

COMMONWEALTH OF PENNSYLVANIA

Alyssa M. Quigley : State Civil Service Commission
: :
v. : :
: :
State Correctional Institution at Fayette, :
Department of Corrections : Appeal No. 31107

Alyssa M. Quigley : Page Darney
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Alyssa M. Quigley challenging her removal from probationary Corrections Officer Trainee employment with the State Correctional Institution at Fayette, Department of Corrections. A hearing was held November 3, 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's decision to remove appellant from her probationary Corrections Officer Trainee position was based upon a discriminatory factor.

FINDINGS OF FACT

1. By letter dated April 11, 2023, appellant was removed from her Corrections Officer Trainee, probationary status position, effective April 11, 2023. The appointing authority charged appellant with:

- A) Violation of DOC Policy 1.1.14, Offender Contact and Relationship Requirements¹
- B) Violation of DOC Code of Ethics, B-6²
- C) Violation of DOC Code of Ethics, B-10³

Comm. Ex. A; AA Ex. 1.

¹ Department of Corrections Policy 1.1.14 is the Offender Contact and Relationship Reporting Requirements Procedures which includes the language:

No employee shall engage in any activity nor fraternize with an offender, their friends, relatives or representatives, on or off duty, not authorized within the performance of the employee's assigned duties or otherwise approved by the Facility Manager/Bureau Director/designee.

The Policy also requires all employees to completely and accurately report personal contacts and relationships with offenders, their friends, relatives, and representatives by, in relevant portion, providing a completed and signed Contact Disclosure Report to the Shift Commander. AA Ex. 6.

² The appointing authority's Code of Ethics, Section B-6 states:

There shall be no fraternization or private relationship of staff with inmates, parolees, or members of their families. This includes trading, bartering or receiving gifts, money and favors from either the inmate or the inmate's friends, relatives or representatives. Moreover, employees are not to deliver gifts or money to inmate's friends, relatives, or representatives. Comm. Ex. A; AA Exs. 1, 9.

³The appointing authority's Code of Ethics, Section B-10 states, "Employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated." Comm. Ex. A; AA Exs. 1, 9.

2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. B.
3. In May 2022, appellant began her employment as a Corrections Officer Trainee with the Department of Corrections. AA Ex. 10.
4. During her new employee orientation, appellant was provided with the appointing authority's Code of Ethics (hereinafter "COE")⁴ and the appointing authority's Policy 1.1.14. N.T. pp. 71-73, 78-81, 94; AA Exs. 6, 7, 8.
5. On October 5, 2022, appellant was issued a written reprimand for undependability. She was advised in the letter that any future violations of the COE or Policy could result in her removal from employment. N.T. pp. 104-107, 125; AA Ex. 11.
6. On March 6, 2023, the appointing authority received a Suspicious Activity Report from Guarded Exchange, the service that monitors inmate phone systems. The report stated Inmate

⁴ The appointing authority's Code of Ethics provides employees with the basic principles, rules, and regulations by which all employees are to conduct themselves. AA Ex. 9.

Caleb Walak⁵ had conversations with civilians wherein he indicated he was familiar with one of the guards in the facility. N.T. pp. 53-54; AA Ex. 10.

7. Corrections Officer 4 Joseph Rusnak began an investigation by obtaining Inmate Walak's telephone contact list. Among the names on the report were Alicia Walak, identified as his sister, and Desiree Kippenberger, identified as the mother of his child. N.T. pp. 55; AA Ex. 10.
8. Rusnak also listened to recordings of Inmate Walak's telephone calls to identify the employee about whom he was talking. N.T. p. 55.
9. Rusnak's review of Inmate Walak's telephone calls provided the following investigative information:
 - A. On February 15, 2023, Inmate Walak spoke with his sister, Alicia Walak. During the conversation, Alicia Walak indicated she knows an appointing authority employee and stated "Alyssa said you were probably on Bravo [unit]."

⁵ Throughout the transcript, the inmate and his sister are referred to as having the last name "Walek." In the exhibits entered into the record, the last name is spelled, "Walak." The Commission will use "Walak" throughout the adjudication.

- B. On February 16, 2023, Inmate Walak's sister refers to a "secure pack," states her friend usually works on Bravo Unit, and her friend is working mandated overtime today.
- C. On February 19, 2023, Inmate Walak tells his sister he saw her friend, asks how long she has worked at the institution, and indicates they recognized each other.
- D. On February 19, 2023, Alicia Walak identified appellant by her last name.
- E. On March 5, 2023, Inmate Walak told Kippenberger that his sister knew one of the guards and he asked her not to name the guard in case it would result in his relocation.

N.T. pp. 60-69; AA Exs. 13, 13A, 14, 14A, 15, 15A, 16, 16A, 17, 17A.

- 10. Rusnak also reviewed appellant's social media information and verified appellant's friendships with Inmate Walak and his sister. N.T. p. 71; AA Ex. 10.
- 11. Appellant never completed a Contact Disclosure Report indicating she knew either Inmate Walak or Alicia Walak. N.T. p. 117.

12. Rusnak interviewed appellant and Corrections Officer Quinn Mulroy. After the interviews, he recommended several disciplinary charges against appellant. N.T. pp. 74-75; AA Ex. 10.
13. On April 11, 2023, appellant attended her Pre-Disciplinary Conference. N.T. pp. 99, 115-117, 120-121, 123; AA Ex. 2.

DISCUSSION

At issue before the Commission is whether appellant's removal from probationary Corrections Officer Trainee was motivated by a discriminatory factor. Before this Commission, appellant could only bring this challenge through Section 3003(7)(ii) of Act 71 of 2018⁶ (hereinafter "Act 71") based upon an allegation the decision to remove her was due to discrimination in violation of Section 2704 of Act 71. 71 Pa.C.S.A. §§ 2704, 3003(7)(ii). Specifically, appellant alleges she was discriminated against based on her sex. Comm. Ex. B.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991).

⁶ Act of June 28, 2018, P.L. 460, No. 71, § 1.

Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claims of discrimination.

Section 2704 of Act 71 of 2018 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other non-merit factors.

71 Pa.C.S.A § 2704.⁷ The prohibition set forth in this section encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on race, gender, religion, disability, political, partisan or labor union affiliation, or other non-merit factors; and second, “technical discrimination” involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). In the instant matter, this appeal involves claims of traditional discrimination.

In analyzing claims of discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that

⁷ The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language. Section 905.1 provides:

Prohibition of Discrimination—No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

71 P.S. § 741.905a.

more likely than not discrimination has occurred. 71 Pa.C.S.A. § 2704; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989).

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate that the proffered merit reason for the personnel action is merely pretextual. *Henderson*, 126 Pa. Commw. at 614-615.

Appellant presented the testimony of Sergeant Quinn Mulroy and Corrections Officer 1 Christian Sheetz. Appellant did not testify on her own behalf. The appointing authority presented the testimony of Mulroy, Corrections Officer 4 Joseph Rusnak, Human Resource Analyst 3 Kristin Carney, and Deputy Superintendent Michael Tkacs.

Appellant's witness Sergeant Mulroy testified he does not recall any discussion between him and appellant on February 19, 2023, regarding an inmate. N.T. p. 23. Further, appellant's witness Corrections Officer 1 Christian Sheetz testified that during the Pre-Disciplinary Conference, appellant acknowledged she had received training regarding the inmate offender contact process. N.T. pp. 39-40.

After the presentation of appellant's case in chief, the appointing authority entered a Motion to Dismiss stating there was no *prima facie* case of discrimination based upon sex. N.T. p. 44. When determining if an appellant has established a *prima facie* case, the Court has noted, "[g]iven the critical role of circumstantial evidence in discrimination proceedings, the *prima facie* case cannot be an onerous one." *Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864. Here, appellant has not met her initial burden. Specifically, as explained above, she has not presented any evidence she was treated unfairly based upon her sex. Thus, the Commission grants the appointing authority's Motion to Dismiss based upon a failure to establish a *prima facie* case of discrimination.⁸ Accordingly, we enter the following:

⁸ Had the burden of proof shifted, the appointing authority presented evidence there was no discrimination. *Henderson, supra*; *Nwogwugwu, supra*. The appointing authority's credible witnesses testified the substantiated charges, the facts relied upon, and the mitigating factors were entered into the appointing authority's Electronic Pre-Disciplinary Conference Tracking system to determine the level of discipline imposed under similar circumstances. N.T. pp. 101-102; AA Ex. 12. In addition, the appointing authority presented credible testimony that appellant had a prior written reprimand which warned any future discipline could result in her removal. N.T. p. 106; AA Ex. 11. The appointing authority also explained that, because appellant was a probationary employee, the only disciplinary options are a written reprimand or removal. N.T. pp. 106-107. Thus, the appointing authority did not treat appellant differently, based upon her sex, than any other probationary employee with a prior written reprimand who subsequently violated the COE and Policy. The Commission has the inherent power to determine the credibility of witnesses and the value of their testimony. *McAndrew v. State Civil Service Commission (Department of Community and Economic Development)*, 736 A.2d 26 (Pa. Commw. Ct. 1999).

Moreover, the appointing authority presented legitimate, non-discriminatory rationale for removing appellant from her probationary Corrections Officer Trainee position. In particular, appellant was personal friends with an inmate and the inmate's sister, told the sister information that jeopardized the security of the institution, and did not report either friendship despite prior training and directives to do so. (Findings of Fact 4, 6-11). Thus, the appointing authority presented legitimate nondiscriminatory reasons for appellant's removal from her probationary Corrections Officer Trainee position. *Henderson, supra*. Appellant has not presented any evidence the appointing authority's rationale is based on pretext. *Id.*

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Alyssa M. Quigley challenging removal from probationary Corrections Officer Trainee employment with the State Correctional Institution at Fayette, Department of Corrections and sustains the action of the State Correctional Institution at Fayette, Department of Corrections in the removal of Alyssa M. Quigley from probationary Corrections Officer Trainee employment, effective April 11, 2023.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Issued: February 27, 2024