

COMMONWEALTH OF PENNSYLVANIA

Mark Benamati	:	State Civil Service Commission
	:	
v.	:	
	:	
Torrance State Hospital,	:	
Department of Human Services	:	Appeal No. 30860
	:	
Jerome J. Kaharick		Eugene K. Cuccarese
Attorney for Appellant		Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Mark Benamati challenging his removal from regular Psychiatric Aide employment with Torrance State Hospital, Department of Human Services (hereinafter “appointing authority”). A hearing was held on May 27, 2022, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony, exhibits introduced at the hearing, and the Brief submitted by the appointing authority.<sup>1</sup> The issue before the Commission is whether the appointing authority has established just cause for appellant’s removal.

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<sup>1</sup> While appellant was afforded the opportunity to submit a Brief, he chose not to do so. N.T. p. 247.

FINDINGS OF FACT

1. By letter dated November 24, 2021, appellant was removed from his position as a Psychiatric Aide, regular status, with Torrance State Hospital, Department of Human Services, effective November 30, 2021. Comm. Ex. A.
  
2. The November 24, 2021 letter informed appellant he was being removed for the following reasons:

**Offenses Related to Firearms and Other Weapons (as defined by Department Policy 7174).** Specifically, on October 4, 2021, you brought several rounds of ammunition onto the grounds of Torrance State Hospital, a mental health facility, via your personal vehicle and on your person, into the Greizman building, and was showing the ammunition to coworkers. Your actions are in violation of DHS HR Policy 7170, Standards of Conduct; and the DHS Accident and Illness Prevention Manual, Section L.3 (Established Safety Rules and Methods for their Enforcement – Firearms and Other Weapons).

**Failure to Follow General Instructions or Procedures (as defined by Department Policy 7174).**

Specifically, on October 4, 2021, you violated Torrance State Hospital Policy/Procedure on Workplace Violence Prevention # 115-58 and Management Directive 205.33 Amended: Workplace Violence.

- A. Specifically, on October 4, 2021, your behavior rose to the level of workplace violence. While having a conversation with several coworkers, you expressed anger with your wife, a Torrance State Hospital employee, and stated, “I want to divorce her.” “She is dead to me.” “I want to kill the b[----].”
- B. Specifically, on October 4, 2021, your behavior rose to the level of workplace violence. While having a conversation with several coworkers, you spoke extensively about all of the weapons you have and can use. You stated, “I have in my possession an AR-15 assault rifle, along with a multitude of assorted weapons that I inherited from a deceased family member. Anytime I can bring these weapons to Torrance State Hospital to kill selected staff members.”

Comm. Ex. A (emphasis in original).

3. The November 24, 2021 letter indicated either infraction, standing alone, would warrant removal. Comm. Ex. A.
4. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.<sup>2</sup> Comm Ex. C.
5. Appellant was employed by the appointing authority as a Psychiatric Aide. N.T. p. 210.
6. Appellant began his employment with the appointing authority on August 12, 2019. N.T. p. 210.
7. On October 4, 2021, appellant worked the 3:00 p.m. to 11:00 p.m. shift on Ward 1 of the appointing authority's Greizman Building. N.T. pp. 30, 35, 84, 123.

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<sup>2</sup> Appellant's request for a hearing on the removal under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination.

8. During his shift on October 4, 2021, appellant described to his co-workers weapons he inherited and/or owned, to include a Colt Diamondback pistol and an AR-15 which is an assault-type rifle that can fire multiple rounds at a time. N.T. pp. 36, 45-46, 211, 233.
9. During his shift on October 4, 2021, appellant retrieved bullets from his vehicle, brought the bullets into the Greizman Building, and showed the bullets to his co-workers. N.T. pp. 41, 47, 64-65, 95-96, 125-127, 214-217, 225.
10. During his shift on October 4, 2021, appellant threatened to kill his wife, who works at the appointing authority as a Registered Nurse. N.T. pp. 36, 43-44, 46, 48, 91.
11. During his shift on October 4, 2021, appellant threatened to kill staff members who work in the appointing authority's Renner Building. N.T. pp. 36-37, 44-45, 50, 65.
12. On October 6, 2021, appellant was suspended pending investigation. N.T. p. 176.

13. By letter dated November 4, 2021, appellant was notified a pre-disciplinary conference (hereinafter “PDC”) was scheduled for November 9, 2021 to discuss the same charges listed in the November 24, 2021 removal letter. N.T. pp. 145-146, 149; AA Ex. 5.
14. On November 9, 2021, appellant’s PDC was held at the appointing authority’s Human Resources Building. N.T. pp. 149, 220.
15. At the beginning of their employment with the appointing authority, all employees are informed they are not permitted to bring any ammunition, guns, or weapons of any type into the hospital. N.T. p. 96.
16. Posted on the front of every gate are signs indicating firearms and ammunition are prohibited on the appointing authority’s grounds. N.T. p. 198.
17. Appellant observed the signage prohibiting firearms and ammunition at the appointing authority’s Renner Building. N.T. pp. 230-231.

18. Pursuant to Policy No. 7174, the charge of “Offenses Related to Firearms and Other Weapons” requires the following elements of substantiation:
- The item at issue is, in fact, a firearm or other weapon prohibited on Commonwealth property.
  - The firearm or other prohibited weapon was in the employee’s possession; i.e., on his/her person or demonstrably under his control (e.g., in his/her automobile, office desk, locker, etc.).

AA Ex. 12.

19. Pursuant to Policy No. 7174, removal is appropriate for a first offense after probation for the charge of “Offenses Related to Firearms and Other Weapons.” N.T. p. 190; AA Ex. 12.
20. The offenses for which appellant was removed were his first offense after probation. N.T. p. 190.
21. Appellant acknowledged he received and reviewed Policy No. 7174 on August 13, 2019. N.T. pp. 181, 228-229; AA Ex. 7 (p. 1).
22. Section L.3(A)(1) of the Accident and Illness Prevention Program Manual (hereinafter “the Manual”) provides, in pertinent part:

In the interest of maintaining an environment that is safe and free of violence for its employees and visitors, [the appointing authority], DOH, PDA, and the DDAP prohibit the wearing, transporting, storage, presence, or use of dangerous weapons on property owned or leased by the agency, including in personal vehicles in parking lots and on grounds, regardless of whether or not the person is licensed to carry the weapon, except visiting law enforcement officers in the performance of their duties.

AA Ex. 10 (p. 2).

23. Section L.3(B)(3) of the Manual defines “weapon” to include ammunition for firearms. N.T. p. 187; AA Ex. 10 (p. 3).

24. Section L.3(A)(4) of the Manual provides, in pertinent part:

Any employee who violates this policy is subject to appropriate disciplinary action, up to and including termination; see Human Resources Manual 7174, Discipline, Offenses related to Firearms and other lethal weapons.

AA Ex. 10 (p. 2).

25. Section (C)(1)(m) of Policy No. 7170 prohibits employees from possessing firearms or lethal weapons on the appointing authority's property. N.T. p. 188; AA Ex. 11 (p. 2).
26. The term "weapon" in Policy No. 7170 is interpreted consistent with the definition set forth in the Manual. N.T. p. 189.
27. Rule 6 of the appointing authority's Rules and Regulations (hereinafter "Work Rules") prohibits employees from bringing ammunition onto the appointing authority's property, which includes having such item in one's possession or in a personal vehicle on the property even if the vehicle is locked. AA Ex. 7 (p. 2).
28. The prohibition pertaining to ammunition is absolute irrespective of whether a firearm is present. N.T. p. 202.
29. Appellant acknowledged he received, read, and understood the Work Rules on June 5, 2019. N.T. p. 182; AA Ex. 7 (p. 7).

30. Section 5(a) of Management Directive 205.33 Amended (Workplace Violence)<sup>3</sup> provides:

Workplace violence by or against commonwealth employees is prohibited. The commonwealth has a “zero tolerance” policy for incidents of workplace violence.

31. Section (4)(i) of Management Directive 205.33 Amended (Workplace Violence) defines “workplace violence,” as follows:

Violence that occurs at or is connected to the workplace, including any location if the violence has resulted from an act or a decision made during the course of conducting commonwealth business. Examples of workplace violence include but are not limited to: verbal and written threats, intimidation, stalking, harassment, domestic violence, robbery and attempted robbery, destruction of commonwealth property, physical assault, bomb threats, rape and murder. Perpetrators of workplace violence can include employees, clients/customers, personal acquaintances/partners and strangers.

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<sup>3</sup> Although Management Directive 205.33 Amended (Workplace Violence) was referenced in appellant’s November 24, 2021 removal letter, a copy was not entered into evidence. All Management Directives, to include Management Directive 205.33 Amended (Workplace Violence), are accessible to employees and the public through the Office of Administration’s website. Accordingly, we hereby take official notice of the policies, responsibilities and procedures set forth in Management Directive 205.33 Amended (Workplace Violence), which was issued on June 16, 2014 and in effect at the time of appellant’s removal. *See Falasco v. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole*, 104 Pa. Commw. 321, 326 n.6, 521 A.2d 991, 994 n.6 (1987) (holding an administrative agency may take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person).

32. Section (5)(b) of Management Directive 205.33 Amended (Workplace Violence) provides:

Violations of this policy by a commonwealth employee may lead to disciplinary action, up to and including termination from employment. The employee may also be subject to criminal prosecution.

33. All employees are provided copies of the appointing authority's policies during orientation. N.T. p. 179; AA Ex. 7 (pp. 1, 7).

### DISCUSSION

By letter dated November 24, 2021, the appointing authority removed appellant from his position as a Psychiatric Aide. Comm. Ex. A. Appellant challenged this action under Section 3003(7)(i) of Act 71 of 2018 (hereinafter "the Act").<sup>4</sup> 71 Pa.C.S.A. §§ 3003(7)(i). Thus, the sole issue before the Commission is whether the appointing authority has established just cause for the removal.<sup>5</sup>

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*

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<sup>4</sup> Act of June 28, 2018, P.L. 460, No. 71, § 1.

<sup>5</sup> The Hearing Notice identifies the sole issue to be heard as appellant's removal from his Psychiatric Aide position. Comm. Ex. C. At the hearing, appellant's suspension pending investigation was mistakenly mentioned as an issue to be heard. N.T. p. 11. Appellant's suspension pending investigation was not part of his appeal. Comm. Ex. B. Therefore, we will not consider it as part of this adjudication.

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 charge, the appointing authority presented the testimony of Psychiatric Aide Joseph Orvosh,<sup>6</sup> Registered Nurse Cindy Trice,<sup>7</sup> Psychiatric Aide James Barnhart,<sup>8</sup> Acting Chief Nursing Executive Celina Vigna,<sup>9</sup> and Human Resources Director Lyle Gardner.<sup>10</sup> Appellant testified on his own behalf. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

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<sup>6</sup> Orvosh is employed by the appointing authority as a Psychiatric Aide. N.T. p. 20. Orvosh has held this position for approximately seven years and works in the appointing authority's Greizman Building. N.T. pp. 21, 25. In that capacity, Orvosh is responsible for the direct care of patients. N.T. p. 26.

<sup>7</sup> Trice is employed by the appointing authority as a Registered Nurse assigned primarily to the Greizman Building. N.T. pp. 73, 77. Trice has worked for the appointing authority for five years. N.T. p. 73. Trice was the supervisor on duty during the incident for which appellant was removed. N.T. pp. 30-31, 84-85.

<sup>8</sup> Barnhart is employed by the appointing authority as a Psychiatric Aide. N.T. p. 120. Barnhart has held this position since April 5, 2021 and works in the Greizman Building. N.T. p. 120. In that capacity, Barnhart is responsible for patient care. N.T. p. 121.

<sup>9</sup> Vigna is currently employed by the appointing authority as the Acting Chief Nursing Executive and has worked for the appointing authority for seventeen years. N.T. pp. 138, 140. In October 2021, Vigna held the position of Nurse Manager 1. N.T. pp. 138-139. As a Nurse Manager 1, Vigna supervised the Registered Nurse Supervisors, took care of staffing, and handled labor management issues, to include conducting pre-disciplinary conferences and fact-finders, among other duties. N.T. pp. 139-141. Vigna was responsible for conducting appellant's pre-disciplinary conference. N.T. pp. 141, 143-144.

<sup>10</sup> Gardner is employed by the Office of Administration as the appointing authority's Human Resources Director. N.T. pp. 165, 167. As the Human Resources Director, Gardner works with Labor Relations which is responsible for contract and policy interpretations as well as facilitating discussions between management and the bargaining units. N.T. pp. 168-169.

### *Summary of Evidence*

Appellant was employed by the appointing authority as a Psychiatric Aide. N.T. p. 210. On October 4, 2021, appellant was working the 3:00 p.m. to 11:00 p.m. shift on Ward 1 of the Greizman Building.<sup>11</sup> N.T. pp. 30, 35, 84, 123. Also working this shift were Psychiatric Aide Joseph Orvosh, Psychiatric Aide James Barnhart, and Laura Deemer.<sup>12</sup> N.T. pp. 30-31, 121, 124. The supervisor for the shift was Registered Nurse Cindy Trice.<sup>13</sup> N.T. pp. 30-31, 84-85, 123.

That evening, Orvosh noticed appellant seemed “a little off.” N.T. pp. 35. Orvosh stated appellant was not acting as the same person he had worked with in the past. N.T. pp. 35-37. Orvosh observed appellant’s eyes were very glassy and his pupils were dilated; he appeared nervous and a little irritated; and he could not concentrate on his work assignments. N.T. pp. 35-37, 61. Orvosh stated appellant was pacing and gritting his teeth. N.T. p. 61. Appellant’s speech was also a little aggressive. N.T. p. 36. Additionally, Orvosh recalled appellant would disappear from the ward for extended periods of time and no one would know where he was. N.T. pp. 37, 61.

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<sup>11</sup> Appellant testified he was working the 3:00 p.m. to 11:30 p.m. shift. N.T. p. 211. We find this half-hour discrepancy is inconsequential because everyone, including appellant, agrees the incident took place in the evening on October 4, 2021. N.T. p. 211.

<sup>12</sup> No testimony was presented identifying the position held by Deemer.

<sup>13</sup> Trice, Barnhart, and Orvosh had worked with appellant prior to the October 4, 2021 incident. N.T. pp. 29, 83, 121-122. Trice, Barnhart, and Orvosh did not socialize with appellant outside of work. N.T. pp. 29, 84, 123.

In addition to the above behavior, appellant's words and actions caused Orvosh to be concerned. Orvosh recalled appellant talked about his wife and problems he was having at home and work. N.T. pp. 36, 43. Orvosh testified appellant said he would like to kill his wife, who works at the appointing authority as a Registered Nurse, as well as other staff members who worked in appointing authority's Renner Building. N.T. pp. 36, 43-45, 47-48, 50, 65. Orvosh could not recall the names of staff members appellant wanted to harm and stated he did not personally know the staff members. N.T. p. 50. However, Orvosh was able to recall why appellant wanted to harm the staff members. Orvosh stated appellant wanted to harm the staff members because they were selected for vacation before him. N.T. p. 50.

Orvosh further stated appellant described in detail the weapons he inherited, to include an AR-15 which is an assault-type rifle that can fire multiple rounds at a time. N.T. pp. 36, 45-46. Orvosh stated appellant also ruminated on different uses for the weapons, to include "taking out" people at work who appellant felt had wronged him or had something over him. N.T. pp. 36-37.

Registered Nurse Trice recalled the guns were inherited from a relative of appellant's wife. N.T. pp. 92-93. Both Trice and Orvosh explained appellant was upset because his wife took the guns away from him, which is why he wanted to kill her. N.T. pp. 46, 91-92. Trice stated appellant said, "She really knows how to push my buttons. I could just kill that b----." N.T. p. 91. Trice indicated she was working on paperwork at her desk when appellant made this statement, which took her by surprise. N.T. pp. 92-93. Trice did not recall appellant naming the types of guns they inherited. N.T. p. 94.

The gun conversation occurred in the office on Ward 1 of the Greizman Building. N.T. pp. 40, 94. Trice stated as appellant spoke about the guns, he got up out of his seat; said, “I have these bullets, and I don’t know what they are for;” and then went out the door before anyone could stop him.<sup>14</sup> N.T. pp. 94-95. Trice stated appellant returned with a handful of “shells.” N.T. p. 94. Trice did not see the “shells” up close, but she could tell they were bullets. N.T. pp. 95-96. Trice stated appellant showed the bullets to Orvosh and Psychiatric Aide Barnhart; however, she was not present for their conversation because she had to handle an issue with a patient. N.T. pp. 95-96. With that said, Trice did recall telling appellant he should not have the bullets and noted he retrieved the bullets from his vehicle. N.T. p. 97.

Orvosh recalled appellant had approximately three to five bullets, but he was uncertain of the exact number.<sup>15</sup> N.T. pp. 41, 64-65. Orvosh stated appellant asked him what kind of bullets they were and what type of weapon would they fit into. N.T. pp. 40, 62. Orvosh examined one of the bullets and noticed the markings at the end of the bullet which would signify the caliber were filed off.<sup>16</sup> N.T. pp. 40, 62. Orvosh stated the bullet also appeared to be a homemade lead-cast bullet. N.T. pp. 40, 42. After examining the bullet, Orvosh handed it back to appellant and

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<sup>14</sup> We note Trice and Orvosh’s recollection of the sequence of events slightly differ. Orvosh recalled after the conversation about appellant wanting to kill his wife and harm co-workers, appellant excused himself and said that he was going off the ward for a break, after which he returned with a handful of bullets that he retrieved from his pocket. N.T. pp. 39-41, 65. We find this distinction is inconsequential to the issue before us—whether appellant’s undisputed actions (*i.e.*, the threats and bringing the ammunition onto the appointing authority’s grounds) constitute just cause for removal.

<sup>15</sup> We find the exact number of bullets is inconsequential because the appointing authority has a no tolerance policy with regard to weapons, which included ammunition. N.T. pp. 201-203.

<sup>16</sup> Orvosh explained he is very familiar with bullets because he previously worked in law enforcement, is a handloader, and has been familiar with handguns since he was a child. N.T. p. 42. Prior to working for the appointing authority, Orvosh served with the United States Secret Service from 1986 to 1999. N.T. pp. 26, 58. Orvosh indicated between 1999 and the start of his employment with the appointing authority, he worked for the United States Postal Service, Homer City Power Plant, and the Indiana County Jail, while recovering from a health condition. N.T. pp. 26-27, 58-59.

appellant put it in his pocket. N.T. pp. 51, 54. Orvosh observed appellant was nervous as he showed the bullets to him and the other staff members who were working at the time. N.T. p. 40.

Psychiatric Aide Barnhart recalled being present as appellant and Orvosh discussed the caliber of the bullet.<sup>17</sup> N.T. pp. 125-126. Barnhart stated appellant also handed him the bullet, but he could not find the caliber on it. N.T. p. 126. Barnhart recalled taking a picture of the back of the bullet, sending it to a friend, and asking him what type of bullet it was. N.T. p. 126. Barnhart noted he only saw the one bullet and did not know where it came from. N.T. pp. 126-128. Barnhart did not report the fact that there was a bullet on the Ward to Registered Nurse Trice, who was the shift supervisor. N.T. p. 127.

Although Barnhart did not report the incident to Trice, Orvosh did. N.T. pp. 51, 64. Orvosh stated he told Trice appellant had live ammunition on the property and he was afraid appellant may have a weapon in his car. N.T. p. 52. Orvosh also indicated he did not know if appellant had a weapon of any kind in his car. N.T. p. 64. Orvosh stated the incident with the ammunition occurred about a half hour before the end of appellant's shift. N.T. p. 54. Orvosh recalled appellant departed at approximately 11:30 p.m. N.T. p. 54.

In addition to the above, Orvosh and Trice testified appellant indicated he was on a series of medications which included psychiatric medications. N.T. pp. 37, 90, 106-107. Orvosh stated appellant did not go into detail about whether he

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<sup>17</sup> Barnhart did not overhear appellant make any statements about his wife. N.T. p. 128. Barnhart only overheard appellant and Orvosh talking about guns and saw that they were trying to identify the caliber of a bullet. N.T. pp. 125-126.

took the medications, only that he was getting help. N.T. pp. 37-38. Additionally, Trice recalled appellant asked her a question about his medication because it was making his stomach agitated. N.T. pp. 90, 106. Trice testified she advised appellant to talk to his doctor and to keep taking the medication because sometimes it takes time for the body to adjust. N.T. p. 90. Trice could not recall the name of the medication appellant was taking, but she remembered appellant informed her he had just started taking it. N.T. p. 91. Trice also recalled the medication was for mental health purposes. N.T. pp. 91-92.

Both Orvosh and Trice were unsettled by appellant's behavior on October 4, 2021 and noted appellant was not acting like himself. N.T. pp. 51, 63, 66-68, 98, 100. Trice stated appellant is usually smiling, has a good disposition, and does the tasks assigned to him, but that night he was "dysregulated." N.T. p. 100. Trice also noted, when she previously worked with appellant, she did not have any difficulty with him. N.T. p. 84.

Additionally, Orvosh testified he took appellant's statements about "taking out" his co-workers very seriously based on the context of the conversation because appellant was concurrently discussing the weapons he owned and possessed. N.T. pp. 45. Orvosh further stated appellant's behavior that night made him feel nervous and uncomfortable, particularly in light of recent shootings reported by the media. N.T. p. 37. However, both Orvosh and Trice acknowledged appellant did not directly threaten any patients or staff who were working on the night of the incident. N.T. pp. 51, 98.

Trice testified she reported the incident to her supervisor, Tonya Prew. N.T. pp. 87-88. Trice explained she was concerned because appellant was agitated and had brought a handful of “shells” into the appointing authority. N.T. p. 89. Trice stated she was particularly concerned by appellant’s demeanor in that he was clenching his teeth, rocking as he sat, and was red-faced as he talked about his wife. N.T. pp. 89-90, 108. Trice also described appellant as agitated. N.T. p. 90. Trice stated this made her feel uneasy and she was concerned for her patients and the rest of the staff. N.T. p. 89. Trice recalled Prew was busy when she reported appellant’s behavior because there was an incident in another ward. N.T. p. 99.

On or about October 6, 2021, Chief Nursing Executive Jillian Troyan informed Human Resources Director Lyle Gardner of the ammunition incident and requested appellant be suspended pending investigation. N.T. pp. 169-171, 174, 176-178. The matter was referred to the Labor Relations Office which concurred with the request and appellant was suspended, effective October 6, 2021, pending further investigation. N.T. pp. 171, 176-178, 220.

Subsequently, by letter dated November 4, 2021 (hereinafter “PDC Notice”), appellant was notified a pre-disciplinary conference (hereinafter “PDC”) was scheduled for November 9, 2021, to discuss the following charges: 1) Offenses Related to Firearms and Other Weapons; and 2) Failure to Follow General Instructions or Procedures. N.T. pp. 145-146, 149; AA Ex. 5. The PDC Notice also informed appellant both charges were based on the conduct which occurred on October 4, 2021. AA Ex. 5.

Appellant's PDC was held on November 9, 2021, as scheduled at the appointing authority's Human Resources Building. N.T. pp. 149, 220. Acting Chief Nursing Executive Celina Vigna was responsible for conducting appellant's PDC.<sup>18</sup> N.T. pp. 143-144, 220; AA Ex. 6. Also present at the PDC were appellant, Nurse Manager 1 Fulmer, and appellant's union representative, Ms. Butterbaugh, who joined via telephone.<sup>19</sup> N.T. pp. 148-149, 220; AA Ex. 6 (p. 1).

Vigna began the PDC by reading the charges set forth in appellant's PDC Notice. N.T. p. 150. After reading the charges, Vigna provided appellant an opportunity to respond to the allegations in the PDC Notice, which he did. N.T. pp. 150, 152-157. Specifically, Vigna asked appellant to respond to the allegations that he brought ammunition on the grounds of the appointing authority and made statements about wanting to kill his wife and other staff members. N.T. pp. 152-157; AA Ex. 6 (pp. 2, 5-7). Vigna noted she showed appellant Trice and Orvosh's statements as they discussed the allegations. N.T. p. 154. Vigna testified, with the exception of the statement about his wife, appellant did not directly respond to the allegations. N.T. pp. 152-157; AA Ex. 6. Regarding his wife, appellant denied saying he wanted to kill her and claimed he said, "f--- the b----." N.T. pp. 153-154; AA Ex. 6 (p. 2). Appellant also generally denied wanting to kill anyone. N.T. p. 156; AA Ex. 6 (p. 2).

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<sup>18</sup> Vigna noted a Nurse Manager who is not the employee's direct supervisor usually conducts the PDC. Prior to appellant's PDC, Vigna did not interact with appellant, other than possibly a phone call about overtime or a staffing issue. N.T. pp. 141-142. Vigna was not assigned to the building where appellant worked and was not his supervisor. N.T. pp. 141, 144. With that said, Vigna noted she did work in the same building as appellant's wife but did not socialize with appellant's wife outside of work. N.T. p. 142.

<sup>19</sup> No testimony was presented identifying Fulmer or Butterbaugh's first names.

Vigna detailed appellant's responses in a Memo dated November 9, 2021 and submitted it to the appointing authority's Labor Relations Office. N.T. pp. 150-152, 157-158, 162; AA Ex. 6. Vigna did not make a disciplinary recommendation, nor was she consulted about the outcome. N.T. pp. 158-159. Vigna explained the Labor Relations Office is responsible for reviewing the matter and determining the outcome. N.T. pp. 158-159.

Human Resources Director Gardner testified it was determined appellant's conduct violated Policy No. 7174 (Discipline). N.T. p. 178; AA Ex. 12. Policy No. 7174 is the appointing authority's discipline policy for offenses related to firearms. N.T. pp. 181, 189; AA Ex. 12. Appellant acknowledged he received and reviewed Policy No. 7174 on August 13, 2019. N.T. p. 181; AA Ex. 7 (p. 1).

Pursuant to Policy No. 7174, removal is appropriate for a first offense after probation. N.T. p. 190; AA Ex. 12. Additionally, when determining the level of discipline, the following matters are to be considered in mitigation or extenuation: 1) the type of firearm or weapon; 2) the nature of possession (*i.e.*, in the car verses in the building); 3) the apparent intent of bringing the firearm or weapon on the grounds (*e.g.*, the employee's explanation); 4) injury or possible danger to patients, co-workers, and other; and 5) the length and nature of the employee's past service. N.T. p. 190; AA Ex. 12.

Gardner testified this was appellant's first offense after probation. N.T. p. 190. Gardner also noted appellant's work history was considered as a mitigating factor, but his mental health was not. N.T. p. 191. Gardner explained mental health

is not a mitigating factor listed in Policy No. 7174, and he further noted the appointing authority was not aware of any mental health diagnosis. N.T. pp. 173-174, 192.

The appointing authority also charged appellant with violating the following policies: 1) Policy No. 7070 (Standards of Conduct); 2) the appointing authority's Accident and Illness Prevention Manual (hereinafter "the Manual"); 3) the appointing authority's Policy/Procedure on Workplace Violence Prevention #115-58; 4) Management Directive 205.33 Amended (Workplace Violence); and 5) the appointing authority's Rules and Regulations (hereinafter "Work Rules").<sup>20</sup> AA Exs. 7, 10, 11. All employees are provided copies of the appointing authority's policies and the Work Rules during orientation. N.T. p. 179; AA Ex. 7 (pp. 1, 7). Also, at the beginning of their employment, all employees are informed they are not permitted to bring any ammunition, guns, or weapons of any type into the hospital. N.T. p. 96.

Pursuant to Policy No. 7170, employees are prohibited from possessing firearms or lethal weapons on the appointing authority's property. N.T. p. 188; AA Ex. 11 (p. 2). Gardner explained the term "weapon" in Policy No. 7170 is interpreted consistent with the definition set forth in the Manual. N.T. p. 189. The Manual defines "weapon" to include ammunition for firearms. N.T. p. 187; AA Ex. 10 (p. 3).

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<sup>20</sup> Gardner testified the appointing authority's Policy for Managing Disruptive Behaviors in the Workplace and Policy and Procedure for Professional Boundaries and Conduct were also considered but did not serve as a basis for appellant's removal. N.T. pp. 182-185.

Also, the Manual, like Policy No. 7170, prohibits employees from wearing, transporting, storing, having, or using weapons on property owned or leased by the appointing authority, including in personal vehicles in parking lots and on grounds. N.T. p. 186; AA Ex. 10 (p. 2). This prohibition applies regardless of whether or not the person is licensed to carry the weapon. N.T. p. 186; AA Ex. 10 (p. 2). The only exception is for visiting law enforcement officers in the performance of their duties. N.T. p. 186; AA Ex. 10 (p. 2).

Gardner explained the policy set forth in the Manual seeks to maintain an environment that is safe and free of violence for employees and visitors. N.T. p. 186. Thus, any employee who violates the policy is subject to appropriate disciplinary action up to and including removal as set forth in Policy No. 7174. N.T. pp. 186-187; AA Ex. 10 (p. 2).

Additionally, Gardner noted Rule 6 of the Work Rules prohibits employees from bringing ammunition onto the appointing authority's property, which includes having such an item in one's possession or in a personal vehicle on the property even if the vehicle is locked.<sup>21</sup> N.T. p. 182; AA Ex. 7 (p. 2). Appellant signed an acknowledgement indicating he received, read, and understood the Work Rules on June 5, 2019. N.T. p. 182; AA Ex. 7 (p. 7).

Gardner further noted there are signs on the front of every gate which indicate firearms and ammunition are prohibited. N.T. p. 198. Gardner testified bringing one bullet onto the grounds is sufficient to remove an employee. N.T.

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<sup>21</sup> Acting Chief Nursing Executive Vigna, Registered Nurse Trice, Psychiatric Aide Orvosh, and Psychiatric Aide Barnhart also acknowledged the Work Rules prohibit ammunition and guns on the appointing authority's grounds. N.T. pp. 52, 96, 127, 159.

p. 201. Additionally, Gardner stated the prohibition pertaining to ammunition is absolute irrespective of whether a firearm is present. N.T. p. 202. Gardner further testified the ammunition charge standing alone would be sufficient for removal as would the workplace violence charge. N.T. p. 203; Comm. Ex. A (p. 1).

Lastly, Human Resources Director Gardner testified appellant violated the Workplace Violence Policy in that he threatened to kill his wife and other staff members. N.T. pp. 193-194. Gardner explained workplace violence is taken very seriously. N.T. p. 194. Gardner stated the appointing authority does not want to take any risks that something could happen. N.T. p. 194. Therefore, based upon a review of the witness statements,<sup>22</sup> notes from the PDC, and the table of discipline, the Labor Relations Office concurred removal was appropriate, and appellant was removed from his position as a Psychiatric Aide. N.T. pp. 194-195; Comm. Ex. A.

In response to the appointing authority's evidence, appellant asserted he is not disputing that he brought ammunition into the Greizman Building. N.T. p. 225. Appellant stated he is only disputing the number of bullets. N.T. p. 255. Appellant provided the following narrative of the October 4, 2021 incident.

Appellant testified he attempted to talk to Psychiatric Aide Orvosh several times on October 4, 2021, but Orvosh was standoffish. N.T. p. 211. Appellant stated later in the evening, he brought up a conversation about guns with Orvosh. N.T. p. 211. Appellant explained his wife's uncle had recently passed away and left them several guns. N.T. p. 211. Appellant stated one of the guns was a Colt Diamondback, which is a rare type of pistol. N.T. p. 211. Appellant stated he

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<sup>22</sup> Orvosh, Trice, and Barnhart completed and signed witness statements regarding the October 4, 2021 incident. N.T. pp. 33-34, 55-56, 86-87, 103-106, 122, 129.

believed Orvosh would be a “gun guy” due to his background in the Secret Service and because he lived on a farm. N.T. p. 211. So, he spoke with Orvosh about the pistol. N.T. p. 214.

Appellant stated during this conversation, Orvosh asked him five times whether the pistol was a .44 or .38 caliber. N.T. pp. 214-215. Appellant recalled there were two bullets in the trunk of his vehicle because they had fallen out when his wife unloaded the gun. N.T. pp. 214-216. Appellant explained his wife recently unloaded the gun because she was taking it to be appraised. N.T. p. 214.

Appellant testified he retrieved the bullets from his vehicle when he went on break and brought them into the facility. N.T. p. 215. Appellant stated Orvosh and Registered Nurse Trice were aware he was leaving to retrieve the bullets but did not tell him he was not allowed to bring the bullets into the facility. N.T. pp. 215-216. Appellant stated if someone had said something, he would not have brought the bullets into the facility. N.T. p. 216.

Appellant stated he showed the two bullets to his co-workers and Psychiatric Aide Barnhart took one. N.T. p. 217. Appellant explained they were looking at the end of the bullet to determine the caliber. N.T. p. 217. Appellant stated his co-workers thought it had been filed down, but he believed it was just from wear because the bullets were old. N.T. p. 217. Appellant stated after he went home, he looked at the bullets under a magnifying glass and observed they were .38 caliber. N.T. pp. 217-218.

Appellant denied any knowledge of the bullets being handmade. N.T. p. 216. Appellant testified he does not make bullets, nor does he know how to make bullets. N.T. p. 217. Appellant stated his “intent was to be friends” with Orvosh and Barnhart who he described as “gun guys.” N.T. p. 218.

Appellant also initially denied referencing an AR-15 rifle during the October 4, 2021 conversation. However, he later admitted he said during the conversation, “I have a Colt AR-15.” N.T. p. 233. Appellant explained the two AR-15 rifles he owns are collectable items. N.T. pp. 233-234. Appellant denied ever shooting a gun. N.T. p. 234.

Regarding the threats against his wife and co-workers, appellant denied threatening his wife’s life and denied calling her a “b----.” N.T. pp. 218, 237. Appellant stated he has been married to his wife for eighteen years and has never threatened her life. N.T. p. 218. Appellant testified he has never said he was going to kill anyone. N.T. pp. 218-219, 238. Appellant stated he may use the “f-bomb” and say “f---- them.” N.T. p. 219.

Appellant also denied saying his wife had taken weapons away from him. N.T. p. 235. Appellant testified he either told his co-workers his wife had taken the guns to be appraised or she took the guns to her mother-in-law’s. N.T. p. 236. Appellant did acknowledge telling his co-workers he was having marital problems. N.T. p. 237.

Appellant testified he had “an episode of bipolar mania” on October 4, 2021 that he was “still coming down from.” N.T. p. 212. Appellant speculated this may have caused him to “maybe talk a little too much, nothing that would lead to be anything like violent or anything of that nature.” N.T. pp. 212-213.

Additionally, appellant provided the following explanations for the abnormal behavior reported by his co-workers (*i.e.*, gritting his teeth, inability to concentrate, and disappearing from the ward for extended periods). Appellant stated he has a bad habit of “gritting his teeth” and speculated his co-workers were not around him enough to notice it. N.T. p. 213. Regarding the allegation that he was unable to concentrate, appellant claimed he asked several times for something to do and each time his co-workers “blew [him] off.” N.T. p. 213. Appellant stated he “ended up sitting there most of the night, bored, and nothing to do.” N.T. p. 213. Appellant also denied taking extended breaks. N.T. p. 214. Appellant testified he took a half-hour lunch and two fifteen-minute breaks, for which he did not use the entire time. N.T. p. 214.

Appellant believes Registered Nurse Trice and Psychiatric Aide Orvosh “confided in each other” and “came up with a plan to set [him] up.” N.T. p. 238. Appellant speculated they did not want him working at the Greizman Building because they have a clique and there were rumors Trice was promised a supervisor position. N.T. p. 238. However, appellant acknowledged he very rarely worked in the Greizman Building. N.T. p. 239. Appellant stated he typically worked in the Renner Building. N.T. pp. 238-239.

Appellant claimed he only saw signs prohibiting firearms and ammunition at the Renner Building. N.T. pp. 230-231. Appellant also initially denied receiving the appointing authority's policies. N.T. p. 226. However, he later asserted he was "inundated" with information and paperwork during orientation. N.T. p. 226. Therefore, he claimed neither he nor anyone else have any idea of what information was given. N.T. p. 226. With that said, appellant stipulated he signed the acknowledgement form related to Policy No. 7174 although he does not remember doing so. N.T. pp. 228-229.

Appellant also acknowledged he attended the PDC during which he spoke with Acting Chief Nursing Executive Vigna about the October 4, 2021 incident. N.T. pp. 220-221. Appellant testified he told Vigna he felt a little manic at the start of his shift and he believes someone should have helped him along the way. N.T. p. 221. Appellant also questioned why he was not given a fitness-for-duty test. N.T. p. 221. Appellant asserted the entire staff, including Human Resources Director Gardner, know he has mental health issues and did not offer him a reasonable accommodation. N.T. pp. 221-222.

Additionally, appellant indicated after the PDC, he mailed a multi-page statement to the appointing authority.<sup>23</sup> N.T. pp. 240-241. This statement was written in crayon on graph paper. N.T. pp. 240-241; AA Ex. 13. Appellant testified he wrote the statement in crayon because he "figured this is a big joke." N.T. pp. 240-241. Appellant stated:

This whole matter is very hard for me to take seriously, like when people go up and make up a bunch of lies about you. All I was trying to do was be friendly with these people. They completely stabbed me in the back.

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<sup>23</sup> We note appellant submitted a short one-page statement at the PDC. AA Ex. 6 (p. 4).

N.T. p. 240. Appellant further asserted his co-workers should have helped him and told him not to bring the bullets into the facility. N.T. p. 241.

### *Just Cause for Removal*

To show just cause for the removal of a regular status civil service employee, the employer must show that the actions resulting in the removal are related to an employee's job performance and touch in some rational and logical manner upon the employee's competence and ability. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992). Having carefully reviewed the evidence, we find the appointing authority has established the charges against appellant and established just cause for his removal. In support of our conclusion, we find credible<sup>24</sup> the testimony provided by the appointing authority's witnesses. Specifically, we find the appointing authority presented credible evidence establishing appellant violated its policies when he brought ammunition onto the appointing authority's grounds and made verbal threats against his wife and other employees.<sup>25</sup>

There is no dispute appellant brought ammunition onto the appointing authority's grounds. *See* Finding of Fact 9. There is also no dispute the ammunition was under appellant's control. *See* Finding of Fact 9. We find such an action is

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<sup>24</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).

<sup>25</sup> We note the appointing authority did not enter into evidence all of the policies listed in the November 24, 2021 removal notice. However, proof appellant violated every applicable policy is not required. Here, the appointing authority established the substances of each charge which is sufficient evidence to demonstrate just cause. *See e.g., Lewis v. Commonwealth of Pennsylvania, Department of Health (Lewis II)*, 70 Pa. Commw. 531, 534, 453 A.2d 713, 714 (1982) (holding where the appointing authority bases a removal action upon several charges and some, but not all of the charges are proven, the Commission may uphold the removal if there is just cause for removal based upon the charges that are proven).

clearly prohibited by the appointing authority's policies. *See* Findings of Fact 15-29. We further find appellant was aware of the prohibition. *See* Findings of Fact 17, 21, 29. Thus, we find the appointing authority had just cause to remove appellant for this infraction.

Additionally, we find the appointing authority presented credible evidence establishing appellant threatened to kill his wife and other employees. *See* Findings of Fact 10-11. Such verbal threats are prohibited under Management Directive 205.33 Amended (Workplace Violence) which is publicly posted for all employees to review. *See* Findings of Fact 30-31. As such, we find there was also just cause to remove appellant for this infraction.

We further find either infraction standing alone is sufficient for removal. Under the rubric set forth in Policy No. 7174, removal is appropriate for a first offense related to firearms and other weapons which includes ammunition. *See* Finding of Fact 19. Likewise, Management Directive 205.33 Amended (Workplace Violence) provides discipline up to and including termination is appropriate. *See* Finding of Fact 32.

Furthermore, we find there are no mitigating circumstances to support a lesser discipline. Appellant was a Psychiatric Aide responsible for the wellbeing of mental health patients. *See* Finding of Fact 5. Appellant's actions could have compromised the well-being of his patients had they seen the ammunition or heard the threats. Thus, appellant's actions posed a possible risk of injury to his patients.

Appellant's actions also posed a risk of possible danger to his wife and co-workers in that he threatened to kill them. This danger was further escalated by the context of the conversation in which the threats were made. During the conversation, appellant described the weapons he owned and showed his co-workers bullets thereby implying he had the means to effectuate his threats. *See Findings of Fact 8-11.* Accordingly, we find just cause was established and removal was appropriate for either infraction standing alone.

Nonetheless, appellant argues: 1) his co-workers should have told him he was not permitted to bring bullets into the facility; 2) his non-compliance should be excused because he was unable to recollect the policies he received during orientation; 3) the appointing authority should have given him a fitness for duty test and/or an accommodation due to his alleged mental health diagnosis; and 4) his co-workers set him up. N.T. pp. 215-216, 221-222, 226-229, 238-239, 241. We are not persuaded by appellant's arguments.

First, there is no evidence appellant's co-workers were obligated, in anyway, to stop him from violating the appointing authority's policies. Moreover, we find credible Registered Nurse Trice's testimony that there was no time to stop appellant. N.T. pp. 94-95.

Additionally, we note the appointing authority's prohibition pertaining to ammunition is clearly stated during orientation and in multiple policies which were provided to appellant. *See Findings of Fact 15, 18-27, 29.* Indeed, appellant acknowledged he observed the signage detailing this policy at the appointing

authority's Renner Building. *See* Findings of Fact 16-17. Thus, we are not persuaded by appellant's claim that his co-workers should have told him he was not permitted to bring bullets into the facility.

Neither are we persuaded by appellant's claim that his non-compliance should be excused because he was unable to recollect the policies he received during orientation. It is appellant's responsibility to comply with his employer's policies and procedures. All employees received copies of the appointing authority's policies during orientation. *See* Finding of Fact 33. This is further evidenced by appellant's signature acknowledging he received Policy No. 7174 and the Work Rules which both prohibit ammunition on the appointing authority's grounds. *See* Findings of Fact 21, 29. Additionally, we note Management Directive 205.33 Amended (Workplace Violence) is publicly available on the Office of Administration's website. Thus, we find appellant was aware of or at the very least should have been aware of the appointing authority's policies. Appellant's failure to remember and adhere to those policies clearly touches upon his competence and ability to perform his duties of a Psychiatric Aide. Thus, we are not persuaded by appellant's excuse.

Furthermore, we are not persuaded by appellant's argument he should have received a fitness for duty test and/or an accommodation. There is no evidence the appointing authority is required to give an employee a fitness for duty test prior to removing the employee for a violation of its policies. Likewise, there is no evidence appellant was entitled to an accommodation. There is no evidence appellant suffers from a disability for which an accommodation is needed. There is no evidence appellant requested an accommodation, and there is no credible

evidence the appointing authority knew of appellant's mental health diagnosis. Thus, there is no evidence to support appellant's belief he was entitled to a fitness for duty test and/or an accommodation.

Lastly, we are not persuaded by appellant's claim that his co-workers set him up. Appellant does not provide any credible evidence to substantiate his belief and his reasoning lacks merit. Appellant claims his co-workers came up with a plan to set him up because they did not want him working at the appointing authority's Greizman Building. However, appellant rarely worked at the Greizman Building. N.T. p. 239. Thus, a conspiracy to remove him seems illogical. Moreover, appellant does not deny bringing the ammunition onto the appointing authority's property. N.T. p. 225. This undisputed violation alone is sufficient grounds for removal. *See Findings of Fact 3, 19.*

Based on the above, we find the appointing authority had just cause to remove appellant. Specifically, we find the appointing authority presented credible evidence establishing appellant violated its policies when he brought ammunition onto the appointing authority's grounds and threatened to kill several co-workers and his wife who also works at the appointing authority. We further find either one of these actions alone are sufficient grounds for removal. Accordingly, we enter the following:

CONCLUSION OF LAW

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

ORDER

AND NOW, the State Civil Service Commission, by agreement of two of its members,<sup>26</sup> dismisses the appeal of Mark Benamati challenging his removal from regular Psychiatric Aide employment with Torrance State Hospital, Department of Human Services, and sustains the action of Torrance State Hospital, Department of Human Services in the removal of Mark Benamati from regular Psychiatric Aide employment, effective November 30, 2021.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

Mailed: 1/25/23

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<sup>26</sup> Commissioner Pamela M. Iovino, who took office on December 22, 2022, did not participate in the discussion of or decision for this appeal.