

COMMONWEALTH OF PENNSYLVANIA

Bruce C. Buckholz : State Civil Service Commission
v. :
Pennsylvania Liquor Control Board : Appeal No. 31083

Bruce C. Buckholz Jason M. Worley
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Bruce C. Buckholz challenging his removal from regular Intermittent Liquor Store Clerk employment with the Pennsylvania Liquor Control Board. A hearing was held on August 24, 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 has established just cause to remove appellant from his position.

FINDINGS OF FACT

1. By letter dated February 9, 2023, appellant was removed from his position as an Intermittent Liquor Store Clerk, regular status, with the Pennsylvania Liquor Control Board, effective February 15, 2023. 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. C.
3. The Pennsylvania Liquor Control Board (hereinafter “appointing authority”) charged appellant with failing to properly respond to correspondence from the Bureau of Human Resources regarding his personnel status dated November 30, 2022, and January 4, 2023, despite instruction. Comm. Ex. A.
4. Appellant worked for the appointing authority as an Intermittent Liquor Store Clerk for three years. N.T. p. 56.
5. In a letter dated November 30, 2022, Lauren Donmoyer, Family Medical Leave Act (hereinafter “FMLA”) Manager for the Bureau of

Human Resources, informed appellant his ongoing absence from November 8, 2022, was not approved as FMLA Absence because he did not work the required 900 hours to be eligible for or entitled to FMLA. Appellant's period of ongoing absence beginning on November 8, 2022, was charged to "absence without leave code 52/97." AA Ex. 1.

6. Donmoyer's November 30, 2022 letter listed three options from which appellant had to choose following his FMLA disapproval. Donmoyer informed appellant his failure to choose an option by December 7, 2022, would result in disciplinary action up to and including termination of employment. The options were listed as follows:
 1. Return to work full-time full-duty, or with restrictions, with a medical release from the health care provider. If you are released with restrictions, the enclosed *Physician's Modified Duty Availability Certificate* must be completed and reviewed by this office before you may return to work. *Please ensure the documentation also covers the absence period from November 8, 2022, to present.*
 2. Resign your position by completing the PLCB-771 and returning it by email to RA-LBSPF@pa.gov or faxing it to 717.326.0444.

3. If you wish to explore the possibility of an accommodation to a disability, contact the agency Disability Services Coordinator at 717.705.6958 by December 7, 2022.

AA Ex. 1.

7. As of December 12, 2022, appellant did not report back to work or otherwise respond to Donmoyer's November 30, 2022 letter indicating he would resign his position or apply for a disability accommodation. Appellant's period of absence beginning on November 6, 2022, was charged as "Absent with leave (AW) without pay."¹ AA Ex. 4.
8. A fact-finding meeting was conducted via telephone on January 4, 2023, in which appellant participated. AA Exs. 5, 6.

¹ We note the November 30, 2022 correspondence from Donmoyer disapproved appellant's absence as absence without leave beginning on November 8, 2022. *See* AA Ex. 1. The memorandum from Cripps dated December 12, 2022, charged appellant with "Absent with leave (AW) without pay" beginning on November 6, 2022. *See* AA Ex. 3. No evidence was presented concerning the discrepancy between the absence begin dates or the type of absence charged. We note the correct citation for "AW" is "Absence without leave (AW) without pay." Thus, the language of appellant's charged absence will hereafter be corrected to "Absence without leave (AW) without pay" beginning on November 6, 2022, which is the day after appellant's last day worked for the appointing authority. N.T. pp. 20-21.

9. On January 4, 2023, appellant contacted Christopher Clocker, Equal Opportunity Specialist 3 for the appointing authority, to discuss a possible disability accommodation. Clocker gave appellant until January 19, 2023, to submit a Health Care Provider Questionnaire (hereinafter “HCPQ”). N.T. p. 31; AA Ex. 2.
10. Clocker never received appellant’s completed HCPQ, nor did appellant contact Clocker at any time after January 4, 2023. N.T. p. 33.
11. On January 20, 2023, Clocker informed Donmoyer appellant did not supply the requested HCPQ by January 19, 2023, and appellant’s accommodation request was not approved. AA Ex. 3.

DISCUSSION

The current appeal challenges the appointing authority’s decision to remove appellant from regular Intermittent Liquor Store Clerk employment with the Pennsylvania Liquor Control Board. 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 failing to properly respond to correspondence from the Bureau of Human Resources regarding his personnel status dated November 30, 2022, and January 4, 2023, despite instruction. Comm. Ex. A.

In support of its charges, the appointing authority presented the testimony of Human Resource Analyst 3 Lauren Donmoyer,² Equal Opportunity Specialist 3 Christopher Clocker,³ and Human Resource Analyst 4 Cyan Bender-Exley⁴. Appellant testified on his own behalf. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

²Donmoyer is employed by the appointing authority as Human Resource Analyst 3. N.T. p. 16. She has held this position for 17 years. N.T. p. 17. In that capacity, Donmoyer oversees the Family Medical Leave Act Unit and ensures eligibility is properly reviewed by FMLA coordinators. N.T. p. 18.

³ Clocker is employed by the appointing authority as Equal Opportunity Specialist 3. N.T. p. 28. He has held this position for six years. N.T. p. 28. In that capacity, Clocker works as the Division Chief for the Equal Opportunity Office, and he reviews and determines accommodation requests. N.T. p. 29.

⁴ Bender-Exley is employed by the appointing authority as Human Resource Analyst 4. N.T. p. 38. He has worked in that position for six years. N.T. p. 39. In that capacity, Bender-Exley supervises analysts in the Labor Relations Division who are responsible for reviewing requests for disciplinary action. N.T. p. 39.

Appellant worked for the appointing authority as Intermittent Liquor Store Clerk for three years. *See* Finding of Fact No. 4. He held this position until his termination. N.T. pp. 55-56.

Appellant last reported to work for the appointing authority on November 5, 2022. N.T. pp. 20-21. In November 2022, appellant underwent a medical surgical procedure. He did not report to work for the appointing authority throughout the two-month recovery period following his surgery. N.T. p. 57.

On November 30, 2022, Lauren Donmoyer sent appellant a letter notifying him his ongoing absence beginning on November 6, 2022, was not approved as FMLA Absence. *See* Finding of Fact No. 5. Appellant was not eligible or entitled to FMLA because he did not work the required 900 hours. Ms. Donmoyer notified appellant he must choose one of the following options by December 7, 2022: (1) return to work full-time full-duty, or with restrictions, with a medical release from a health care provider; (2) resign his position; or (3) contact the agency Disability Services Coordinator by December 7, 2022. Appellant failed to respond to Ms. Donmoyer's letter. *See* Findings of Fact Nos. 6-7.

Based on appellant's lack of response to Ms. Donmoyer's letter, Cyan Bender-Exley's office reviewed the request for disciplinary action against appellant. N.T. p. 40. On December 12, 2022, Connie Cripps, Chief of Human Resource Systems and Services Division, wrote a memorandum summarizing appellant's status and noting the start of disciplinary proceedings. N.T. p. 42; *See* Finding of Fact No. 7. Cripps noted as of December 2022, appellant had not reported

back to work or responded indicating he would resign from his position. *Id.* His period of absence beginning on November 6, 2022, was charged as Absence without leave (AW) without pay. *Id.* On December 14, 2022, Robert L. Skelly, Assistant Regional Manager for the appointing authority, sent a memorandum recommending disciplinary action. *See* Finding of Fact No. 8. Based on those two memoranda, Bender-Exley's office scheduled a fact-finding meeting with appellant via telephone on January 4, 2023. N.T. pp. 45-46; *See* Finding of Fact No. 8.

During the January 4, 2023 fact-finding meeting, appellant explained on November 30, 2022, he was in the hospital for treatment following a medical surgical procedure. N.T. p. 46. Appellant opted to return home mid-December 2023. For the period appellant was in the hospital, he did not receive any mail. N.T. p. 57. Skelly informed appellant the Bureau of Human Resources did not receive any communication from appellant regarding his personnel status and intended to remove appellant from his position. *See* Finding of Fact No. 8. Appellant indicated he wished to return to work. N.T. p. 58.

On January 4, 2023, appellant contacted Christopher Clocker concerning a possible accommodation request. *See* Finding of Fact No. 9. Appellant requested four weeks of approved unpaid leave to recuperate following his medical surgical procedure, after which he claimed he would be able to return to full-work duty. N.T. p. 34. After speaking with appellant, Clocker sent him the Health Care Provider Questionnaire (hereinafter "HCPQ") for appellant's physician to complete. Clocker requested appellant complete and return the HCPQ within fifteen days of the letter dated January 4, 2023. Clocker emphasized a completed HCPQ was

essential in determining whether appellant qualified for an ADA accommodation. Despite this request, Clocker's office did not receive a completed HCPQ, nor did Clocker receive any contact from appellant any time after January 4, 2023. When appellant failed to respond by the January 19, 2023 deadline, Clocker notified Donmoyer appellant failed to provide the HCPQ and an accommodation was not approved. *See Findings of Fact Nos. 9-11.*

Appellant confirmed he communicated with Clocker to discuss the possible accommodation on January 4, 2023. N.T. p. 60. He further agreed he was given the HCPQ and the opportunity to have it completed by his physician. *Id.* Appellant explained he believed the HCPQ was sent to his treating hospital twice, but he had no way of knowing if the questionnaire was sent back to Clocker's office. *Id.*

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 credible⁵ the testimony provided by the appointing authority's witnesses.

Donmoyer's initial November 30, 2022 correspondence gave appellant until December 7, 2022, to respond with his course of action regarding his disapproved absence beginning on November 6, 2022. Although appellant was recovering after his surgery and missed timely responding to Donmoyer's letter by

⁵ 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 December 7, 2022 deadline, the appointing authority gave appellant another opportunity to respond. Following the January 4, 2023 fact-finding meeting, Clocker informed appellant he had until January 19, 2023, to submit his HCPQ concerning a possible accommodation to his disability.

Nonetheless, appellant failed to follow through with his HCPQ or otherwise contact Clocker any time after their January 4, 2023 communication. Although appellant was allegedly unsure if the HCPQ was sent by the hospital to the appointing authority, he failed to either reach back out to the Disability Services Office before the extended January 19, 2023 deadline, or to otherwise contact the appointing authority concerning his personnel status. The appointing authority warned appellant of his possible termination in the first letter sent on November 30, 2022. Appellant's failure to choose one of the three listed options and comply in a timely manner in response to either the November 30, 2022, or January 4, 2023 correspondence led to his termination.

Based on the above, we find the appointing authority had just cause to remove appellant based on his failure to properly respond to correspondence from the Bureau of Human Resources regarding his personnel status dated November 30, 2022, and January 4, 2023. Appellant failed to follow direction concerning his personnel status despite repeated instruction, 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 Bruce C. Buckholz challenging his removal from regular Intermittent Liquor Store Clerk employment with Pennsylvania Liquor Control Board and sustains the action of the Pennsylvania Liquor Control Board in the removal of Bruce C. Buckholz from regular Intermittent Liquor Store Clerk employment effective February 15, 2023.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: November 16, 2023