

COMMONWEALTH OF PENNSYLVANIA

Andrew D. Troutman : State Civil Service Commission
v. :
Pennsylvania Game Commission : Appeal No. 31046

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Attorney for Appellant

William C. Martson
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Anthony D. Troutman challenging his one-day suspension from regular Wildlife Conservation Officer employment with the Pennsylvania Game Commission. A hearing was held July 6, 2023, via video, before Chairwoman Maria P. Donatucci.

The Commissioners have reviewed the Notes of Testimony and Exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority had good cause to issue appellant a one-day suspension from his Wildlife Conservation Officer, regular status, position.

FINDINGS OF FACT

1. By letter dated November 30, 2022, appellant was notified of his one-day suspension from his regular status Wildlife Conservation Officer position effective December 13, 2022. The appointing authority charged:

The reason for this suspension without pay is for unbecoming and inappropriate conduct which is in violation of the PGC Work Rules and Standards of Conduct. Specifically, on November 2, 2022 you were off duty and put yourself in a situation that reflects unfavorably in your role as a Wildlife Conservation Officer and on behalf of the Pennsylvania Game Commission. Additionally, you engaged in inappropriate communications involving a fellow Game Warden.¹

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. Comm. Ex. B.²

¹ Throughout the transcript, the appointing authority uses the terms “Game Warden” and “Wildlife Conservation Officer” interchangeably in reference to appellant’s job title and the job title of several of his coworkers. The Commission will use the term “Game Warden.”

² Appellant’s request for a hearing under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination. N.T. p. 11; Comm. Ex. D.

3. The appointing authority's Work Rules and Standards of Conduct (hereinafter "Work Rules") is the guiding document used to determine if discipline is appropriate. N.T. pp. 37-38; AA Ex. 16.
4. Within the Work Rules are provisions prohibiting employees from engaging in conduct which creates a conflict of interest or the appearance of a conflict of interest. N.T. p. 40; AA Ex. 16.
5. The Work Rules also prohibit an employee from accepting loans and engaging in conduct that may result in or may reasonably create the appearance of soliciting or accepting gifts. N.T. pp. 39, 43; AA Ex. 16.
6. On November 2, 2021, appellant was previously issued a written reprimand for a violation of the Work Rules and Standards of Conduct for unbecoming conduct and inappropriate behavior. N.T. p. 33; Comm. Ex. A; AA Ex. 15.
7. On February 25, 2022 appellant acknowledged receipt of the Work Rules. AA Ex. 16.

8. Hunter harassment occurs when someone interferes with another person's lawful hunting. N.T. p. 83.
9. Appellant is assigned to the Northwest Region. N.T. p. 100.
10. McClelland owns property located in the Southwest Region, which is not in appellant's jurisdiction. N.T. p. 29.
11. Appellant had filed hunter violations against McClelland in the past. N.T. p. 119.
12. McClelland had filed hunter complaints against appellant in the past. N.T. p. 121.
13. Appellant was aware of a hunter harassment issue between McClelland and another hunter, Miller. N.T. pp. 29, 39, 42, 104-105; AA Ex. 9.
14. Game Wardens, such as appellant, are permitted to hunt while off duty. N.T. p. 51.
15. On or about November 2, 2022, appellant obtained permission to use Miller's tree stand while hunting. N.T. pp. 28, 31, 39, 64-65, 127-128.

16. The property³ on which Miller's tree stand is located is in the Southwest Region, not in appellant's jurisdiction. N.T. p. 29.
17. On November 2, 2022, appellant was off duty and used Miller's tree stand. N.T. pp. 28, 31.
18. While in the tree stand, appellant utilized binoculars to look in the direction of McClelland's land and home. N.T. pp. 28-29.
19. McClelland approached appellant and the two men had a verbal confrontation. N.T. pp. 28, 127.
20. On November 3, 2022, appellant contacted Game Warden Walker, who was assigned to the Southwest Region, and asked to meet to discuss issuing McClelland a citation for hunter harassment. N.T. pp. 28-29.

³ There is conflicting testimony as to who owns the land upon which the tree stand was located. Human Resource Analyst 3 Delynn Steffen testified the land was owned by Miller. N.T. pp. 28, 73. She also testified she is unsure if the land is owned by the federal government. N.T. p. 65. Conservation Administration Supervisor Jason Amory testified the land is owned by the Army Corp of Engineers and is open to the public for hunting. N.T. pp. 129-130. Because the testimony is unclear, the Commission will refer to area as "the property."

21. Appellant also contacted Game Warden Kimmel, who is assigned to the Southwest Region, and questioned Walker's work ethic. N.T. pp. 33, 57, 140.

22. On November 21, 2022 appellant attended a Pre-Disciplinary Conference. N.T. pp. 27-28; Comm. Ex. A.

DISCUSSION

At issue before the Commission is whether the appointing authority had good cause to suspend appellant for one day from his position as a Wildlife Conservation Officer, regular status. The appointing authority asserts appellant violated the Work Rules and Standards of Conduct (hereinafter "Work Rules") while off-duty when he put himself in a situation that reflects unfavorably on his job role and the appointing authority. Additionally, the appointing authority asserts appellant engaged in inappropriate communications involving a fellow Game Warden.

In an appeal challenging the suspension of a regular status employee, the appointing authority has the burden to present sufficient evidence to demonstrate the suspension was for good cause. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1987); 71 Pa.C.S.A. §§ 2603(c), 3003(7)(i). Good cause must relate to an employee's competence and ability to

perform his job duties, *Department of Corrections v. Ehnnot*, 110 Pa. Commw. 608, 532 A.2d 1262 (1987), or must result from conduct which hampers or frustrates the execution of the employee's duties. *McCain v. Department of Education*, 71 Pa. Commw. 165, 454 A.2d 667 (1983).

The appointing authority presented the testimony of Human Resources Analyst Delynn Steffen, Law Enforcement Supervisor for the Southwest Region Brian Singer, and Conservation Administration Supervisor Jason Amory. Appellant did not testify or present witnesses on his own behalf.

The parties do not dispute the following facts. Appellant's jurisdiction lies in the Northwest Region. N.T. p. 100. Prior to the incident at issue, McClelland had filed complaints against appellant and appellant has filed violations against McClelland. N.T. pp. 119, 121. On November 2, 2022, appellant had permission to, and did use, Miller's tree stand located next to McClelland's property. N.T. pp. 28, 31, 39, 64-65, 127-128. The property upon which Miller's tree stand is placed and McClelland's land are not within appellant's jurisdiction. N.T. p. 29. While in the tree stand, appellant looked through binoculars toward McClelland's home and property; when McClelland approached appellant the two men had a verbal confrontation. N.T. pp. 28, 127. The appointing authority's employees are permitted to hunt while off duty. N.T. p. 51. The following day, appellant approached Game Warden Walker, who was assigned to the Southwest Region, and asked to meet to discuss issuing McClelland a citation. N.T. pp. 28-29. Subsequently, appellant contacted Game Warden Kimmel in the Southwest Region and questioned Walker's work ethic. N.T. pp. 33, 57, 140.

With respect to issuing the suspension, the appointing authority charges appellant with violating multiple Work Rules. Comm. Ex. A. The first Work Rule the appointing authority charges appellant with violating is Work Rule 7 which provides, “Refuse to accept loans, gifts, money, services or other arrangements for personal benefit, under any circumstance, which may reasonably be expected to influence you in the discharge of your duties.” AA Ex. 16. Human Resource Analyst 3 Delynn Steffen explained appellant violated this Work Rule because he obtained permission from Miller to use the tree stand knowing there was a hunter harassment issue between Miller and McClelland. According to Steffen, appellant knew he could encounter McClelland. N.T. p. 39. On cross examination, Steffen opined the personal benefit to appellant was when he spoke to Kimmel and questioned Walker’s ethics and work performance. N.T. pp. 57-58. The appointing authority has not presented sufficient evidence to explain how appellant’s decision to speak with Kimmel, although inappropriate, resulted in a “personal benefit” to appellant. Therefore, the appointing authority has not established how appellant’s behavior violated this Work Rule.

The second Work Rule appellant is charged with violating is Work Rule 8 which states, “Refrain from engaging in any occupation, profession, business dealing, practice, or remunerative activity which might cause or result in conflict with the interest of the Game Commission or the Commonwealth.” AA Ex. 16. According to Steffen, appellant’s decision to accept Miller’s invitation to use the tree stand, when there was a potential for an encounter with McClelland that could lead to a citation for McClelland constitutes “remunerative” activity. N.T. p. 58. The Commission finds this testimony without merit. The appointing authority provides no definition of “remunerative activity” and there is no definition of “remunerative activity” in the Work Rules. Merriam-Webster defines “renumerate”

as: “1, To pay an equivalent for; 2. to pay an equivalent for a service, loss, or expense.”⁴ Merriam-Webster defines “remuneration” as 1, Something that remunerates; 2. An act or fact of remunerating.”⁵ The appointing authority does not provide any explanation as to how a possible citation to McClelland constitutes any remuneration for appellant. Thus, the appointing authority has not presented sufficient evidence to support a violation of this Work Rule.

The third and fourth Work Rules appellant is charged with violating are related to a conflict of interest. Those two portions state as follows:

Game Commission employees must avoid any action which might result in, or reasonably be expected to create the appearance of:

- h. Using information obtained as a result of his/her Commission employment, which is not available to the public at large, for his/her own personal gain or others.
- i. Soliciting or accepting gifts, loans, favors or anything of monetary value from any person or entity that is regulated by the Commission, does business with the Commission or is subject to an enforcement action by the Commission.

AA Ex. 16. Steffen testified these provisions were violated because appellant used his employment to gain access to the tree stand and, subsequently, used the tree stand solely for the purpose of experiencing hunter harassment. N.T. pp. 42-43. Steffen further testified appellant’s personal gain was related to a personal vendetta against McClelland. N.T. pp. 42-43. In addition, Steffen opined appellant’s job duties do

⁴ “Remunerate.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/remunerate>. Accessed 24 oct. 2023.

⁵ “Remuneration.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <http://www.merriam-webster.com/dictionary/remuneration>. Accessed 24 oct. 2023.

not include telling another Game Warden, in a different district, how to perform his job duties and doing so constitutes interference and coercion. N.T. p. 55. She further opined that if the encounter had resulted in a citation for McClelland that would have been a personal gain for appellant. N.T. p. 55.

The Commission finds this reasoning faulty. The appointing authority did not present any evidence appellant was in the tree stand for the sole purpose of instigating a hunter harassment situation. Further, there is no direct testimony regarding the contents of the conversation between appellant and Walker, therefore no way to determine if appellant's inappropriate conduct was also coercive. In addition, there is nothing in the record to support the belief that a citation issued to McClelland would in any way serve to benefit appellant. In the absence of any evidence of any personal benefit to appellant, the appointing authority has not presented sufficient evidence to support a violation of this portion of the Work Rules pertaining to a conflict to interest.

With respect to the second portion the Work Rule pertaining to conflicts of interest, Steffen explained appellant has law enforcement powers. N.T. pp. 53-54. As a hunter, Miller is regulated by the appointing authority. N.T. p. 54. Upon cross examination, Steffen stated appellant's gift of borrowing the tree stand "bled over" into the job duties because there was an ongoing hunter harassment issue. N.T. p. 52. However, Steffen also acknowledged every hunter is subject to the appointing authority's regulations. N.T. p. 53. In addition, Steffen also acknowledged there is no language in the section indicating the Work Rule applies to hunter harassment

issues. N.T. p. 53. Moreover, there is no testimony and nothing in the Work Rules stating an employee may not use another hunter's tree stand with permission. Thus, by the appointing authority's own acknowledgment, there is not sufficient evidence to support a violation of this Work Rule.

The second charge against appellant asserts appellant engaged in inappropriate communications involving a fellow Game Warden. Comm. Ex. A. In this respect, appellant acknowledged speaking to Walker and requesting he issue a citation to McClelland. N.T. pp. 28-29. Appellant also acknowledges talking with Kimmel and questioning Walker's work ethic. N.T. pp. 33, 57, 240. Through appellant's admissions, the appointing authority has presented sufficient evidence to support this charge.

In summation and upon review of the record in its entirety, the Commission finds the appointing authority has not presented sufficient evidence of good cause to support the imposition of a one-day suspension. Specifically, the appointing authority has not presented sufficient evidence to establish violations of the Work Rules. The record of this appeal supports our finding that Appellant did not contest the allegation that he maintained inappropriate communications with two other Game Wardens. Because the appointing authority has presented sufficient evidence to support only one charge, the Commission modifies the one-day suspension. The Commission has the authority⁶ to modify the penalty to make it consistent with such charges as have been established by the

⁶ *Department of Corrections v. State Civil Service Commission (Clapper)*, 842 A.2d 526, 533 (Pa. Commw. 2004); 71 P.S. § 741.952(c).

credible evidence of record. Consequently, pursuant to Section 3003(8)(iii) of Act 71,⁷ we modify appellant's one-day suspension to a written reprimand. Accordingly, we enter the following.⁸

CONCLUSION OF LAW

The appointing authority has not presented evidence establishing good cause for a suspension under Section 2603 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, orders that the one-day suspension imposed by the Pennsylvania Game Commission be set aside and a written reprimand be imposed. The Commission further directs that the appointing authority amend its records to reflect a written reprimand. We further award appellant reimbursement of such wages and emoluments as he would have earned had he worked as a Wildlife Conservation Officer from December 13, 2022, less wages earned and benefits received under the

⁷ Section 3003(8)(iii) of Act 71, as amended, provides in relevant portion:

If an employee is removed, furloughed, suspended or demoted, the commission may modify or set aside the action of the appointing authority.

71 Pa.C.S. § 3003(8)(iii).

⁸ The appointing authority's charge letter contains other allegations regarding appellant's alleged misconduct. None of the allegations are relevant to the charges identified by the appointing authority and, thus, not discussed in this Adjudication.

Public Laws of Pennsylvania as established by a sworn statement to be submitted by appellant to the appointing authority. We further order that within thirty (30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with this Order to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: November 16, 2023