

COMMONWEALTH OF PENNSYLVANIA

Brandyn T. Riley : State Civil Service Commission
 :
 v. :
 :
 Office of Administration, :
 Executive Offices : Appeal No. 31102

Brandyn T. Riley Jonathan W. Kunkel
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Brandyn T. Riley challenging his Level Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with final warning from regular Human Resource Assistant 2 employment with the Office of Administration, Executive Offices.¹ A hearing was held on September 19, 2023, via video, before Commissioner Pamela M. Iovino.

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 good cause for appellant’s suspension.

¹ Under the ADLS, there was no effect on appellant’s pay, seniority, or other benefits. The Level Two ADLS carries the same weight as if appellant served a three-day suspension. Comm. Ex. A. Consequently, the present appeal will be considered by the Commission as an appeal of a three-day suspension.

FINDINGS OF FACT

1. On March 21, 2023, the Office of Administration (hereinafter “appointing authority”) issued appellant a Level Two Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) with final warning, equivalent to a three-day suspension, from his regular Human Resource Assistant 2 employment. Comm. Ex. A.

2. The March 21, 2023 letter provides the following reason for appellant’s Level Two ADLS:

Failure to Perform Work:
Specifically, between August 8, 2022, and February 7, 2023, you failed to perform work for approximately 152.75 hours.

Comm. Ex. A (emphasis in original).

3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018. Comm. Ex. C.

4. Appellant works for the appointing authority as a Human Resource Assistant 2 in the Human Resource Service Center, Work Related Injury Services Division. He has been employed in this position since 2019. N.T. p. 284.

5. Appellant is scheduled to work from 8:30 a.m. until 5:00 p.m., with a lunch break from 12:00 p.m. until 1:00 p.m. N.T. pp. 66-67.
6. In his role as Human Resource Assistant 2 for the appointing authority, appellant handles incident-only and medical-only workers' compensation claims. N.T. pp. 181-182.
7. Appellant is responsible for tracking his assigned workers' compensation claims through the appointing authority's case management system. This includes handling the claim through the appointing authority's resource account, OA entry. N.T. pp. 185-186.
8. In late 2022, Melissa Ecija, Work-Related Injury Services Manager for the appointing authority, discovered numerous emails coming into the resource account related to appellant's assigned claims. N.T. p. 193.
9. Ecija investigated appellant's workload, specifically concerning gaps in time for work performed on his assigned claims. N.T. p. 198.

10. Ecija first examined appellant's claims with open due dates as of February 2023. N.T. p. 204; AA Ex. 4.
11. For the claim on the injury dated November 9, 2022, with a due date of February 3, 2023, the workers' compensation adjuster sent appellant eight requests with questions on the claim. Appellant changed the due date of the claim without checking on the claim's status. N.T. pp. 204-205; AA Ex. 4.
12. For the claim on the injury dated October 11, 2022, with a due date of February 3, 2023, appellant failed to process the claim correctly and upload an injury packet. Additionally, the workers' compensation adjuster sent appellant three requests with questions on the claim. N.T. p. 206; AA Ex. 4.
13. Ecija further compiled a list of open claims² as of February 8, 2023, totaling eighty. N.T. p. 209; AA Ex. 5.

² A "claim with an open due date" involves a claim for which appellant must perform an action on a claim by a certain date. An "open claim" includes a claim which appellant may have finished, but which was closed out incorrectly, thereby affecting the appointing authority's reporting. N.T. p. 211.

14. For the claim on the injury dated December 2, 2022, appellant took a month to process a letter which should have been completed in December. Additionally, the closed claim check due date should have been completed on January 13, 2023, and not still pending on February 8, 2023, with an incident-only letter. N.T. p. 219; AA Ex. 5, 8.

15. For the claim on the injury dated November 22, 2022, appellant was assigned the claim on November 28, 2022. He did not perform any work on the claim until February 3, 2023, at which point appellant generated the incident-only letter. As of February 8, 2023, the claim was still open pending an uploaded incident-only letter. N.T. pp. 226-227; AA Exs. 5, 8.

16. For the claim on the injury dated December 28, 2022, appellant was assigned the claim on December 30, 2022. He did not take action on the claim until January 23, 2023. Appellant also improperly submitted the claim as an incident-only claim. Appellant's supervisor, Mary Alice Williams, updated the claim on January 31, 2023. N.T. pp. 228-230; AA Exs. 5, 8.

17. The open claims report showed instances where appellant delayed processing a claim by one to three months without any action on the claim during that time. Examples of appellant's delay in processing includes claims for the following dates of injury: August 10, 2022, October 28, 2022, October 29, 2022, November 7, 2022, November 10, 2022, November 22, 2022, November 27, 2022, December 2, 2022, December 14, 2022, December 28, 2022, and December 30, 2022. AA Exs. 5, 8.

18. The open claims report further showed instances where Williams brought appellant's claims up to date herself. Examples of instances where Williams worked on appellant's caseload include claims for the following dates of injury: August 14, 2022, August 27, 2022, September 11, 2022, October 17, 2022, October 28, 2022, October 29, 2022, November 7, 2022, November 19, 2022, November 30, 2022, December 3, 2022, December 9, 2022, December 13, 2022, December 19, 2022, December 21, 2022, and December 28, 2022. AA Exs. 5, 8.

19. Ecija created a Tracking Touch Report, showing an employee's activity on assigned claims, which covered the time period of November 1, 2022, through February 7, 2023. She identified two Human Resource Assistant 2 counterparts with a touch count of 668 and 924. Appellant showed a reduction in activity and tracking compared to his counterparts, with a personal touch count of 388. N.T. pp. 212-213; AA Ex. 6.
20. On February 7, 2023, Emily Shapard, Human Resource Analyst 3 for the appointing authority, had a Teams meeting regarding appellant's failure to perform work. She was tasked with investigating appellant's work performance. N.T. pp. 26-28.
21. Shapard requested IT captures from her supervisor, to include captures of appellant's Outlook/email, Office 365 (hereinafter "O365") logs, and Virtual Private Network (hereinafter "VPN") logs. N.T. p. 30.
22. From the requested IT captures, Shapard created a Master Calendar from August 2022 to February 2023 covering four data points. First, appellant's leave usage obtained from a screenshot

of his leave records. Second, appellant's scheduled meetings obtained from his Outlook calendar. Third, appellant's O365 actions obtained from his O365 logs.³ And fourth, appellant's Outlook email capture. N.T. pp. 39-40; AA Ex. 9.⁴

23. Shapard utilized the Master Calendar to determine if there were any obvious gaps in appellant's work. Shapard rounded up to the nearest quarter of an hour in her calculations. She took into account appellant's one hour lunch break from 12:00 p.m. until 1:00 p.m. in her calculations. N.T. pp. 39-40, 67.

24. For the period of August 8 through August 31, 2022, appellant failed to show evidence he performed work on ten out of the eighteen days Shapard investigated for the month of August, for a total of 23.25 hours. AA Ex. 9.

³ We note the O365 log exhibited time in Coordinated Universal Time (UTC). Shapard converted the time to Eastern Standard Time (EST) in her Master Calendar. N.T. pp. 50-51; AA Exs. 12-32.

⁴ Appellant's leave usage screenshot, Outlook calendar, O365 logs, and Outlook email capture are found in appointing authority Exhibits 10-33.

- a. On August 8, 2022, appellant had no meetings on his calendar and zero O365 actions.⁵ Appellant had 6.5 hours of his workday unaccounted. AA Exs. 9, 11-12.
- b. On August 9, 2022, appellant had a meeting from 2:00 p.m. to 2:30 p.m. He had one O365 action at 12:45 p.m. He sent one email at 10:50 a.m. Appellant used sick leave from 4:30 p.m. until 5:00 p.m. Appellant showed no evidence of work from 2:30 p.m. until 4:30 p.m., totaling 2 hours. N.T. pp. 58; AA Exs. 9-12.
- c. On August 10, 2022, appellant had no meetings on his calendar. He had four O365 actions, with the first occurring at

⁵ In her Master Calendar, Shapard noted appellant sent six emails on August 8, 2022, with the first sent at 12:46 p.m. and the last sent at 1:54 p.m. AA Ex. 9. Shapard explained she found the information through a log of appellant's sent emails from his Outlook email capture, which she identified as appointing authority Exhibit 33. N.T. p. 60. However, upon review, appointing authority Exhibit 33 shows a record of appellant's **Received** emails from August 2022 through February 2023. It does not contain any evidence of emails appellant sent throughout that period. *See* AA Ex. 33. Therefore, the Commission is unable to verify Shapard's findings pertaining to appellant's sent emails, exempting testimony. As such, we will not further address Shapard's notations of appellant's sent emails within her Master Calendar unless otherwise corroborated through testimony. Of note, while Shapard did utilize the missing data of appellant's sent emails to calculate his work hours performed, our inability to verify the sent emails does not subtract from the calculation of hours for which appellant failed to show he performed work. As such, her calculation of those hours will remain undisturbed absent additional error.

11:03 a.m., and the last occurring at 3:28 p.m. Appellant had 2.5 hours of his workday unaccounted for from 8:30 a.m. to 11:00 a.m. AA Exs. 9, 11-12.

- d. On August 11, 2022, appellant had no meetings on his calendar. He had seven O365 actions, the first occurring at 7:45 a.m., and the last occurring at 3:35 p.m. Appellant had 0.75 hours of his workday unaccounted for from 4:15 p.m. until 5:00 p.m. AA Exs. 9, 11-12.
- e. On August 15, 2022, appellant had no meetings on his calendar. He had two O365 actions, with the first occurring at 2:25 p.m. and the last occurring at 3:00 p.m. Appellant had 6.5 hours of his workday unaccounted. AA Exs. 9, 11-12.
- f. On August 17, 2022, appellant had a meeting on his calendar from 1:30 p.m. until 2:30 p.m. He had fifteen O365 actions, the first occurring at 7:30 a.m., and the last occurring at 1:48 p.m. Two O365 actions occurred outside of appellant's normal working hours.

Appellant used sick leave from 2:00 p.m. until 3:00 p.m. Appellant showed no evidence of performing work from 3:15 p.m. until 5:00 p.m., totaling 1.75 hours. AA Exs. 9-11, 13.

g. On August 18, 2022, appellant had no meetings on his calendar. He had fifty-seven O365 actions between 10:13 a.m. and 10:52 a.m., and two O365 actions between 2:23 p.m. and 2:30 p.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 13.

h. On August 23, 2022, appellant had a meeting on his calendar from 2:00 p.m. until 2:30 p.m. He had seven O365 actions, with the first occurring at 5:58 a.m. and the last occurring at 1:00 p.m. He sent four emails, the first at 11:41 a.m., and the last at 12:23 p.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. N.T. pp. 64-66; AA Exs. 9, 11, 13.

- i. On August 24, 2022, appellant had no meetings on his calendar. He had eight O365 actions between 9:19 a.m. and 2:13 p.m. Appellant had one O365 action at 2:52 a.m. Appellant showed no evidence of work from 3:00 p.m. until 5:00 p.m., totaling 2 hours. AA Exs. 9, 11, 14.
 - j. On August 31, 2022, appellant had no meetings on his calendar. He had twelve O365 actions between 6:41 a.m. and 2:35 p.m. He had one additional O365 action at 3:07 a.m. Appellant showed no evidence of work from 4:00 p.m. until 5:00 p.m., totaling 1 hour. AA Exs. 9, 11, 14.
25. For the period of September 1 through September 30, 2022, appellant failed to show evidence of work performed on twelve out of the twenty days Shapard investigated for the month of September, for a total of 29.75 hours. AA Ex. 9.
- a. On September 2, 2022, appellant had no meetings on his calendar. He had thirteen O365 actions between 6:60 a.m. and

2:16 p.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. AA Exs. 9, 11, 15.

- b. On September 8, 2022, appellant had no meetings on his calendar. He had fourteen O365 actions between 7:45 a.m. and 1:33 p.m. He did not send any emails. Appellant showed no evidence of work from 1:45 p.m. until 5:00 p.m., totaling 3.25 hours. N.T. pp. 67-71; AA Exs. 9, 11, 15.
- c. On September 13, 2022, appellant had no meetings on his calendar. He had three O365 actions between 9:45 a.m. and 10:00 a.m., and two O365 actions at 2:01 p.m. Appellant showed no evidence of work performed from 2:00 p.m. until 5:00 p.m., totaling 3 hours. AA Exs. 9, 11, 16.
- d. On September 14, 2022, appellant had no meetings on his calendar. He had eleven O365 actions between 9:45 a.m. and

1:17 p.m. Appellant showed no evidence of work from 8:30 a.m. until 9:45 a.m., and from 3:30 p.m. until 5:00 p.m., totaling 2.75 hours. AA Exs. 9, 11, 16.

- e. On September 16, 2022, appellant had no meetings on his calendar. He had one O365 action at 10:12 a.m. Appellant showed no evidence of work from 8:30 a.m. until 10:15 a.m., totaling 1.75 hours. AA Exs. 9, 11, 16.
- f. On September 20, 2022, appellant had a meeting on his calendar from 2:00 p.m. until 2:30 p.m. He had twenty O365 actions between 7:45 a.m. and 2:47 p.m., and one O365 action at 3:27 p.m. Appellant showed no evidence of work from 3:45 p.m. until 5:00 p.m., totaling 1.25 hours. AA Exs. 9, 11, 17.
- g. On September 21, 2022, appellant had a meeting on his calendar from 1:00 p.m. until 1:30 p.m. He had three O365 actions between 6:30 a.m. and 7:31 a.m., and three O365 actions between 11:45 a.m. and 12:19 p.m. Appellant showed no

evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 17.

- h. On September 22, 2022, appellant had no meetings on his calendar. He had thirteen O365 actions between 5:00 a.m. and 8:10 a.m., and one O365 action at 11:45 a.m. Appellant showed no evidence of work from 1:00 p.m. until 3:30 p.m., totaling 2.5 hours. AA Exs. 9, 11, 17.
- i. On September 26, 2022, appellant had no meetings on his calendar. He had two O365 actions at 12:18 p.m. and 2:42 p.m. Appellant showed no evidence of work from 8:30 a.m. until 12:00 p.m., totaling 3.5 hours. AA Exs. 9, 11, 17.
- j. On September 27, 2022, appellant had no meetings on his calendar. He had one O365 action at 9:38 a.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 17.

- k. On September 28, 2022, appellant had no meetings on his calendar. He had five O365 actions between 11:45 a.m. and 1:01 p.m. He sent five emails, the first at 12:04 p.m., and the last at 3:50 p.m. Appellant showed no evidence of work from 8:30 a.m. until 11:45 a.m., and from 4:00 p.m. until 5:00 p.m., totaling 4.25 hours. N.T. pp. 71-73; AA Exs. 9, 11, 18.
 - l. On September 29, 2022, appellant had no meetings on his calendar. He had four O365 actions between 8:45 a.m. and 9:50 a.m. Appellant showed no evidence of work from 3:45 p.m. until 5:00 p.m., totaling 1.25 hours. AA Exs. 9, 11, 18.
26. For the period of October 3 through October 31, 2022, appellant failed to show evidence of work performed on eight out of the twenty days Shapard investigated for the month of October, for a total of 20 hours. AA Ex. 9.
- a. On October 3, 2022, appellant had a meeting on his calendar from 10:30 a.m. until 11:30 a.m. He had ten O365 actions between 6:45 a.m. and 10:57 a.m. He sent

one email at 10:25 a.m. Appellant showed no evidence of work from 11:30 a.m. until 5:00 p.m., totaling 4.5 hours. N.T. pp. 74-77; AA Exs. 9, 11, 19.

- b. On October 6, 2022, appellant had no meetings on his calendar. He had nine O365 actions between 7:45 a.m. and 1:07 p.m. Appellant showed no evidence of work from 3:15 p.m. until 5:00 p.m., totaling 1.75 hours. AA Exs. 9, 11, 19.
- c. On October 11, 2022, appellant had no meetings on his calendar. He had twelve O365 actions between 7:33 a.m. and 12:05 p.m., as well as one O365 action outside his normal working hours at 3:13 a.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 20.
- d. On October 12, 2022, appellant had no meetings on his calendar. He had two O365 actions between 5:53 a.m. and 6:00 a.m., one O365 action at 12:00 p.m.,

and one O365 action at 1:39 p.m. Appellant showed no evidence of work from 8:30 a.m. until 12:00 p.m., totaling 3.5 hours. AA Exs. 9, 11, 20.

- e. On October 13, 2022, appellant had no meetings on his calendar. He had seven O365 actions between 1:22 p.m. and 2:48 p.m. He sent three emails, the first at 2:58 p.m. and the last at 3:49 p.m. Appellant showed no evidence of work from 8:30 a.m. until 12:00 p.m. and 4:00 p.m. until 5:00 p.m., totaling 4.5 hours. N.T. pp. 77-79; AA Exs. 9, 11, 20.
- f. On October 19, 2022, appellant had no meetings on his calendar. He had ten O365 actions between 5:21 a.m. and 3:32 p.m. Appellant used sick family leave from 10:45 a.m. until 1:00 p.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9-11, 21.
- g. On October 26, 2022, appellant had no meetings on his calendar. He had fifteen O365 logs between 11:37 a.m. and

3:35 p.m. Appellant showed no evidence of work from 3:45 p.m. until 5:00 p.m., totaling 1.25 hours. AA Exs. 9, 11, 21.

h. On October 27, 2022, appellant had no meetings on his calendar. He had fifteen O365 actions between 5:43 a.m. and 2:05 p.m., and he had one O365 at 2:45 a.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 22.

27. For the period of November 1 through November 30, 2022, appellant failed to show evidence of work performed on fifteen out of the nineteen days Shapard investigated for the month of November, for a total of 43.25 hours. AA Ex. 9.

a. On November 1, 2022, appellant had a meeting on his calendar from 2:00 p.m. until 2:30 p.m. He had five O365 actions between 6:12 a.m. and 8:00 a.m. and four O365 actions between 12:45 p.m. and 2:14 p.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. AA Exs. 9, 11, 22.

- b. On November 2, 2022, appellant had no meetings on his calendar. He had nine O365 actions between 6:27 a.m. and 1:17 p.m., and one O365 action at 2:36 a.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 22.

- c. On November 3, 2022, appellant had no meetings on his calendar. He had twenty-two O365 actions between 6:45 a.m. and 3:22 p.m., and one O365 action at 5:16 p.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 22.

- d. On November 4, 2022, appellant had no meetings on his calendar. He had eight O365 actions between 6:25 a.m. and 8:33 a.m., one O365 action at 11:01 a.m., and one O365 action at 2:43 p.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 23.

- e. On November 7, 2022, appellant had no meetings on his calendar. He had nine O365 actions from 9:42 a.m. until 3:56 p.m. Appellant showed no evidence of work from 8:30 a.m. until 9:30 a.m., totaling 1 hour. AA Exs. 9, 11, 23.

- f. On November 8, 2022, appellant had no meetings on his calendar. He had five O365 actions between 9:45 a.m. and 11:00 a.m., and one O365 action at 2:25 p.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. AA Exs. 9, 11, 23.

- g. On November 9, 2022, appellant had no meetings on his calendar. He had six O365 actions between 10:06 a.m. and 1:00 p.m. Appellant showed no evidence of work from 3:00 p.m. until 5:00 p.m., totaling 2 hours. AA Exs. 9, 11, 23.

- h. On November 10, 2022, appellant had no meetings on his calendar. He had two O365 actions at 7:23 a.m. Appellant

showed no evidence of work from 8:30 a.m. until 3:00 p.m., and from 3:10 p.m.⁶ until 5:00 p.m., totaling 7.25 hours. AA Exs. 9, 11, 23.

- i. On November 15, 2022, appellant had a meeting on his calendar from 2:00 p.m. until 2:30 p.m. He had six O365 actions between 8:31 a.m. and 9:00 a.m., and ten O365 actions between 12:00 p.m. and 2:41 p.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 24.

- j. On November 16, 2022, appellant had a meeting on his calendar from 1:30 p.m. until 2:30 p.m., which was not accepted. He had ten O365 actions between 9:31 a.m. and 2:38 p.m. Appellant showed no evidence of work from 2:45 p.m. until 5:00 p.m., totaling 2.25 hours. AA Exs. 9, 11, 24.

⁶ We note Shapard failed to round up her calculation to the nearest quarter of an hour for the start time appellant failed to perform work, from 3:10 p.m. to 3:15 p.m.

- k. On November 17, 2022, appellant had no meetings on his calendar. He had three O365 actions between 8:45 a.m. until 9:00 a.m., and two O365 actions between 12:46 p.m. until 12:55 p.m. Appellant showed no evidence of work from 1:00 p.m. until 5:00 p.m., totaling 4 hours. AA Exs. 9, 11, 24.
- l. On November 18, 2022, appellant had no meetings on his calendar. He had one O365 action at 2:10 p.m. Appellant showed no evidence of work from 8:30 a.m. until 2:00 p.m., totaling 4.5 hours. AA Exs. 9, 11, 24.
- m. On November 21, 2022, appellant had no meetings on his calendar. He had two O365 actions, the first at 9:20 a.m. and the second at 11:24 a.m. He sent one email at 10:11 a.m. Appellant showed no evidence of work from 11:30 a.m. until 5:00 p.m., totaling 4.5 hours. N.T. pp. 80-82; AA Exs. 9, 11, 25.

- n. On November 23, 2022, appellant had no meetings on his calendar. He had four O365 actions between 10:06 a.m. and 10:27 a.m., and one O365 action at 2:15 p.m. Appellant showed no evidence of work from 2:15 p.m. until 5:00 p.m., totaling 2.75 hours. AA Exs. 9, 11, 25.

 - o. On November 30, 2022, appellant had no meetings on his calendar. He had three O365 actions between 10:26 a.m. and 10:27 a.m., one O365 action at 2:27 p.m., and one O365 action at 4:12 p.m. Appellant showed no evidence of work from 8:30 a.m. until 10:15 a.m., totaling 1.75 hours. AA Exs. 9, 11, 26.
28. For the period of December 1 through December 30, 2022, appellant failed to show evidence of work performed on five out of the twenty-one days Shapard investigated for the month of December, for a total of 21 hours.⁷ AA Ex. 9.

⁷ We note Shapard incorrectly calculated appellant failed to show evidence of work performed for a total of 15.5 hours for the month of December. *See* Ex. 9 (p. 5). Shapard failed to include the 5.5 hours appellant showed no evidence of work on December 23, 2022. Additionally, Shapard notated appellant showed no evidence of work from 2:15 p.m. until 5:00 p.m. on December 30, 2022, despite her noted four-hour early dismissal on that date. Nonetheless, the hours on December 30, 2022, were correctly omitted from Shapard's final calculation.

- a. On December 2, 2022, appellant had no meetings on his calendar. He had two O365 actions, the first at 2:11 p.m. and the last at 2:45 p.m. He sent four emails, the first at 12:03 p.m. and the last at 2:49 p.m. Appellant showed no evidence of work from 8:30 a.m. until 12:00 p.m., and from 3:00 p.m. until 5:00 p.m., totaling 5.5 hours. N.T. pp. 82-85; AA Exs. 9, 11, 26.

- b. On December 5, 2022, appellant had no meetings on his calendar. He had one O365 action at 6:06 a.m., and three O365 actions between 9:41 a.m. and 9:42 a.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. AA Exs. 9, 11, 27.

- c. On December 12, 2022, appellant had no meetings on his calendar. He had six O365 actions between 8:46 a.m. and 8:50 a.m., and three O365 actions between 3:37 a.m. and 5:11 p.m. Appellant showed no evidence of work from 9:00 a.m. until 2:30 p.m., totaling 4.5 hours. AA Exs. 9, 11, 27.

- d. On December 23, 2022, appellant had no meetings on his calendar. He had nine O365 actions between 6:27 a.m. and 10:17 a.m., and one O365 action at 5:12 p.m. Appellant showed no evidence of work from 10:30 a.m. until 5:00 p.m.,⁸ totaling 5.5 hours. AA Exs. 9, 11, 29.

 - e. On December 29, 2022, appellant had no meetings on his calendar. He had twenty O365 actions between 6:56 a.m. and 12:58 p.m., and one O365 action at 5:02 p.m. Appellant showed no evidence of work from 2:00 p.m. until 5:00 p.m., totaling 3 hours. AA Exs. 9, 11, 30.
29. For the period of January 3 through January 31, 2023, appellant failed to show evidence of work performed on nine out of the eighteen days Shapard investigated for the month of January, for a total of 17.5 hours. AA Ex. 9.
- a. On January 11, 2023, appellant had no meetings on his calendar. He had five O365 actions at 8:33 a.m., and one O365

⁸ We note Shapard failed to round up her calculation to the nearest quarter of an hour for the start time appellant failed to perform work, from 10:20 a.m. to 10:30 a.m.

action at 5:02 p.m. Appellant showed no evidence of work from 4:00 p.m. until 5:00 p.m., totaling 1 hour. AA Exs. 9, 11, 31.

b. On January 13, 2023, appellant had no meetings on his calendar. He had seven O365 actions between 8:35 a.m. and 9:20 a.m., and five O365 actions between 3:58 p.m. and 5:31 p.m. He sent two emails, the first at 4:09 p.m., and the last at 4:52 p.m. Appellant showed no evidence of work from 9:30 a.m. until 4:00 p.m., totaling 5.5 hours.⁹ N.T. pp. 85-87; AA Exs. 9, 11, 31.

c. On January 20, 2023, appellant had no meetings on his calendar. He had eleven O365 actions between 8:31 a.m. and 11:18 a.m., and one O365 action at 5:02 p.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 32.

⁹ We note Shapard incorrectly calculated appellant's time he failed to perform work on January 13, 2023, as totaling 6.5 hours. In her calculation, Shapard failed to omit appellant's lunch hour from 12:00 p.m. through 1:00 p.m. See AA Ex. 9.

- d. On January 23, 2023, appellant had no meetings on his calendar. He had eleven O365 actions between 7:02 a.m. and 11:26 a.m., one O365 action at 2:07 p.m., and one O365 action at 5:09 p.m. Appellant showed no evidence of work from 3:00 p.m. until 5:00 p.m., totaling 2 hours. AA Exs. 9, 11, 32.
- e. On January 24, 2023, appellant had meetings on his calendar from 10:00 a.m. until 10:30 a.m., and from 2:00 p.m. until 2:30 p.m. He had twenty O365 actions between 8:13 a.m. and 11:37 a.m., two O365 actions between 1:45 p.m. and 1:58 p.m., and one O365 action at 5:03 p.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. AA Exs. 9, 11, 32.
- f. On January 26, 2023, appellant had no meetings on his calendar. He had thirty O365 actions between 8:15 a.m. and 2:57 p.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours. AA Exs. 9, 11, 32.

- g. On January 27, 2023, appellant had a meeting on his calendar from 10:30 a.m. until 11:30 a.m. He had six O365 actions between 8:40 a.m. and 10:15 a.m., and one O365 action at 5:10 p.m. Appellant showed no evidence of work from 3:30 p.m. until 5:00 p.m., totaling 1.5 hours.
- h. On January 30, 2023, appellant had no meetings on his calendar. He had eight O365 actions between 9:30 a.m. and 11:14 a.m., and one O365 action at 6:00 p.m. Appellant used sick leave from 8:30 a.m. until 10:00 a.m. Appellant showed no evidence of work from 4:00 p.m. until 5:00 p.m., totaling 1 hour. AA Exs. 9-11, 32.
- i. On January 31, 2023, appellant had no meetings on his calendar. He had twenty-three O365 actions between 6:19 a.m. and 1:00 p.m., and one O365 action at 3:59 p.m. Appellant showed no evidence of work from 4:00 p.m. until 5:00 p.m., totaling 1 hour. AA Exs. 9, 11, 32.

30. For the period of February 1 through February 7, 2023, appellant failed to show evidence of work performed on one out of the five days Shapard investigated for the month of February, for a total of 2.5 hours. AA Ex. 9
 - a. On February 7, 2023, appellant had a meeting on his calendar from 2:00 p.m. until 2:30 p.m. He had eighteen O365 actions between 8:27 a.m. and 2:20 p.m. He sent two emails, the first at 9:10 a.m. and the last at 10:59 a.m. Appellant showed no evidence of work from 2:30 p.m. until 5:00 p.m., totaling 2.5 hours. N.T. pp. 88-90; AA Exs. 9, 11, 32.
31. On February 22, 2023, Shapard conducted an investigatory interview with appellant to discuss her findings. N.T. p. 91; AA Exs. 34, 36.
32. Shapard provided appellant with a list of the dates and times relative to his gaps in work performed from August 2022 through February 2023. She requested appellant provide her with evidence of work produced during those dates and times by March 3, 2023. N.T. pp. 98-102; AA Ex. 35.

33. On March 3, 2023, appellant signed and submitted a witness statement concerning his job duties and his communications with Shapard. The statement further addressed appellant's work claims and the gaps in his work performance from August 2022 through February 2023. N.T. p. 102; AA Ex. 38.
34. Section 13.11 of Management Directive 505.7 provides,
- Employee disciplinary actions are to be corrective and, where appropriate, progressive in nature and designed to encourage the employee to conform to the established standards of performance or conduct, except in those instances where the actions of the employee are not conducive to rehabilitation or make continued employment with the commonwealth clearly unacceptable.

Ap. Ex. 2.

DISCUSSION

The current appeal challenges the appointing authority's decision to issue appellant a Level Two ADLS with final warning from regular status employment as Human Resource Assistant 2 with the Office of Administration. The sole issue before the Commission is whether the appointing authority established good cause to suspend appellant from his position for three days with final warning.

In an appeal challenging the suspension of a regular status employee, the appointing authority bears the burden of establishing good cause for the personnel action. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1986); 71 Pa.C.S.A. §§ 2603(c), 3003 (7)(i). Good cause must be based upon meritorious criteria and be related to one's competency and ability to execute job duties properly. *White*, 110 Pa. Commw. At 498, 532 A.2d at 951.

The appointing authority charged appellant with failing to perform work for approximately 152.75 hours between August 8, 2022, and February 7, 2023. Comm. Ex. A.

In support of its charges, the appointing authority presented the testimony of Human Resource Analyst 5 Melissa Ecija,¹⁰ and Human Resource Analyst 3 Emily Shapard.¹¹ Appellant testified on his own behalf. The evidence provided by the parties has been reviewed by the Commission and is summarized below.

Appellant works for the appointing authority as Human Resource Assistant 2 in the Human Resource Service Center, Work Related Injury Services Division. He has been employed in this position since 2019. *See* Finding of Fact No. 4. In his role as Human Resource Assistant 2, appellant handles workers'

¹⁰ Ecija is employed by the appointing authority as Human Resource Analyst 5 and serves as Work-Related Injury Services Manager. N.T. p. 178. She has held this position since June 2018. *Id.* In that capacity, Ecija is responsible for the Commonwealth's workers' compensation program, to include her oversight of appellant's team within the Department of Human Services and Health. N.T. p. 179.

¹¹ Shapard is employed by the appointing authority as Human Resource Analyst 3. N.T. p. 23. She has worked in that position since 2021. N.T. p. 24. In that capacity, Shapard investigates allegations of employee misconduct and recommends appropriate action to the management team. N.T. p. 25.

compensation claims. He is responsible for tracking those claims through the appointing authority's case management system. Appellant is further required to handle the claims through the appointing authority's resource account, OA entry. *See Findings of Fact Nos. 6-7.*

Melissa Ecija is responsible for the workers' compensation program for the Commonwealth and manages the Work-Related Injury Services Division, under which appellant works in the Department of Human Services and Health. N.T. pp. 179-181. Ecija explained when a case is assigned, an assistant will input an injury packet into the case management system in order to create the claim. N.T. pp. 186-187. A due date is then created for the employee for the next business day. *Id.* Part of appellant's written procedure for tracking and processing claims is to sign onto the computer each morning, log onto the VPN, and run the due dates for that day. N.T. pp. 187-188. After appellant begins processing the claim, he is responsible for checking the injury packet and reviewing documents, as well as recording all contacts made on the claim. N.T. p. 189.

In late 2022, Ecija began having concerns about the timely completion of appellant's tasks. *See Finding of Fact No. 8.* Ecija explained, in an effort to help her assistant with the busy resource account, she spent mornings or lunch periods cleaning out the email inbox. N.T. p. 192. In November and December 2022, Ecija noticed many of the emails coming into the resource account were for appellant's claims. N.T. p. 194. They included third, fourth, and in some cases fifth requests from the workers' compensation adjusters for information about appellant's assigned claims. *Id.* Ecija notified appellant's supervisor, Mary Alice Williams, about her concerns with appellant's workload. N.T. pp. 194-195. She asked Williams to see why appellant had fallen behind and to ask if he needed any help

with work. *Id.* After the first time Ecija approached Williams about appellant, his work seemed to improve. N.T. pp. 194-196. However, shortly afterward, more requests came into the resource account concerning appellant's assigned claims. This pattern occurred several times. *Id.*

When appellant's work performance continued to decline, Ecija began looking into his workload. *See* Finding of Fact No. 9. She found gaps in time on appellant's claims where several weeks went by without any action on a claim. N.T. p. 198. Additionally, Ecija noticed elements of appellant's work were missing, incomplete, and did not meet work standards. *Id.* Ecija gathered information on the claims in question and reached out to Matthew Updegrove, supervisor for employee relations under the General Government Delivery Center, with her concerns. N.T. pp. 199-200. Updegrove's office helped pull appellant's emails and O365 actions to aid Ecija's investigation of his claims. N.T. p. 200.

Ecija examined appellant's claims with open due dates as of February 2023. *See* Finding of Fact No. 10. Of the nineteen claims with open due dates, Ecija noted two claims as being the most egregious for missing work, to include claims with injuries dated November 9, 2022, and October 11, 2022. N.T. p. 204. For the former claim, the workers' compensation adjuster sent appellant an email with eight requests for an update on the claim, and appellant merely changed the due date of the claim without checking on the claim's status. *See* Finding of Fact No. 11. For the latter claim, appellant failed to properly process the claim or upload an injury packet. *See* Finding of Fact No. 12. Ecija explained the big impact when a claim is improperly processed with no medical packet could be a delay in the injured employee's medical treatment. N.T. p. 207.

Next, Ecija compiled a list of open claims as of February 8, 2023, totaling eighty claims. *See* Finding of Fact No. 13. In her comments on the claims, she noted instances of incomplete work or delayed processing. N.T. p. 209. Among appellant's listed open claims, Ecija noted three claims which were particularly egregious in appellant's handling of the claim. N.T. pp. 216-230. They included claims for the injury dates of December 2, 2022, November 2, 2022, and December 28, 2022. *Id.* For those claims, appellant took one to three months to take any action. *See* Findings of Fact Nos. 13-16. Appellant did not properly close out any of those claims. *Id.* The open claims report Ecija compiled showed numerous other instances in which appellant delayed processing a claim from one to three months, as well as instances where appellant's claims were brought up to date by his supervisor, Williams. *See* Findings of Fact Nos. 17-18.

As a final step in her investigation, Ecija created a Tracking Touch Report, a report showing an employee's activity on assigned claims. Her report covered the time period of November 1, 2022, through February 7, 2023. Ecija identified two Human Resource Assistant 2 counterparts to appellant with a touch count of 668 and 924. She explained appellant showed a significant reduction in his activity and tracking when compared to his counterparts, with a personal touch count of 388. *See* Finding of Fact No. 19. Ecija sent the Tracking Touch Report and the open claims reports to Emily Shapard for review. N.T. pp. 31-32.

In conjunction with the dates in the open claims reports Ecija sent her, Shapard requested IT captures from her supervisor to include captures of appellant's Outlook, O365 logs, and VPN logs. *See* Finding of Fact No. 21; N.T. pp. 32-33. From those requested captures, Shapard created a Master Calendar covering appellant's work performance from August 2022 through February 2023. The

Master Calendar tracked evidence of appellant's performed work through his leave records, his scheduled meetings, his O365 actions, and his Outlook emails. *See* Finding of Fact No. 22. Shapard explained appellant's work duties were very reliant on Commonwealth IT resources, and the capture data she requested would allow her to determine any obvious gaps in appellant's work performance. N.T. pp. 39-40.

For the period of August 8 through August 31, 2022, appellant failed to show evidence he performed work for a total of 23.25 hours. From September 1 through September 30, 2022, appellant failed to show evidence of work performed for a total of 29.75 hours. For the period of October 3 through October 31, 2022, appellant showed no evidence of work performed for a total of 20 hours. From November 1 through November 30, 2022, he failed to show evidence of work performed for a total of 43.25 hours. For the period of December 1 through December 30, 2022, appellant showed no evidence of work for a total of 21 hours. From January 3 through January 31, 2023, appellant failed to show evidence of work for a total of 17.5 hours. Finally, for the period of February 1 through February 7, 2023, he showed no evidence of work performed for a total of 2.5 hours. *See* Findings of Fact Nos. 24-30.

Once Shapard completed her review of her compiled data in her Master Calendar, she conducted an investigatory interview with appellant on February 22, 2023. *See* Finding of Fact No. 31. She explained the purpose of the interview was to discuss the gaps in his work, as well as to ask about his missing or incomplete claims as identified by Ecija. N.T. p. 91. During the interview, Shapard addressed several open claims which showed significant gaps in his work activity. *See* AA Ex. 36. In response, appellant responded he could not recall what he had been doing on the dates in question off the top of his head. N.T. p. 94, AA Ex. 36. In response

to questions regarding some open claims, he stated maybe he had not gotten around to closing out the claims, or that medical-only claims typically take longer than incident-only claims. When Shapard questioned appellant about gaps in his work as evidenced by the IT captures noted in her Master Calendar, appellant explained he could not recall what he was doing, but some days were slow days. During his down time, appellant stated he might review leave requests or the leave manual, and there was not a whole lot to do. In instances where appellant did not have a lot of work, he did not reach out to his supervisor for more work. He stated he spent most of his time “kind of waiting” or he may “go to the restroom [and] get a cup of coffee.” *Id.*

At the close of the investigatory interview, Shapard informed appellant she would provide him with a list of dates and times in question so he could do his own research to provide any sort of evidence of his work performed during the dates and times in question. N.T. p. 94. She subsequently provided the list to appellant through email, requesting any evidence he could provide by March 3, 2023. *See* Finding of Fact No. 32. On March 3, 2023, appellant provided Shapard with a signed witness statement, to include his responses to her list of dates and times. *See* Finding of Fact No. 35. In response to the identified gaps in his work performance from August 2022 through February 2023, totaling approximately 152.75 hours,¹² appellant replied he did not recall what he was doing during the dates and times in question. When addressing the list of open claims, appellant responded to the majority of open claims with “not sure what happened,” “never received response from supervisor,” or, “not my responsibility to upload letters.” *Id.* Shapard later

¹² We note, when considering Shapard’s errors in her calculations for December 23, 2022, and January 13, 2023, the corrected total number of hours appellant failed to perform work from August 2022 through February 2023 is approximately 157.25 hours.

clarified with Ecija, while it was not appellant's responsibility to upload the letters, it was his responsibility to process the letters timely for them to get uploaded. N.T. pp. 106-107.

Having carefully reviewed the evidence, we find the appointing authority has established the charges against appellant and established good cause for his three-day suspension. In support of our conclusion, we find credible¹³ the testimony provided by the appointing authority's witnesses.

After Ecija noticed repeated requests for information regarding appellant's assigned claims in OA entry, Williams approached appellant on numerous occasions to ask why he was behind. His performance would improve immediately after his conversations with Williams, followed by a period with little to no work on his assigned claims. Both Ecija and Shapard gathered evidence showing gaps in appellant's work performance, which notably included instances where appellant had left a claim untouched for one to three months. In several instances, appellant's claims were also updated or resolved by Williams. Shapard's Master Calendar evidenced approximately 152.75 total hours where appellant failed to perform work.

In response to Ecija and Shapard's findings, appellant simply stated he did not recall what he had been doing during the dates and times in question. Appellant's assertion he may not have had any work to do during that time is unmerited, as Ecija showed credible evidence of appellant's assigned cases which sat on his case tracker untouched for months on end. She reviewed over eighty open

¹³ 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).

cases on appellant's log, and confirmed appellant's touch report was significantly below those of his counterparts. Nonetheless, appellant alleges his Employee Performance Review (hereinafter "EPR") was satisfactory for the period in question. N.T. p. 285. Ecija testified appellant's EPR covered the period of July 2022 through July 2023. N.T. p. 255; AP Ex. 25. She explained the EPR noted periods of improvement during the last three months of the rating period, which does not include any period relative to his suspension. *Id.* His EPR noted appellant's work results and his work habits both needed improvements, and appellant struggled to meet established deadlines and adhere to work rules during the beginning of the rating period. *Id.*; N.T. pp. 257-258. Thus, appellant's EPR adequately noted appellant's failure to perform work from August 2022 through February 2023.

Despite the credible evidence showing appellant failed to perform work for a significant period from August 2022 through February 2023, appellant further alleges he did not receive forewarning of his charged discipline. While appellant did have discussions with Williams relative to his work performance in late 2022, he did not receive any form of discipline at that time. He continued to work without any form of discipline or forewarning of the current charges until his Teams meeting with Shapard on February 22, 2023. When Shapard scheduled the Teams meeting, she informed appellant the meeting concerned issues with his time and attendance. She did not discuss appellant's gap in his work performance or his numerous open claims until she conducted her investigatory interview on the Teams call.

Pursuant to section 13.11 of Management Directive 505.7, employee disciplinary actions should be progressive in nature where appropriate. *See* Finding of Fact No. 34. Here, the appointing authority failed to take any disciplinary action

prior to issuing appellant's Level Two ADLS in March 2023. Notably, the fact appellant's work performance improved the final three months of his EPR demonstrates corrective action was achievable following the first issuance of discipline. Thus, in light of appellant's lacking formal disciplinary history, we are persuaded that while appellant's Level Two ADLS is appropriate, the final warning is excessive and should be removed.

Based on the above, we find the appointing authority had good cause to suspend appellant for three days based on his failure to perform work between August 8, 2022, and February 7, 2023. Appellant failed to execute the duties of his job properly, providing good cause for the suspension. *White*. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish good cause for 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 Level Two Alternative Discipline in Lieu of a three-day suspension with final warning imposed by the Office of Administration, Executive Offices against Brandyn T. Riley be modified to a Level Two Alternative Discipline

in Lieu of a three-day suspension without final warning. We further order that within thirty (30) 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: January 22, 2024