

COMMONWEALTH OF PENNSYLVANIA

John E. Randell : State Civil Service Commission  
: :  
v. : :  
: :  
Pennsylvania Liquor Control Board : Appeal No. 31127

John E. Randell Ashley A. Chille  
*Pro Se* Attorney for Appointing Authority

ADJUDICATION

This is an appeal by John E. Randell challenging his removal from probationary Intermittent Liquor Store Clerk employment, with the Pennsylvania Liquor Control Board. A hearing was held on November 30, 2023, via video, before Chairwoman Maria P. Donatucci.

The Commissioners have reviewed the Notes of Testimony and the exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority removed appellant from his Intermittent Liquor Store Clerk position for reasons motivated by discrimination.

FINDINGS OF FACT

1. By email dated May 16, 2023, appellant was informed he was removed from his Intermittent Liquor Store Clerk employment, probationary status, with the Pennsylvania Liquor Control Board (hereinafter “appointing authority”). Comm. Ex. A.
  
2. The appointing authority’s decision to remove appellant was based on the following charges:

Conduct unbecoming a Commonwealth employee/Violation of the Work Rules and Guide to Better Service in Store #1903; in that during the period of April 24 through May 11, 2023, you repeatedly exhibited inappropriate behavior toward co-workers.

Comm. Ex. A.
  
3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. D.
  
4. Appellant worked for the appointing authority as Intermittent Liquor Store Clerk at Store #1903 for approximately three weeks. N.T. pp. 22, 198-199.

5. Appellant was on his probationary period in May 2023, and was still undergoing training. N.T. pp. 77, 103.
6. On May 7, 2023, appellant worked the closing shift with Lisa Valenti, the store's Assistant Manager. N.T. pp. 84, 144-145.
7. Appellant and Valenti had a disagreement on May 7, 2023, when Valenti attempted to help appellant reconcile his till. N.T. pp. 82-92. 144-151.
8. Valenti documented the incident in a memo on May 9, 2023, and sent it to the store's General Manager, Sylvia Mushala. N.T. p. 147; AA Ex. 4.
9. On May 11, 2023, appellant worked with Hannah Hilpp, Liquor Store Clerk 2 in Store #1903. During that shift, Hilpp served as the store's Assistant Manager. N.T. pp. 196-199.
10. Appellant and Hilpp finished their shift reconciling the till in the store's office area, located opposite the store's registers and behind a divider. N.T. p. 199.

11. While demonstrating his experience tandem skydiving to Hilpp, appellant approached Hilpp from behind. His body came into contact with Hilpp's lower back and buttock area. N.T. pp. 104-105, 201; AA Ex. 1.
12. Hilpp did not consent to appellant's unwanted contact, and she asked him not to touch her. N.T. pp. 201-202.
13. Video footage of the store's office area showed the incident between appellant and Hilpp occurred at 4:27 p.m. on May 11, 2023. AA Ex. 1.
14. Hilpp documented the incident in a memo to Allen Austra, District Manager for Store #1903, with Mushala copied on it. N.T. pp. 181, 202; AA Ex. 3.
15. Austra reviewed Hilpp's statement against the video evidence and requested disciplinary action be taken against appellant. N.T. pp. 183-185; AA Ex. 5.

## DISCUSSION

At issue before the Commission is whether the appointing authority's decision to remove appellant from his Intermittent Liquor Store Clerk employment was motivated by any discriminatory factor. Appellant alleges he was discriminated against based on sex. Comm. Ex. B.

Appellant testified on his own behalf. The appointing authority presented the testimony of State Store Administrator 2 Sherry Ann Beinhower,<sup>1</sup> Liquor Store Manager 1 Lisa Valenti,<sup>2</sup> General Manager 3A Sylvia Mushala,<sup>3</sup> Operations Manager 1 Allen Austra,<sup>4</sup> Liquor Store Clerk 2 Hannah Hilpp,<sup>5</sup> and Human Resource Analyst 3 Diane Smith.<sup>6</sup>

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<sup>1</sup> Beinhower works for the appointing authority as State Store Administrator 2, also referred to as Assistant Regional Manager for Region 2. N.T. pp. 121-122. She has worked in that position for ten years. N.T. p. 121. In that position, Beinhower handles discipline of the appointing authority's employees. N.T. p. 122.

<sup>2</sup> Valenti works for the appointing authority as Liquor Store Manager 1, also referred to as Assistant Manager. N.T. p. 142. She has worked in that position for two and a half years. N.T. p. 143. In that position, Valenti assists customers and store employees, as well as handles the store's cash management. N.T. pp. 143-144. Valenti also worked as appellant's supervisor. N.T. p. 144.

<sup>3</sup> Mushala works for the appointing authority as General Manager 3A of Store #1903. N.T. p. 161. She has worked in that position for eight years. *Id.* In that position, Mushala oversees the day-to-day operations of the store. N.T. p. 162. She also worked as appellant's supervisor. N.T. p. 163.

<sup>4</sup> Austra works for the appointing authority as Operations Manager 1, also referred to as District Manager for District 25. N.T. p. 181. He has worked in that position for eighteen months. N.T. p. 182. In that position, Austra assists the general managers with the day-to-day operations of their stores. N.T. p. 183. He oversees nineteen stores, to include Store #1903. *Id.*

<sup>5</sup> Hilpp works for the appointing authority as Liquor Store Clerk 2. N.T. p. 196. She has held that position since September 18, 2022. N.T. p. 196. In that position, Hilpp assists customers and helps with the stock. N.T. p. 198. When Hilpp runs a shift, she works as Assistant Manager, and she is responsible for making sure the store runs smoothly procedure-wise. N.T. pp. 197-198.

<sup>6</sup> Smith works for the appointing authority as Human Resource Analyst 3. N.T. p. 231. She has worked in that position for seven years. *Id.* In that capacity, Smith works in Labor Relations, handling recommendations for disciplinary action. N.T. p. 232.

Before this Commission, a probationary employee can only challenge his removal through Section 3003(7)(ii) of Act 71 of 2018 based upon an allegation of discrimination affecting the involved personnel action; in an appeal alleging discrimination, the burden lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991); 71 Pa.C.S.A. §3003(7)(ii); 4 Pa. Code §105.16.

Section 2704 of Act 71 of 2018 prohibits discrimination. Specifically, 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 nonmerit factors.

71 Pa.C.S. § 2704. 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.<sup>7</sup> This includes prohibiting both procedural and traditional discrimination which encompasses claims based upon non-merit factors. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996); *Pronko v. Department of Revenue*, 114 Pa. Commw. Ct. 428, 539 A.2d 462 (1988); 71 P.S. § 2704. Here, appellant has alleged traditional discrimination. Comm. Ex. B.

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<sup>7</sup> Section 905.1- Prohibition of Discrimination, provided:

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.

In claims of traditional discrimination, the appellant must prove a *prima facie* case of discrimination by producing sufficient evidence which, if believed and otherwise unexplained, indicates it is more likely than not discrimination has occurred. *Henderson v. Office of the Budget*, 126 Pa. Commw. Ct. 607, 560 A.2d 859 (1989); *Department of Health v. Nwogwugwu*, 141 Pa. Commw. Ct. 33, 594 A.2d 847 (1991). Once a *prima facie* case of discrimination has been established, the burden shifts to the appointing authority to present a legitimate, non-discriminatory explanation for the employment action. Appellant always retains the ultimate burden of persuasion and must demonstrate the proffered merit reason is merely a pretext for discrimination. *Henderson* at 126 Pa. Commw. Ct. 607, 560 A.2d 859.

Appellant alleges the appointing authority's decision to remove him from his Intermittent Liquor Store Clerk employment was based on sex discrimination. He asserted, "I was specifically discriminated because of my sex. And the reason being is, I'm bigger, I'm stronger, I'm taller. Simple as that." N.T. p. 113.

In his case-in-chief, appellant testified to feeling uncomfortable and awkward in the workplace, to include not being heard by management and staff regarding warehouse and cleaning practices. N.T. pp. 25-37. Appellant acknowledged he got into a disagreement with Valenti during their shift on May 7, 2023. *See* Finding of Fact No. 7. He testified he did not recall telling Valenti, "when

a woman starts to babble on, all of her brain cells immediately shut down.” N.T. p. 92. Instead, he testified when he refused Valenti’s help with the till, she told him, “a man who doesn’t want a woman to tell him what to do.” N.T. pp. 87-88. After speaking with Mushala regarding the incident, appellant agreed it was a petty disagreement between coworkers which should be handled in-house through a conversation between appellant, Valenti, and Mushala. N.T. pp. 94-97. Appellant acknowledged he never told Mushala he thought Valenti’s alleged comment constituted sexual harassment. N.T. pp. 93-94.

Appellant further acknowledged another incident which occurred on May 11, 2023 while working with Hilpp. *See* Findings of Fact 11-13. He testified he intended to demonstrate tandem skydiving in a comedic fashion, using Hilpp as the other individual in the example. N.T. pp. 105-106. He did not dispute he physically touched Hilpp during that demonstration without her permission. N.T. pp. 104-105.

Following the presentation of appellant’s case-in-chief, the appointing authority made a Motion to Dismiss for failure to establish a *prima facie* case. N.T. p. 115. Ruling on the Motion was deferred pending review by the full Commission. N.T. p. 116. Following our review, the Motion is hereby granted.



Appellant presented no evidence or corroborating testimony in support of his assertion of sex discrimination. Thus, the Commission finds appellant has not presented a *prima facie* case of discrimination based upon his sex. The burden of establishing a *prima facie* case cannot be an onerous one. *Nwogwugwu, supra*. Discrimination cannot be inferred and there must be factual support to sustain the allegations. *Price, supra*. Here, appellant has not established there was any causal connection between his sex and his removal.<sup>8</sup> *Henderson, supra*. Accordingly, we enter the following:

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<sup>8</sup> If the burden of proof had shifted to the appointing authority, the appointing authority credibly established there was no discrimination based upon appellant's sex. Specifically, appellant does not dispute the incident on May 11, 2023 occurred, and it is corroborated by video evidence. Even if appellant's testimony concerning Valenti's alleged comments to him on May 7, 2023 were to be believed, both Austra and Smith testified that incident did not have any role in the decision to remove appellant. N.T. pp. 189-190, 246-248. Thus, the appointing authority has established a legitimate, nondiscriminatory reason that only appellant's undisputed, unbecoming conduct on May 11, 2023 led to his removal. *Henderson, supra*. Appellant has not proffered evidence indicating the merit reason is merely pretext for discrimination. *Id.*

CONCLUSION OF LAW

Appellant has not presented 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 John E. Randell challenging his removal from probationary Intermittent Liquor Store Clerk employment, with the Pennsylvania Liquor Control Board and sustains the action of the Pennsylvania Liquor Control Board in removing appellant from his probationary Intermittent Liquor Store Clerk employment.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Pamela M. Iovino  
Commissioner

Issued: April 18, 2024