

COMMONWEALTH OF PENNSYLVANIA

Chad R. Foster : State Civil Service Commission
 :
 v. :
 :
 Pennsylvania Fish and Boat :
 Commission : Appeal No. 31042

Chad R. Foster : Vienna M. Vasquez
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Chad R. Foster challenging his removal from regular Aquatic Resources Program Specialist employment with the Pennsylvania Fish and Boat Commission. A hearing was held on May 18, 2023, 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 has established just cause to remove appellant from his position.

FINDINGS OF FACT

1. By letter dated November 15, 2022, appellant was removed from his position as an Aquatic Resources Program Specialist, regular status, with the Pennsylvania Fish and Boat Commission, effective November 15, 2022. Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.¹ Comm. Ex. C.
3. The Pennsylvania Fish and Boat Commission (hereinafter “appointing authority”) charged appellant with a recent work history involving serious infractions of the work rules. Specifically, the charges were based on the following conduct:

You stated that you understand that you are expected to do high-quality, detailed work but you continually fail to do so. You repeatedly promise to do better with each infraction, however, you continue to repeat mistakes and produce sloppy work, which reflects poorly on you and fails to instill confidence to the Commission’s customers. Your most recent incident with the Steelhead fishing events was evidence that you are failing to

¹ 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.

perform as expected and are not meeting the standards in your performance improvement plan (PIP).

Comm. Ex. A.

4. Appellant worked for the appointing authority as an Aquatic Resources Program Specialist beginning October 2016. N.T. p. 147.
5. On April 14, 2021, Maxine Johnson, Director of Human Resources for the appointing authority, participated in a Microsoft Teams meeting with appellant concerning appellant's poor work performance, to include lack of follow-through, lack of motivation, and lack of leadership. Johnson informed appellant if he did not take corrective action, he could lose his job. N.T. pp. 128-129, 134-135.
6. In August 2021, appellant received an unsatisfactory employee performance review (hereinafter "EPR") from his former supervisor Carl Richardson, and he was placed on a performance improvement plan (hereinafter "PIP"). Appellant signed the EPR and acknowledged he needed to improve his work performance. N.T. pp. 135-136; AA Ex. 1.

7. Melissa Gallo, Aquatic Resources Education Manager for the appointing authority, became appellant's direct supervisor in January 2022. N.T. pp. 22-27.
8. In or around February 2022, appellant began using leave without prior supervisor approval. Appellant also improperly used leave for family members who were not family by legal definition. N.T. pp. 27-28.
9. In response to appellant's continued poor work performance, Gallo conducted biweekly counseling sessions with appellant to address his work product. N.T. pp. 29-31.
10. During the counseling sessions, Gallo addressed appellant's improper call-off procedure as well as his poor work performance, to include submitting work with errors, an inability to follow directions, and distractedness during work meetings. N.T. pp. 29-31.
11. In May 2022, appellant submitted an assignment to Gallo which had been copied from other uncited internet sources. Gallo found multiple sentences

within the assignment verbatim on different websites. She had to redo appellant's assignment. N.T. pp. 183-185.

12. From the period Gallo began appellant's counseling sessions until May 2022, she continued to witness the same issues with appellant's poor work performance. Gallo issued appellant an unsatisfactory interim EPR in May 2022. N.T. pp. 32-37; AA Ex. 15.
13. On May 19, 2022, Johnson advised appellant an investigation was being conducted into his conduct as an employee. Johnson charged appellant with poor work performance to include appellant's failure to meet deadlines, his submission of coded reports and statements with errors despite prior feedback, and his submission of a plagiarized assignment. Additionally, Johnson noted appellant arrived to work late and repeatedly called off with little to no notice. AA Ex. 2.
14. On June 8, 2022, appellant was issued a 3-Day Alternative Discipline in Lieu of Suspension (hereinafter "ADLS Level 2"). The disciplinary action was taken as a result of appellant's violation

of Administrative Policy 2013-001 *Violation of Work Rules and Standards of Conduct for Commission Employees and Volunteers*, as follows:

#1, Employees will perform all duties to the best of their ability and with the highest level of integrity, honesty, tact and efficiency;

#2, Employees will faithfully implement and follow Commission rules and standards and all other work rules and standards applicable to Commonwealth employees;

#4, Employees will transact Commission business in a professional and ethical manner;

#7, Employees will comply with and adhere to all leave and call off procedures, including work hours and break times;

#13, Employees shall not falsify reports and records, including but not limited to personnel, payroll, time and activity and leave.

N.T. p. 50; AA Ex. 4.

15. On June 9, 2022, Gallo issued appellant Performance Guidelines as well as a Leave Restriction and Improvement Plan in effect June 9, 2022, through December 9, 2022. N.T. p. 53; AA Ex. 5, AA Ex. 6.

16. On July 1, 2022, and August 23, 2022, appellant violated his Leave Restriction and Improvement Plan by submitting doctor's excuses without a wet signature. N.T. pp. 54-56; AA Ex. 6, AA Ex. 7.

17. On September 14, 2022, Johnson issued appellant a Disciplinary Final Warning for appellant's violation of Administrative Policy SOP-100, *Violation of Work Rules and Standards of Conduct for Commission Employees and Volunteers* as follows:
 - #1. Employees will perform all duties to the best of their ability and with the highest level of integrity, honesty, tact, and efficiency.
 - #2. Employees will faithfully implement and follow Commission rules and standards and all other work rules and standards applicable to Commonwealth employees.
 - #21. Employees shall not engage in insubordinate or disrespectful conduct toward supervisors, such as refusal to perform assigned work or failure to obey orders or directives.

N.T. pp. 62-64; AA Ex. 9.

18. The September 14, 2022, Disciplinary Final Warning was based on appellant's failure to adhere to a corrective course of action despite repeated notifications and conversations with his supervisor;

his continued submission of sloppy, haphazard work; his failure to adhere to supervisor's directions; and his failure to follow his written leave restriction directions. Specifically, appellant submitted invalid doctor's notes in violation of the Leave Restriction Policy on July 1, 2022, and August 23, 2022; he failed to work on the RK Mellon grant² in a timely manner; he scheduled late shifts against supervisor direction; he improperly utilized his Outlook calendar by listing himself as unavailable for all-day, personal appointments on workdays; and he submitted time and attendance reports with errors. AA Ex. 9.

19. In November 2022, appellant worked as lead on the Pennsylvania Steelhead Program, a high-priority four-day program for fishing education. N.T. pp. 65-71.
20. Throughout the Steelhead Program event, appellant went missing for long periods of time without informing anyone of his whereabouts. N.T. pp. 67-74.

² We note no testimony was provided defining the meaning of "RK Mellon."

21. Appellant parked his truck a quarter of a mile or more away from where the Steelhead Program event occurred. During the program, appellant ate lunch in his truck for a period longer than his designated thirty-minute lunch break. N.T. pp. 72-74, 96.
22. On November 4, 2022, appellant informed Cody Whipple, a coworker on the Steelhead Fishing Program, that he had been fishing and had caught a fish at the 0.30-mile location. AA Ex. 12.
23. On November 4, 2022, Ryan Novatnack, a volunteer for the Steelhead Program, witnessed appellant fishing in an area where participants could have been fishing. None of the other instructors carried rods down to the creek. AA Ex. 11.
24. Around 3:30 p.m. on November 4, 2022, Novatnack witnessed appellant in his work truck. Appellant jumped out of the truck when he saw Novatnack and the other participants walking back to the parking lot. AA Ex. 11.

25. On November 6, 2022, at around 1:00 p.m., Novatnack saw appellant in his work truck while the event was still going on. Appellant informed Novatnack he was catching up on paperwork. AA Ex. 11.
26. On November 7, 2022, Whipple witnessed appellant fishing by himself approximately fifty yards away from program participants. AA Ex. 12.
27. At 9:00 a.m. on November 7, 2022, Whipple traveled downstream to ask appellant for his assistance with a participant who wanted to learn spinning. At 10:00 a.m., Whipple witnessed the same participant fishing by himself with his line snagged, while appellant continued to fish alone approximately fifty yards downstream from the participant. AA Ex. 12.
28. Appellant was the first to leave the Steelhead Program event on November 4, 5, 6, and 7, 2022. AA Ex. 11, AA Ex. 12.
29. On November 14, 2022, Gallo issued appellant a Written Notice of a Pre-Disciplinary Conference. The appointing authority alleged appellant violated SOP-100, *Work Rules and Standards of Conduct for*

Commission Employees and Volunteers, as previously enumerated in appellant's September 14, 2022, Final Disciplinary Warning. The Written Notice was based on appellant's continued lack of attention to detail as well as continued instances in which appellant ignored Gallo's directives regarding work assignments. Specifically, appellant showed poor leadership of the Steelhead fishing program through his periods of absence, his time spent fishing away from participants, and his early leave throughout the program. Additionally, appellant failed to follow directions on the Time and Attendance report coding for the PFBC operational meeting and for "Boating" to a specific grant. Appellant submitted Time and Attendance reports with errors, and he further improperly submitted entries on the appointing authority's Event Manager. AA Ex. 10.

DISCUSSION

The current appeal challenges the appointing authority's decision to remove appellant from regular Aquatic Resources Program Specialist employment with the Pennsylvania Fish and Boat Commission. The sole issue before the Commission is whether the appointing authority established just cause to remove appellant from his position.

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

The appointing authority charged appellant with serious infractions of the work rules and failure to meet standards outlined in his PIP. Comm. Ex. A. Specifically, the appointing authority alleged appellant understood he was expected to do high-quality, detailed work but he continually failed to do so, culminating with his mishandling of the Steelhead Program in November 2022. *Id.*

In support of its charges, the appointing authority presented the testimony of Aquatic Resources Education Manager Melissa Gallo,³ Human Resources Analyst 3 Linda Flemm,⁴ and Director of Human Resources Maxine Johnson⁵. Appellant testified on his own behalf. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

³Gallo is employed by the appointing authority as Aquatic Resources Education Manager. N.T. pp. 22-23. She has held this position since January 2022. N.T. p. 24. In that capacity, Gallo serves as appellant's supervisor. N.T. pp. 26-27.

⁴Flemm is employed by the appointing authority as Human Resource Analyst 3, with the working title of Labor Relations Coordinator. N.T. p. 101. She has held this position since April 2018. N.T. p. 102.

⁵Johnson is employed by the appointing authority as Director of Human Resources. N.T. pp. 128-129. Her position was recently reclassified from Human Resource Analyst 4. *Id.* She has worked for the appointing authority since 2014. N.T. p. 130.

Appellant began working for the Commonwealth in 2007 as an Environmental Interpretive Technician. N.T. pp. 147-148. In 2016, appellant was promoted by the appointing authority to a Regional Outreach and Education Coordinator. N.T. p. 151. In October 2016, he began working as an Aquatic Resources Program Specialist. N.T. p. 147. He held this position until termination.

Appellant began exhibiting poor work performance in 2021. On April 14, 2021, Maxine Johnson conducted a Teams meeting with appellant to address concerns about his work performance. *See* Finding of Fact No. 5. Johnson emphasized appellant's need to take corrective action to preserve his employment with the appointing authority, to include improvement in his follow-through, his level of motivation, and leadership. *Id.* Appellant agreed with Johnson he could perform better in the workplace. N.T. p. 135. However, despite this assertion, appellant's conduct did not improve, and he received an unsatisfactory EPR in November 2021 and was put on a PIP. *See* Finding of Fact No. 6.

In January 2022, Melissa Gallo took over as appellant's direct supervisor. *See* Finding of Fact No. 7. Around February 2022, Gallo began experiencing issues with appellant's improper leave usage, to include using family leave for non-family members. *See* Finding of Fact Nos. 8-9. Gallo explained appellant also consistently submitted work with errors and failed to follow directions. She noted during Teams meetings, appellant was visibly on his phone, or it appeared he was viewing something irrelevant to the work meeting on another computer. Appellant lacked attention to detail in his work, which was not up to par with his position as supervisor. N.T. p. 28. Gallo conducted bi-weekly counseling

sessions with appellant to address these issues. *See* Finding of Fact No. 9. Following these counseling sessions, appellant agreed to Gallo's required call-off procedures, and he acknowledged the expectations regarding his work performance going forward. N.T. p. 31.

Nonetheless, from the time Gallo began providing appellant feedback until May 2022, she continued to experience the same issues with appellant's work performance. *See* Finding of Fact No. 12. This included appellant's submission of a suspected plagiarized assignment to Gallo, which she had to correct herself. *See* Finding of Fact No. 11. Gallo issued appellant an unsatisfactory EPR in May 2022, explaining appellant submitted work with errors, he missed deadlines, and he put forth minimal effort. She further stated appellant communicated poorly, was not forthcoming on projects, and did not follow work procedure or directions. N.T. pp. 38-42. Appellant agreed with his unsatisfactory rating, acknowledging he needed to do better and improve his work performance. N.T. p. 44.

Following the negative EPR, on June 9, 2022 Gallo issued appellant Performance Guidelines and a Leave Restriction and Improvement Plan. *See* Finding of Fact No. 15. However, after the Performance Guidelines were put in place, appellant's performance did not improve. N.T. p. 53. Appellant showed poor management of a key project in the Northwest Region, the RK Mellon Grant. Gallo explained this grant was valued up to \$150,000, and it was the highest priority grant in the Northwest Region. As lead on the grant, appellant made critical mistakes in his management of the project. N.T. pp. 58-59. Appellant also showed improper schedule change requests and poor management of his Outlook calendar.

Specifically, appellant listed himself as unavailable for a private appointment when he should have been working. N.T. p. 59. Gallo testified she performed extra work on appellant's behalf to correct errors on his Time and Activity Reports. N.T. p. 59. Additionally, appellant violated his Leave Restriction and Improvement Plan twice, involving submission of an invalid doctor's excuse. *See* Finding of Fact No. 16. Appellant admitted he needed to exhibit more attention to detail in his work, and asserted he would try harder to perform to expectations. He further removed any personal obligations from his Outlook calendar. N.T. p. 61.

Despite continued assertions he would try harder to meet Gallo's expectations, appellant's work performance continued to decline. His failure to meet work standards culminated with his role as lead on the Pennsylvania Steelhead Program in November 2022. *See* Finding of Fact No. 19. Appellant handled multiple programs in the past and previously attended the Steelhead Program. He was aware of his assigned duties and signed off on his responsibilities during the event. N.T. p. 72. Nonetheless, appellant's conduct during the event showed he failed to meet his responsibilities as lead of the program. There were long periods where Steelhead Program staff either could not locate appellant or would find him in his truck. Appellant admitted to being in his truck for long periods of time, located about a quarter mile or more from where the program occurred. He also acknowledged he failed to notify anyone of his whereabouts. N.T. p. 83. Cody Whipple and Ryan Novatnack, Steelhead Program staff, witnessed appellant fishing by himself in areas as far as 50 yards away from participants. Appellant failed to properly assist the participants who were attempting to learn fishing techniques. Additionally, both Whipple and Novatnack noted appellant was the first

to leave the program each day throughout the four-day event. *See* Findings of Fact Nos. 20-29. Following the conclusion of the Steelhead Program, appellant admitted he could have performed better, to include notifying people of his whereabouts. N.T. p. 161.

Gallo explained the decision to terminate appellant's employment was a culmination of appellant's poor work performance, with a history of creating more work for his coworkers. N.T. pp. 81-82. Linda Flemm noted appellant continually stated he understood the concerns surrounding his work performance, with numerous assertions he would do better. N.T. p. 118. She expressed appellant lacked the communication and maturity necessary to meet the standards of his position. N.T. p. 123. Appellant received prior discipline in the form of an ADLS Level 2 and a Final Disciplinary Warning. *See* Findings of Fact Nos. 14, 17. Despite these prior actions, appellant's conduct did not change. In response to his termination, appellant testified he understood the reasons. N.T. p. 157.

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 credible⁶ the testimony provided by the appointing authority's witnesses.

⁶ 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).

The appointing authority established the final decision to terminate appellant's employment was based on his poor work performance beginning in April 2021. Despite numerous counseling sessions with Gallo, appellant's work performance continued to decline. This occurred despite additional feedback meetings, performance guidelines, and further issued warnings. Nonetheless, appellant alleges "it took a new supervisor of nine months to ruin a good employee of 15 years." Comm. Ex. B. We determine this assertion is without merit. Johnson informed appellant he could lose his job due to poor work performance as early as April 2021. Additionally, appellant's negative EPR dated August 2021 was issued by his former supervisor Carl Richardson. Gallo did not become appellant's supervisor until January 2022. Despite Gallo's continued counseling and warnings for the continued witnessed behavior from 2021, appellant continuously failed to correct his performance.

Based on the above, we find the appointing authority had just cause to remove appellant based on his long history involving serious infractions of the work rules. Appellant's inability to improve his work performance, culminating in November 2022 with his mishandling of the Steelhead Program, clearly reflect negatively upon his competence and ability to perform his job duties. Appellant demonstrated a declining work ethic despite numerous assertions he would improve, thereby providing just cause for the removal. *Woods*. 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 its members, dismisses the appeal of Chad R. Foster challenging his removal from regular Aquatic Resources Program Specialist employment with the Pennsylvania Fish and Boat Commission and sustains the action of the Pennsylvania Fish and Boat Commission in the removal of Chad R. Foster from regular Aquatic Resources Program Specialist employment effective November 15, 2022.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: September 21, 2023