

COMMONWEALTH OF PENNSYLVANIA

Melissa A. Kalyan : State Civil Service Commission  
 :  
 v. :  
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 :  
 Schuylkill County : Appeal No. 30835  
 Drug and Alcohol Program :

Melissa A. Kalyan Alvin B. Marshall  
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Melissa A. Kalyan challenging her suspension pending investigation and subsequent removal<sup>1</sup> from regular County Drug and Alcohol Administrator 1 (Local Government) employment with the Schuylkill County Drug and Alcohol Program (hereinafter “appointing authority”). A hearing was held on March 31, 2022, via video, before Commissioner Gregory M. Lane.

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

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<sup>1</sup> When an appointing authority suspends an employee pending investigation and subsequently removes the employee, the period of suspension will be deemed part of the removal action. *Woods v. State Civil Service Commission (New Castle Youth Development Center, Department of Public Welfare)*, 865 A.2d 272, 274 n. 3 (Pa. Commw. Ct. 2004); 4 Pa. Code § 101.21(b)(2). Appellant having been suspended, effective October 11, 2021, pending investigation, and having remained on suspension until her removal by letter dated October 20, 2021, we consider appellant’s removal, effective as of the date of suspension, to be the sole personnel action to be reviewed through this appeal.

## FINDINGS OF FACT

1. By letter dated October 14, 2021, appellant was notified of her suspension without pay pending a determination by the Board of Commissioners regarding her termination from employment from her County Drug and Alcohol Administrator 1 (Local Government), regular status position. Comm. Ex. A.
2. The appointing authority's October 14, 2021 letter stated:

This letter will serve as a follow-up to your conversation with Ms. Elaine Gilbert, Mental Health, Development Services, and Drug and Alcohol Administrator, and Ms. Heidi Zula, Human Resources Director, on October 11, 2021. Based upon your unsatisfactory work performance, you are being suspended without pay effective October 11, 2021 pending a determination by the Board of Commissioners regarding your termination from employment. It is anticipated that the Board of Commissioners will review this information and determine the appropriate action at their next scheduled meeting on Wednesday,

October 20, 2021. You will be informed in writing of the decision by the Board of Commissioners.

Comm. Ex. A.

3. By letter dated October 20, 2021, the appointing authority removed appellant from her County Drug and Alcohol Administrator 1 (Local Government), regular status position. Ap. Ex. 1.
4. The appointing authority's October 20, 2021 letter stated:

This letter is to confirm that the Board of Commissioners voted to terminate your employment from your Drug and Alcohol Administrator 1 position effective October 20, 2021 based upon unsatisfactory work performance.

Ap. Ex. 1.

5. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.<sup>2</sup>

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<sup>2</sup> Appellant did not raise any claims of discrimination in her appeal request form. Comm. Ex. B.

6. Appellant was employed by the appointing authority as the Drug and Alcohol Administrator 1, also known as the Single County Administrator, for the Schuylkill Drug and Alcohol Program since December 2011. N.T. pp. 32, 111-112, 211.
7. Appellant reported directly to the Administrator of Mental Health, Developmental Services, and Drug and Alcohol Programs Elaine Gilbert. N.T. pp. 109, 111-112.
8. Appellant was senior management and was responsible for directly supervising all matters within the Schuylkill County Drug and Alcohol Program. N.T. pp. 111-112.
9. Schuylkill County is one of forty-seven counties in the Commonwealth of Pennsylvania that is a Single County Authority (hereinafter, "SCA"), and appellant is Schuylkill County's designated SCA administrator. N.T. pp. 28-29.
10. As Schuylkill County's SCA administrator appellant was "responsible for implementing prevention, treatment, intervention as well as

recovery support services, to their local and geographic areas, to make sure clients are receiving their appropriate substance use services.” N.T. p. 29, 32.

11. The Department of Drug and Alcohol Programs (hereinafter, “DDAP”) is a state agency within the Commonwealth of Pennsylvania responsible for overseeing the forty-seven county SCAs. N.T. pp. 28-29.
12. DDAP works with SCAs to establish treatment needs plans, prevention plans, and ensure SCAs are implementing the appropriate services needed in their local areas. N.T. p. 28.
13. DDAP also oversees the implementation and compliance of the grant agreements between DDAP and the forty-seven SCAs. N.T. pp. 28-29.
14. DDAP partially funds the forty-seven SCAs with funds DDAP receives from the Federal Government. N.T. p. 30.

15. All the SCAs, including Schuylkill County, are required to submit reports to DDAP throughout the year documenting how they are spending their funds and what they are spending their funds on. N.T. pp. 3-31.
16. DDAP provides a report schedule in July, the beginning of the state fiscal year, to all SCAs notifying them of the deadlines for the entire year. N.T. p. 31.
17. In Schuylkill County, the report schedule deadline notice was sent to appellant. N.T. pp. 31-32.
18. On September 21, 2021, DDAP Bureau Director for Program Oversight Erica Nocho, sent the following email to Gilbert:

I am reaching out to you with regard to concerns we have with Schuylkill County Single County Authority timeliness in submitting and completing documentation to DDAP. There has been an ongoing issue with DDAP staff needing to reach out [to] the SCA Administrator, Ms. Melissa Kalyan several times in order to get the information that is needed. Due dates for reports are always given well in advance including for any items not listed on the DDAP report schedule[]. The cause for concern has been

elevated because Ms. [Kalyan] has more recently decided to stop replying to me and Mr. Jeff Geibel who is the Director of DDAP Treatment services. As I am sure you are aware, DDAP as a state agency has obligations not only to our federal oversight agency (SAMHAS) but also to other state agencies such as the state comptroller's office, Office of the Budget, Department of Treasury etc... The documentation DDAP requires the SCA to submit is used as supporting documentation to show Pennsylvania's continued need for funding and to verify that the much needed services are actually for individuals in need of SUD services.

Due to the repeated tardiness and lack of responses from Ms. [Kalyan], DDAP must take this late reporting into consideration when we review proposals submitted by the SCA for any of DDAP's funding initiative announcements. If the issue cannot be rectified in the immediate future, DDAP will begin to withhold payment on all SCA invoices until the SCA reaches compliance with reporting obligations.

N.T. pp. 32-38, 42-44; AA Ex. 1.

19. Nocho attached a five-page document to her September 21, 2021 email she identified as an SCA lateness tracking sheet for fiscal year 2021. N.T. pp. 40-41; AA Ex. 1.

20. The five-page document outlined what reports were late, the number of attempts to obtain the reports, and the due dates for the reports. N.T. pp. 40-41; AA Ex. 1.
21. Upon receipt of Nocho's email, Gilbert notified her supervisor, County Administrator Gary R. Bender, and forwarded the email and attached five-page document to Human Resource Manager Heidi Zula. Comm. Ex. A.; N.T. pp. 114-115, 156, 199; AA Ex. 1; Ap. Ex. 1.
22. Gilbert also contacted Nocho to further discuss the email and attached five-page document. N.T. p. 114.
23. On September 23, 2021, Gilbert and Zula met with appellant, and discussed Nocho's email, the late reports, and the information discussed when Gilbert spoke to Nocho. N.T. pp. 116-120, 201-202.
24. During the September 23, 2021 meeting, appellant said she did not file the reports on time because there was a lot going on, and there are a lot of different reporting requirements. N.T. pp. 120-121.
25. On October 11, 2021, a meeting took place between Gilbert, Zula, County Administrator Bender, the

County Solicitor, and the County Commissioners to review with the County Commissioners the concerns with appellant. N.T. pp. 202-204.

26. Based on the results of the October 11, 2021 meeting, it was decided to meet with appellant again, present appellant with the information discussed, and offer appellant the opportunity to resign. N.T. pp. 151-157, 203-204.
27. If appellant would elect not to resign, then appellant would be informed she was going to be suspended pending a recommendation of termination to the County Commissioners at their next public meeting. N.T. pp. 203-204.
28. Following the October 11, 2021 meeting, Gilbert and Zula informed appellant of the results of the meeting, and offered appellant the opportunity to resign. N.T. p. 157.

29. Appellant told Gilbert and Zula she did not want to resign, and appellant was suspended pending a determination by the Board of Commissioners regarding her termination from employment. Comm. Ex. A; N.T. p. 157.
  
30. On October 20, 2021, a public meeting of the Board of Commissioners was held, and the Commissioners voted to terminate appellant's employment as Schuylkill County Drug and Alcohol Administrator 1. N.T. p. 158; Ap. Ex. 1.

### DISCUSSION

The issue before the Commission is whether the appointing authority had just cause to remove appellant from her regular County Drug and Alcohol Administrator 1 (Local Government) employment with the Schuylkill County Drug and Alcohol Program (hereinafter "appointing authority") for unsatisfactory work performance.

In an appeal challenging the removal of a regular status employee, the appointing authority bears the burden of establishing just cause for the personnel actions. Section 2607 of Act 71 of 2018 states, "No regular employee in the classified service shall be removed except for just cause." 71 P.S. § 2607. In

*Perry v. State Civil Service Commission (Department of Labor and Industry)*, 38 A.3d 942 (Pa. Cmmw. 2011), the Commonwealth Court of Pennsylvania provided clarification for “just cause”:

The term “just cause” is not defined in the Act. Just cause must be merit-related, and the criteria for determining whether the appointing authority had just cause for removal must touch upon the employee’s competency and ability in some rational and logical manner.

What constitutes just cause for removal is largely a matter of discretion on the part of the head of the department. However, to be sufficient, the cause should be personal to the employee and such as to render the employee unfit for his or her position, thus making dismissal justifiable and for the good of the service.

38 A.3d at 951, citing *Woods v. State Civil Service Commission*, 590 Pa. 337, 912 A.2d 803 (2006), *Wei v. State Civil Service Commission (Department of Health)*, 961 A.2d 254 (Pa. Commw. 2008); *Pennsylvania Board of Probation and Parole v. State Civil Service Commission (Manson)*, 4 A.3d 1106 (Pa. Commw. 2010), and *Pennsylvania Board of Probation and Parole v. State Civil Service Commission*, 4 A.3d 1106 (Pa. Cmmw. 2010).

The appointing authority presented the testimony of Bureau Director for County Program Oversight at the Department of Drug and Alcohol Programs (hereinafter, “DDAP”) Erica Nocho, Drug and Alcohol Program Representative Sundee Klopach, Schuylkill County Administrator of Mental Health, Developmental Services, and Drug and Alcohol Programs Elaine Gilbert, and Human Resource Manager Heidi Zula. Appellant testified on her own behalf.

We will begin by reviewing the facts of this case. Appellant was employed by the appointing authority as the Drug and Alcohol Administrator 1, also known as the Single County Administrator, for the Schuylkill County Drug and Alcohol Program since December 2011. N.T. pp. 32, 111-112, 211. Appellant reported directly to the Administrator of Mental Health, Developmental Services, and Drug and Alcohol Programs Elaine Gilbert. N.T. pp. 109, 111-112. Appellant was senior management and was responsible for directly supervising all matters within the Schuylkill County Drug and Alcohol Program. N.T. pp. 111-112.

Schuylkill County is one of forty-seven counties in the Commonwealth of Pennsylvania that is a Single County Authority (hereinafter, “SCA”), and appellant is Schuylkill County’s designated SCA administrator. N.T. pp. 28-29. As Schuylkill County’s SCA administrator, appellant was “responsible for implementing prevention, treatment, intervention as well as recovery support services, to their local and geographic areas, to make sure clients are receiving their appropriate substance use services.” N.T. p. 29, 32.

DDAP is a state agency within the Commonwealth of Pennsylvania responsible for overseeing the forty-seven county SCAs. N.T. pp. 28-29. DDAP works with SCAs to establish treatment needs plans, prevention plans, and ensure SCAs are implementing the appropriate services needed in their local areas. N.T. p. 28. DDAP also oversees the implementation and compliance of the grant agreements between DDAP and the 47 SCAs. N.T. pp. 28-29. DDAP partially funds the forty-seven SCAs with funds DDAP receives from the Federal Government. N.T. p. 30. All the SCAs, including Schuylkill County, are required to submit reports to DDAP throughout the year documenting how they are spending their funds and what they are spending their funds on. N.T. pp. 3-31. DDAP

provides a report schedule in July, the beginning of the state fiscal year, to all SCAs notifying them of the report deadlines for the entire year. N.T. p. 31. In Schuylkill County, the report schedule listing the deadlines was sent to appellant. N.T. pp. 31-32.

On September 21, 2021, DDAP Bureau Director for Program Oversight Erica Nocho, sent the following email to Gilbert:

I am reaching out to you with regard to concerns we have with Schuylkill County Single County Authority timeliness in submitting and completing documentation to DDAP. There has been an ongoing issue with DDAP staff needing to reach out [to] the SCA Administrator, Ms. Melissa Kalyan several times in order to get the information that is needed. Due dates for reports are always given well in advance including for any items not listed on the DDAP report schedule[]. The cause for concern has been elevated because Ms. [Kalyan] has more recently decided to stop replying to me and Mr. Jeff Geibel who is the Director of DDAP Treatment services. As I am sure you are aware, DDAP as a state agency has obligations not only to our federal oversight agency (SAMHAS) but also to other state agencies such as the state comptroller's office, Office of the Budget, Department of Treasury etc... The documentation DDAP requires the SCA to submit is used as supporting documentation to show Pennsylvania's continued need for funding and to verify that the much needed services are actually for individuals in need of SUD services.

Due to the repeated tardiness and lack of responses from Ms. [Kalyan], DDAP must take this late reporting into consideration when we review proposals submitted by the SCA for any of DDAP's funding initiative announcements. If the issue cannot be rectified in the immediate future, DDAP will begin to withhold payment on all SCA invoices until the SCA reaches compliance with reporting obligations.

N.T. pp. 32-38, 42-44; AA Ex. 1. Nocho attached a five-page document to her September 21, 2021 email she identified as an SCA lateness tracking sheet for fiscal year 2021. N.T. pp. 40-41; AA Ex. 1. The five-page document outlined what reports were late, the number of attempts to obtain the reports, and the due dates for the reports. N.T. pp. 40-41; AA Ex. 1. The five-page document listed twenty separate reports appellant was required to submit to DDAP. AA Ex. 1. Appellant submitted nineteen of the twenty reports past the listed due date, and ten of the reports were submitted after DDAP's third request for information. AA Ex. 1. Upon receipt of Nocho's email, Gilbert notified her supervisor, County Administrator Gary R. Bender, and forwarded the email and attached five-page document to Human Resource Manager Heidi Zula. N.T. pp. 114-115, 156, 199; Coms. Ex. A.; AA Ex. 1; Ap. Ex. 1. Gilbert also contacted Nocho to further discuss the email and the attached five-page document. N.T. p. 114.

Nocho and Klopach testified regarding the importance of receiving timely reports from SCAs. Klopach testified failure of SCAs to timely provide required reports will result in improper oversight of providers, which will affect the integrity and quality of services provided by the SCAs and providers. N.T. pp. 93-94. Nocho testified the failure to file reports or not file reports in a timely manner will result in DDAP giving inaccurate data to the Federal Government. N.T. pp. 49-50. The providing of inaccurate data can directly affect the amount of funding DDAP receives from the Federal Government. N.T. p. 50. Nocho testified the amount of funding DDAP receives would affect the funding of all 47 SCAs and not just Schuylkill County. N.T. p. 50.

On September 23, 2021, Gilbert and Zula met with appellant, and discussed Nocho's email, the late reports, and the information discussed when Gilbert spoke to Nocho. N.T. pp. 116-120, 201-202. During the September 23, 2021 meeting, appellant said she did not file the reports on time because there was a lot going on, and there are a lot of different reporting requirements. N.T. pp. 120-121.

On October 11, 2021, a meeting took place between Gilbert, Zula, County Administrator Bender, the County Solicitor, and the County Commissioners to review with the County Commissioners the concerns with appellant. N.T. pp. 202-204. Based on the results of the October 11, 2021 meeting, it was decided to meet with appellant again, present appellant with the information discussed, and offer appellant the opportunity to resign. N.T. pp. 151-157, 203-204. If appellant would elect not to resign, then appellant would be informed she was going to be suspended pending a recommendation of termination to the County Commissioners, at their next public meeting. N.T. pp. 203-204. Gilbert testified the decision to suspend appellant pending a recommendation of termination if appellant did not resign was made so appellant did not tamper with anything or put other people at ill ease in the office pending a decision on appellant's termination. N.T. p. 158.

Following the October 11, 2021 meeting, Gilbert and Zula informed appellant of the results of the meeting, and offered appellant the opportunity to resign. N.T. p. 157. Appellant told Gilbert and Zula she did not want to resign, and appellant was suspended pending a determination by the Board of Commissioners regarding her termination from employment. N.T. p. 157; Comm.

Ex. A. On October 20, 2021, a public meeting of the Board of Commissioners was held, and the Commissioners voted to terminate appellant's employment as Schuylkill County Drug and Alcohol Administrator 1. N.T. p. 158; Ap. Ex. 1.

In response to the charges, appellant asserts the appointing authority did not have just cause for her removal. Ap. Brief. Appellant further asserts the suspension and termination procedures violated appellant's due process rights. Ap. Brief. Specifically, appellant alleges the suspension pending investigation letter and subsequent termination letter for unsatisfactory work performance did not provide her sufficient notice of the charges against her to allow appellant to defend herself against the charges. Ap. Brief. Appellant further alleges the suspension and termination procedures did not comply with the rules of the State Civil Service Commission. Ap. Brief. Essentially, appellant is attempting to raise a claim of technical/procedural discrimination. Appellant was granted a hearing under 3003(7)(i) of Act 71 of 2018, and not under 3003(7)(ii) of Act 71 of 2018 related to claims of discrimination because she did not raise any claims of discrimination in her appeal request form and we cannot address this issue. Comm. Ex. B.<sup>3</sup>

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<sup>3</sup> Even if the appellant had properly raised allegations of procedural discrimination related to Act 71 and due process related to notice violations, we find appellant had sufficient notice of the charges. The Pa. Code states, "Each appointing authority shall give employees written notice of personnel actions affecting them." 4 Pa. Code § 105.1. Further, "[t]he notice requirements in this subsection are mandatory. Failure to adhere to the requirements set forth in this section and §§ 105.2--105.5 may nullify the personnel action. *Id.* (*emphasis added*). "While the notice requirements of 4 Pa. Code § 105.1 are mandatory, failing to adhere to them is not grounds for nullification of the personnel action. *State Correctional Institution at Pittsburg, DOC v. Adamson*, 567 A.2d 763, 765 (Pa. Commw. 1989), citing *Wood v. Department of Public Welfare*, 411 A.2d 281 (Pa. Commw. 1980). Here the suspension pending investigation letter and termination/removal letter stated only unsatisfactory work performance as the reason for the personnel actions. However, both Gilbert and Zula credibly testified they met with appellant on September 23, 2021 and fully discussed the contents of Nocho's email, the late reports, and the information discussed when Gilbert spoke to Nocho. N.T. pp. 116-120, 201-202. Additionally, Nocho credibly testified appellant received notice at the beginning of the fiscal year as the SCA administrator of all the report deadlines. N.T. pp. 31-32. Accordingly, we find appellant had sufficient notice of the charges such that her due process rights were not violated. 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).

We now will address whether the appointing authority had just cause for appellant's removal. Appellant is a management employee. N.T. pp. 111-112. An appointing authority can require 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 her subordinates. *Id.* Appellant was the SCA administrator for 10 years and was aware of her responsibility to file timely reports to DDAP, and the consequences of failing to file timely reports. Appellant was also aware when these reports were due because she was given a deadline schedule by DDAP at the beginning of each fiscal year. Appellant filed nineteen untimely reports despite knowing her responsibilities, the consequences of filing untimely reports, and the deadlines for those reports. Additionally, ten of the nineteen untimely reports were only filed after a third request from DDAP. Nocho and Klopach credibly testified appellant's failure to timely file reports with DDAP could have resulted in the loss of federal funds to both Schuylkill County and the other forty-six SCAs in the Commonwealth.<sup>4</sup> Finally, Klopach credibly testified untimely reports effect proper oversight and will affect the integrity and quality of services provided by the SCAs and providers. We find the appointing authority had just cause to remove appellant from her County Drug and Alcohol Administrator 1 (Local Government) regular employment position. Accordingly, we enter the following:

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<sup>4</sup> It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish just cause for appellant's removal 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 Melissa A Kalyan challenging her removal from regular County Drug and Alcohol Administrator 1 (Local Government) employment with the Schuylkill County Drug and Alcohol Program and sustains the removal of Melissa A Kalyan from regular County Drug and Alcohol Administrator 1 (Local Government) employment with the Schuylkill County Drug and Alcohol Program.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: November 22, 2022