuasive regarding appellant's time and attendance violations, falsification of payroll records and payroll information, and appellant's failure to perform his managerial duties as a Senior Civil Engineer Supervisor.

Regarding appellant's time and attendance charge, appellant was responsible for being present and ready to work throughout the duration of his work schedule at his assigned location. Appellant also received training regarding the

¹⁷ 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).

importance of time and attendance and received notice through his one-day suspension regarding the importance of being present at work. Yet, Musto, Smith, and Koscelnak credibly revealed appellant arrived late to work and left early on both his dayshift and nightshift on April 8, 2021 and April 9, 2021. In order to perform one's work duties, one must be available for work. *Zielinski v. Luzerne County Assistance Office, Department of Public Welfare*, 107 Pa. Commw 414, 528 A.2d 1028 (1986). The Commonwealth has the right to have employees present at work to perform needed services. *Id.* While appellant argues that his work schedule of completing sixteen hours of work is overwhelming, he acknowledged and Musto confirmed appellant requested to work both shifts. As such, appellant's time and attendance violations against his work schedule negatively reflect upon his competency and ability to execute his job duties as a Senior Civil Engineer Supervisor.

Regarding appellant's charge of falsifying payroll records and information, we find appellant's stance that his entries were the result of human error to be unpersuasive. Appellant acknowledged he was trained on the importance of entering and approving accurate payroll records. Moreover, appellant agreed to abide by the appointing authority's Working Rules, which prohibit the falsification of payroll records or information. Despite receiving and understanding this prohibition, appellant entered inaccurate time entries for his shifts on April 8, 2021 and April 9, 2021. Appellant's falsification of these records reflects negatively upon his competence and ability to perform his job duties and responsibilities.

Regarding appellant's charge of failing to perform his managerial duties, as a Senior Civil Engineer Supervisor, appellant holds a managerial position. An appointing authority can require its managerial employees be held to the highest

level of conduct. *Woodbridge v. Commonwealth, Department of Revenue*, 435 A.2d 300, 302 (Pa. Commw. 1981). Furthermore, a management employee must strictly adhere to standards and set an example for his subordinates. *Id.* Appellant asserts that he did not fail to perform his managerial duties because as a manager, he should be able to determine what should be considered work for his subordinate employees and did nothing wrong. We disagree. Contrary to appellant's belief, Musto credibly explained appellant's subordinates were confined to the limitations of their union agreement to only have a half hour lunch period. When appellant approved his subordinates' payroll records, despite knowing their lunch periods exceeded their time limit, appellant failed to perform his managerial duties as a Senior Civil Engineer Supervisor. Appellant's belief that he did nothing wrong clearly reflects how he failed to uphold his responsibility regarding time and attendance, the submission of accurate payroll records, and supervisory responsibilities. We find appellant's failure to perform his managerial duties, including his failure to adhere to his work schedule and falsification of payroll records, sufficient to provide just cause for his removal. *Woods, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

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

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of John R. Jordan challenging his removal from regular Senior Civil Engineer Supervisor (Transportation) employment with the Pennsylvania Department of Transportation and sustains the action of the Pennsylvania Department of Transportation in the removal of John R. Jordan from regular Senior Civil Engineer Supervisor (Transportation) employment, effective August 23, 2021.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: November 22, 2022