

COMMONWEALTH OF PENNSYLVANIA

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| Chamara Grant | : | State Civil Service Commission |
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| v. | : | |
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| State Correctional Institution at Phoenix, | : | |
| Department of Corrections | : | Appeal No. 30833 |
| Chamara Grant | | Jocelyn R. Schultz |
| <i>Pro Se</i> | | Attorney for Appointing Authority |

ADJUDICATION

This is an appeal by Chamara Grant challenging her removal from regular Corrections Officer 1 employment with the State Correctional Institution at Phoenix, Department of Corrections. A hearing was held on March 18, 2022, via video, before Commissioner Gregory M. Lane

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority had just cause for appellant's removal.

FINDINGS OF FACT

1. On October 4, 2021, appellant was informed she was removed from her regular Corrections Officer 1 employment with the appointing authority, effective October 4, 2021. Comm. Ex. A.

2. The October 4, 2021 removal letter provides the following reason for appellant's removal:

Unacceptable Attendance, More Specifically AWOL

Specifically, it was determined that you have had an unauthorized absence from work (AW) since May 19, 2021, and continuing until the date of this letter. During this period of time, you have accrued 792 hours of AW. You were mailed an options letter on July 27, 2021, which required you to return to work by August 4, 20201 [sic], or select one of the following options: return to work, retirement, resignation, and/or apply for other Commonwealth employment. You did not respond to this letter or report for duty as required.

You have abandoned your position so this action is warranted.

Comm. Ex. A (emphasis in original).

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018. Comm. Ex. C.

4. Appellant began her employment with the appointing authority as a Corrections Officer Trainee in 2018. After her probationary period concluded, appellant received a promotion to Corrections Officer 1. N.T. pp. 17, 76.
5. By letter dated September 11, 2019, appellant received a verbal reprimand for being absent without leave (hereinafter “AW”) on August 18, 2018, and August 28, 2019. The letter informed appellant that further instances will subject her to further discipline, including suspension and removal. N.T. p. 21; AA Ex. 1 (pp. 1-2).
6. By letter dated September 30, 2019, appellant received a written reprimand for using non-prescheduled combined leave on September 21, 2019. The letter informed appellant that further instances will subject her to further discipline, including suspension and removal. N.T. p. 22; AA Ex. 1 (pp. 3-4).
7. By letter dated March 11, 2021, appellant received a three-day suspension for violating the appointing authority’s Code of Ethics and procedures. The letter informed appellant that further violations may

result in her removal. The letter listed appellant's Philadelphia, Pennsylvania address. N.T. p. 23; AA Ex. 1.

8. At the conclusion of appellant's three-day suspension, appellant never returned to work. N.T. pp. 24, 35.
9. By letter dated June 16, 2021, a Family Medical Leave Act (hereinafter "FMLA") Notice of Eligibility and Disapproval was sent to appellant for her absences between June 13, 2021, and June 16, 2021. The notice informed appellant that she was denied FMLA because she did not meet the work requirement of 1,250 hours. Because appellant was denied FMLA leave, her absences between June 13, 2021, through June 16, 2021, were converted to unauthorized absences. N.T. pp. 50-51; AA Exs. 6, 7.
10. By letter dated July 27, 2021, the appointing authority sent appellant a return-to-work letter. The letter informed appellant that she had been on unauthorized absence from work since May 19,

2021. The letter further provided appellant four options for her to respond by August 4, 2021: 1) return to work on or before August 4, 2021; 2) retire; 3) resign; or 4) apply for other commonwealth employment. If appellant decided to not resign or retire, a pre-disciplinary conference (hereinafter “PDC”) would be scheduled. The letter listed appellant’s Philadelphia, Pennsylvania address. Appellant’s return-to-work letter was sent to her via regular and certified mail to her Philadelphia, Pennsylvania address. N.T. pp. 25-28; AA Exs. 2, 9.

11. Appellant did not respond to her return-to-work letter. N.T. p. 27.
12. By letter dated August 5, 2021, the appointing authority sent appellant a PDC notice. The notice scheduled appellant’s PDC for August 12, 2021. The notice informed appellant that she was charged with violating the appointing authority’s Code of Ethics, Section B.21 for being AW since May 19, 2021. Specifically, the PDC notice informed appellant that she has accrued 432 hours of unapproved absences since May 19, 2021. The PDC notice also indicated appellant did not respond to her return-to-work letter. It was sent to appellant

via regular and certified mail to appellant's Philadelphia, Pennsylvania address. N.T. pp. 36-37; AA Exs. 4, 9.

13. On August 12, 2021, appellant's PDC was conducted but appellant did not attend. As a result, the PDC was held in absentia. N.T. pp. 41-43; AA Ex. 5.
14. Within a week after appellant's PDC, appellant called Field Human Resource Officer Scott Distler. Appellant asked Distler whether she could return to work and informed him that her address had changed. During the conversation, Distler informed appellant that it was her responsibility to inform the appointing authority of her address change. N.T. pp. 53-54.
15. The appointing authority's address records reflect appellant's Philadelphia, Pennsylvania address as her current address. N.T. p. 54.
16. The appointing authority did not receive any of appellant's mail returned or any notice that appellant no longer lived in Philadelphia, Pennsylvania. N.T. pp. 55-56.

17. The appointing authority does not have any records that appellant updated her Philadelphia, Pennsylvania address during her employment. N.T. p. 63.
18. Because appellant contacted him, Distler waited to submit the summary of appellant's case to the superintendent for his review. N.T. p. 53.
19. After Distler submitted the summary of appellant's case, the superintendent recommended appellant's removal. Comm. Ex. A; N.T. pp. 18, 19, 45.

DISCUSSION

The issue before the Commission is whether the appointing authority established just cause for appellant's removal from regular Corrections Officer 1 employment. The appointing authority charged appellant with unacceptable attendance for being absent without leave (hereinafter "AW") from May 19, 2021, until the date of her removal on October 4, 2021.

The appointing authority bears the burden of proving just cause for removal of a regular status employee 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 (Pa. Commw. 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 the job duties. *Woods v. State Civil Service Commission*, 590 Pa. Commw. 337, 912 A.2d 803 (2006).

In support of the charge, the appointing authority presented the testimony of Field Human Resource Officer Scott Distler.¹ In response, appellant testified on her own behalf.

Appellant began her employment with the appointing authority as a Corrections Officer Trainee in 2018. After her probationary period concluded, appellant was promoted to a Corrections Officer 1. N.T. pp. 17, 76. Throughout her employment, appellant received prior discipline. N.T. p. 21. On September 11, 2019, appellant received a verbal reprimand for being AW on August 18, 2018, and August 28, 2019. N.T. p. 21; AA Ex. 1 (pg. 1). On September 30, 2019, appellant received a written reprimand for using non-prescheduled combined leave on September 21, 2019. N.T. p. 22; AA Ex. 1 (pg. 3.). On March 11, 2021, appellant received a three-day suspension for violating the appointing authority's Code of Ethics and procedures. N.T. p. 23; AA Ex. 1 (pg. 5).

Distler confirmed that with each progressive discipline, the appointing authority informed appellant that her time and attendance would be monitored, and any further instances of time and attendance violations could result in further

¹ Distler is employed as a Field Human Resource Officer assigned to the State Correctional Institution at Phoenix (hereinafter "SCI-Phoenix") and the State Correctional Institution at Chester. N.T. pp. 14, 74.

discipline, including removal. N.T. pp. 22-23; AA Ex. 1. Distler testified that appellant acknowledged each form of discipline through her signature after they were presented. N.T. p. 23.

Distler testified that the appointing authority's authorized absence manual provides that when an employee is assigned to work pursuant to their work schedule, the employee is required to work during the assigned time. If the employee is not present to work, the employee's absence must be documented. When an employee does not have available leave to use or to document, then the employee will be charged with AW. N.T. p. 74.

After her three-day suspension, appellant never returned to work. N.T. pp. 24, 35. Based on her continued absences from May 19, 2021, until her removal, appellant accrued 792 hours of being AW.² N.T. p. 20.

On June 16, 2021, a Family Medical Leave Act (hereinafter "FMLA") Notice of Eligibility and Disapproval was sent to appellant for her absences between June 13, 2021 through June 16, 2021.³ While the Pennsylvania HR Service Center received notice from the appointing authority that appellant's absences between June 13, 2021 through June 16, 2021 could qualify for FMLA, appellant was denied

² From March 15, 2021 through May 19, 2021, appellant utilized all of her anticipated leave. N.T. pp. 20, 30, 34-35; AA Ex. 3.

³ Whenever an employee has an extended absence of more than five days, the appointing authority provides the employee a Family Medical Leave Act (hereinafter "FMLA") letter. N.T. p. 46. Distler confirmed SCI-Phoenix does not have anything to do with FMLA. N.T. p. 111.

FMLA because she did not meet the work requirement.⁴ N.T. p. 50; AA Exs. 6, 7. Because appellant was not deemed eligible for FMLA, her absences between June 13, 2021, through June 16, 2021, were converted to unauthorized absences. N.T. p. 51; AA Ex. 7.

On July 27, 2021, the appointing authority sent appellant a return-to-work letter.⁵ N.T. pp. 25-26, 28; AA Ex. 2; *see Finding of Fact 10*. Distler confirmed appellant's return-to-work letter was sent via regular and certified mail to her Philadelphia, Pennsylvania address, as cited in the appointing authority's records.⁶ N.T. p. 27; AA Ex. 9. Distler testified appellant did not respond to her return-to-work letter. N.T. p. 27. Distler emphasized appellant did not return to work from May 19, 2021 through August 4, 2021. N.T. p. 66. By August 6, 2021, appellant accumulated approximately ninety-nine days of AW. N.T. pp. 33-34; AA Ex. 3 (pg. 2).

On August 5, 2021, a PDC notice was sent to appellant scheduling her for a PDC on August 12, 2021. N.T. pp. 35-36; AA Ex. 4. The charge referenced in appellant's PDC notice is unacceptable attendance, specifically AW in violation of the appointing authority's Code of Ethics, Section B.21. N.T. pp. 36, 42; AA

⁴ To be eligible for FMLA, an employee must have at least 1,250 hours of work. N.T. p. 50.

⁵ When an employee goes for an extended period of time being AW, the appointing authority sends the employee a return-to-work letter. The return-to-work letter provides the employee options for returning to work. For example, the return-to-work letter may provide an announcement of extended absence, or list opportunities if the employee wants to return to work, resign, or retire. N.T. p. 24.

⁶ Distler confirmed that appellant's return-to-work letter's reference to April 5, 2021, was a typo and the correct date should reflect May 19, 2021. N.T. pp. 26-27.

Ex. 4; *see Finding of Fact 12*. Major Robert Terra, Major Scott Bowman, and Human Resources Analyst 5 Missy Kracher conducted appellant's PDC on August 12, 2021. N.T. pp. 41-42; AA Ex. 5. Distler testified appellant did not attend her PDC and the PDC was held in absentia.⁷ N.T. pp. 41, 42-43; AA Ex. 5. The PDC panel unanimously determined that the charges were substantiated. N.T. p. 43. After the PDC concluded, a summary of the PDC was created. N.T. pp. 43-44; AA Ex. 6.

Distler recalled appellant called him within a week after her PDC. During the phone conversation, appellant asked Distler whether she could return to work. Distler testified he told appellant there was nothing preventing her from returning to work. N.T. pp. 53, 54. Appellant also informed Distler that her address had changed. Distler explained to appellant how it was her responsibility to inform the appointing authority of any changes to her address. N.T. p. 54. Distler further informed appellant that according to their records, her current address is Philadelphia, Pennsylvania. N.T. p. 54. Because the appointing authority had appellant's Philadelphia, Pennsylvania address as her current address, Distler indicated to appellant that the agency would not be able to reschedule her PDC or stop the disciplinary process. N.T. p. 54.

In Distler's experience, when an employee contacts the appointing authority within a week after a PDC was held, there is a strong probability that the employee was either aware or understood a PDC occurred. N.T. p. 55. While he

⁷ When an employee does not attend a PDC, the PDC panelists hold the PDC without the employee's presence. N.T. p. 43.

recalled appellant did not mention her PDC or her return-to-work letter, Distler believed the timing of appellant's phone call indicated her awareness of the PDC. N.T. pp. 54-55. Distler emphasized that none of the appellant's mail was returned to SCI-Phoenix as unable to be forwarded or that the person doesn't live there anymore.⁸ N.T. pp. 55-56. Consequently, the appointing authority presumed appellant's mail made it to its destination. N.T. pp. 56-57.

Distler testified the appointing authority does not have any records of appellant updating her Pennsylvania address to another address during her employment. N.T. pp. 59, 63; AA Ex. 10. Moreover, Distler noted the SAP⁹ screenshot indicates appellant's address was changed after her employment on December 15, 2021. AA Ex. 11.

Because appellant called him, Distler waited a couple of weeks to submit the summary of appellant's case to the superintendent for his review. N.T. p. 53. Distler explained that under normal circumstances, a summary is sent to the superintendent quickly when it appears that an employee has abandoned their job and has been unresponsive. N.T. p. 53. Distler stated that because appellant contacted him, he waited a couple of weeks to see if she was going to return to work. N.T. p. 53. After Distler submitted the summary of appellant's case, the

⁸ Appellant's FMLA Notice of Eligibility and Disapproval was mailed to appellant's New Jersey address. N.T. p. 51; AA Ex. 7.

⁹ The term SAP was not defined during the course of the proceedings.

superintendent recommended appellant's removal.¹⁰ N.T. p. 45. Distler confirmed appellant was removed from Corrections Officer 1 employment on October 4, 2021, because of her AW. Comm. Ex. A; N.T. p. 18, 19. Throughout appellant's employment with the appointing authority, Distler never received any documentation from appellant explaining her absences. N.T. p. 69.

Distler further emphasized the impact appellant's prolonged absence had on SCI-Phoenix. Specifically, due to appellant's absence, SCI-Phoenix had to staff employees where appellant would be stationed and provide them overtime compensation. N.T. p. 67. The security of the facility was at risk because the rescheduling had to occur at the last possible moment. As a result, appellant's absences impacted the overall operations of SCI-Phoenix. N.T. p. 67.

In response to the appointing authority's case-in-chief, appellant acknowledged and did not dispute her unauthorized absences and agreed she was absent without leave. N.T. pp. 81, 92. Appellant acknowledged receiving calls from the appointing authority mandating her to return to work because they did not have workers to fill her position inside SCI-Phoenix. N.T. pp. 89-90. Appellant admitted she did not tell anyone at SCI-Phoenix why she was absent. N.T. pp. 90, 91.

Instead, appellant asserted that she contacted former Field Human Resource Officer Danna Williams at SCI-Phoenix every time she did not report for work. N.T. pp. 81-82. When she called the facility, appellant claims she informed

¹⁰ The superintendent's recommendation was sent for a termination systems review, where the appointing authority's essential labor office reviewed all details of the case to confirm whether removal was appropriate. N.T. p. 45.

them she would be out for five days at a time. N.T. p. 89. Appellant explained she was unable to function properly at the prison due to her mental health. N.T. pp. 81, 86, 87-88. As a result, appellant stated she contacted SEAP¹¹ to find therapy in June 2021. N.T. p. 86.

Furthermore, appellant argues she did not receive any mail from SCI-Phoenix. N.T. p. 83. Appellant claims she changed her mailing address before her removal in 2021 through ESS¹² and has not lived at her Philadelphia, Pennsylvania address since 2020. N.T. pp. 84, 86, 113. Appellant stated that she could not get into ESS to acquire proof that her address was changed or that it wasn't her accurate address. N.T. p. 113. Moreover, appellant asserted that she gave Distler her address during her phone conversation with him. N.T. p. 85. Appellant contended if she received the appointing authority's letters, then she would have returned to work. N.T. pp. 89-90.

Nonetheless, appellant admitted to receiving her March 11, 2021 three-day suspension letter while working inside the facility. Despite receiving her March 11, 2021, three-day suspension letter listing her Philadelphia, Pennsylvania address, appellant did not inform the appointing authority that the address was incorrect. N.T. p. 93.

Appellant also acknowledged receiving her FMLA Notice of Eligibility and Disapproval letter. Appellant stated she did not contact FMLA, but FMLA contacted her after she was absent for over four days. N.T. p. 84. Appellant claims

¹¹ The term SEAP was not defined during the course of the proceedings.

¹² The term ESS was not defined during the course of the proceedings.

she did not have any contact with FMLA during her absences because she previously received FMLA leave. N.T. p. 83. Appellant further asserted that she never provided her address to a FMLA coordinator. N.T. p. 113.

Regarding her conversation with Distler, appellant asserted he told her she would need a doctor's note to return to work. N.T. pp. 84-85. Appellant further claimed Distler informed her a PDC occurred, and a recommendation was made. N.T. p. 85. Appellant acknowledged she didn't provide any medical documentation to SCI-Phoenix or Distler and did not return to work. N.T. pp. 84-85, 92-93.

Rebutting appellant's claim that she contacted Dana Williams and the facility when she was absent, Distler testified that he was informed that appellant did not call SCI-Phoenix. N.T. p. 101. Distler explained Dana Williams was the former Field Human Resource Officer, who retired from the position. Williams was also the former SEAP coordinator for SCI-Phoenix. N.T. p. 102. While Williams acted as a Field Human Resource Officer, Distler was a Labor Operations Coordinator. Distler recalled that Williams was his supervisor. N.T. p. 102. During the course of business as a Labor Operations Coordinator, Distler would meet with Williams to review whether any employees were out because of a SEAP-related absence.¹³ N.T. p. 102. Distler recalled he did not receive any notice from Williams about whether appellant was experiencing SEAP-related absences or an address change. N.T. pp. 102, 104.

¹³ In the event that an employee was out on a SEAP-related absence, the SEAP coordinator would have informed the Human Resources staff. As a result, any disciplinary proceedings related to the SEAP-related absences would have been stopped and not pursued. N.T. pp. 103-104.

Furthermore, in response to appellant's assertion that he told her that a doctor's note was required to return to work, Distler explained that pursuant to the appointing authority's policies, he is not permitted to state that the appointing authority requires a doctor's note for appellant to return to work. Instead, he is permitted to state that if appellant provided a note, then it may provide an explanation for the reasons for her absences. Distler emphasized that despite appellant not possessing a doctor's note, it did not prevent her from returning to work. N.T. p. 104. Distler did not receive any of appellant's doctor's notes and did not receive any reasons explaining why appellant did not return to work. N.T. pp. 108-109.

Having carefully reviewed the record, we find the appointing authority established just cause for appellant's removal. Specifically, the Commission finds the testimony of Scott Distler credible¹⁴ regarding appellant's unauthorized absences from May 19, 2021, until her removal.

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.* There is no dispute that appellant was absent without leave from May 19, 2021, until her removal on October 4, 2021. Despite receiving calls from the appointing authority to return to work, appellant did not return to work and did not inform the appointing authority

¹⁴ 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).

of her reasons supporting her unauthorized absences. Additionally, the appointing authority sent a return-to-work letter and a PDC notice to appellant outlining her unacceptable attendance. Appellant not only failed to respond to the correspondence but also did not return to work at SCI-Phoenix. As a result, appellant's absences negatively impacted SCI-Phoenix's overall operations, security, and costs.

Regarding appellant's claim that she did not receive any mail from SCI-Phoenix, we find this argument unpersuasive. As Distler explained, the appointing authority only had appellant's Philadelphia, Pennsylvania address within its records throughout appellant's employment. The appointing authority did not receive any returned mail sent to appellant or any notice that appellant no longer lived at the address. Moreover, appellant had the opportunity but failed to inform the appointing authority that her address was incorrect on her March 11, 2021 three-day suspension letter. Based on Distler's credible testimony and SAP records, appellant changed her address after her removal. We further note that appellant was on notice of how her former time and attendance violations could lead to progressive discipline. As such, appellant's continued absences negatively reflected upon her competency and ability to perform her job duties as a Corrections Officer 1. *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 Chamara Grant challenging her removal from regular Corrections Officer 1 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 the removal of Chamara Grant from regular Corrections Officer 1 employment, effective October 4, 2021.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: September 27, 2022