

COMMONWEALTH OF PENNSYLVANIA

David T. Notto : State Civil Service Commission
 :
 v. :
 :
 :
 Armstong County :
 Area Agency on Aging : Appeal No. 31492

David T. Notto Timothy R. Miller
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by David T. Notto challenging his removal from regular Aging Care Manager 2 (Local Government) employment with the Armstong County Area Agency on Aging (hereinafter, “appointing authority”). Hearings were held on April 29, 2025, and July 31, 2025, via video, before Commissioner Pamela M. Iovino.

The Commissioners have reviewed the Notes of Testimony, exhibits introduced at the hearings, and the Briefs of the parties. The issues before the Commission are whether there is just cause for appellant’s removal and whether the appointing authority’s decision to remove appellant was based upon any discriminatory factor.

FINDINGS OF FACT

1. By letter dated November 13, 2024, appellant was informed the appointing authority had decided to terminate his Aging Care Manager 2 (hereinafter, ACM2) (Local Government) regular status, employment. Comm. Ex A.

2. The appointing authority's termination letter was signed by Executive Director Lisa Shaffer, and stated:

Effective November 14, 2024 you will be terminated as an Aging Care Manager from the Armstrong County Area Agency on Aging. The attached list of issues was reviewed with you on November 12, 2024.

As a Care Manager you have continued to make numerous inaccurate documentations in SAMS in regards to Activities & Referrals, Journals, Service Deliveries and Assessments. These mistakes are affecting the AAA consumers in regards to service eligibility and service distribution. As a Care Manager you altered previous assessments that cannot be fixed, creating inaccurate journals that cannot be deleted and documenting past the mandatory timeframe. These errors have often occurred after much prompting and reminders.

You have also been disrespectful and insubordinate to your Supervisor, Executive Director and other staff members on several occasions.

On multiple occasions you were found to be sleeping on the job. You also did not follow instructions given by the Information Technology department which caused weekly issues with your computer(s) and technology.

Comm. Ex., AA Ex. 1.

3. Attached to the November 13, 2024, removal letter was a list of thirty-seven incidents, between August 5, 2024 and November 7, 2024, upon which appellant's removal was based. AA Exs. 1-2.
4. The appeal was properly raised before the Commission and was heard under Sections 3003(7)(i) and (ii) of Act 71 of 2018.
5. Appellant was employed as an ACM2 at the appointing authority since November 22, 2022. N.T. p. 26.

6. ACM2's are responsible for assessing a consumer's eligibility for services provided by the appointing authority and, if found eligible, determining what services the consumer will receive based on the consumer's needs. N.T. pp. 29, 163-164; AA Ex. 59.

7. On January 12, 2024, appellant signed the ACM2 job description that listed the essential functions of his job to include:

- “Performs home services visits and determines need and eligibility for community based services.”
- “Performs comprehensive needs assessments and develops comprehensive service plan.”
- “Performs follow up service delivery and reassesses consumer eligibility and maintains documentation.”
- “Operates computer and other office equipment as necessary.”
- “Perform other job related duties.”

N.T. pp. 29, 163-164, 504-507; AA Ex. 59.

8. The appointing authority's consumers consist of the Commonwealth's elderly population. N.T. p. 29.

9. The types of services consumers can qualify to receive through the appointing authority include home delivery of meals, personal care assistance such as assistance with bathing, and Personal Emergency Response Systems (hereinafter, “PERS”). N.T. pp. 39-41, 176-178.
10. PERS is a medical alert system that can be worn around a consumer’s neck to allow the consumer to contact emergency medical services when needed. N.T. pp. 40-41.
11. Consumers can request services by contacting the appointing authority, at which time an initial intake will occur. N.T. pp. 164-165.
12. The initial intake will generate a referral, which will be assigned to an individual ACM2. N.T. pp. 164-165.
13. When an ACM2 receives a referral, they are expected to contact the consumer within twenty-four hours to schedule a home visit to determine eligibility for services. N.T. pp. 164-168.

14. The twenty-four hour expectation is only a recommendation by the appointing authority and is not a codified written policy. N.T. pp. 154-155, 165-168.
15. At the scheduled home visit, an ACM2 will conduct an initial assessment to determine the consumer's eligibility for services. N.T. pp. 178-179.
16. The information gathered during the initial assessment is entered into the Social Assistant Management System (hereinafter, "SAMS"). N.T. pp. 34-38, 169, 178-180.
17. SAMS is a statewide data collection system. N.T. pp. 36-40, 178-180.
18. Appellant was trained in how to use the SAMS when he was first hired in 2022. N.T. pp. 49-50.
19. Once the initial home visit to assess services is completed, the initial assessment must be entered into SAMS and approved by an Aging Care Manager Supervisor within ten days as required by the state. N.T. pp. 164-166, 179-181.

20. In addition to the initial assessment, all assessments, home visits, phone calls, activities, referrals, and journal entries for each individual consumer must be documented in SAMS by the assigned ACM2. N.T. pp. 36-40, 178-180, 310.
21. All contacts an ACM2 has with or about a consumer must be documented as a journal entry in the SAMS within three days as required by the state. N.T. pp. 39, 179.
22. Inaccurate and untimely entry of data into SAMS can negatively impact the delivery of services to consumers and can potentially affect the appointing authority's funding if periodic state audits reveal continued non-compliance with state requirements and data entry deadlines. N.T. pp. 41-47.
23. In the summer of 2024, the appointing authority implemented an open-door policy requiring all staff, including appellant, to keep their office doors open. N.T. pp. 30-31, 174-177.
24. Appellant failed to adhere to the open-door policy by keeping his door closed, locking his door, and placing items in front of his door to prevent it from fully opening. N.T. pp. 30-31, 174-177.

25. Both Executive Director Lisa Shaffer and appellant's direct supervisor, Aging Care Manager Supervisor 1 Lauren Wheeler, discussed with appellant his non-compliance with the open-door policy. N.T. pp. 30-31, 162-163, 174-177.
26. It took approximately six months for appellant to fully comply with the open-door policy. N.T. pp. 33-34, 174-177.
27. Between June 6, 2024, and July 25, 2024, Wheeler had numerous email communications with appellant regarding appellant's failure to timely and accurately enter consumer data gathered during assessments and home visits into SAMS. N.T. pp. 195-243; AA Exs. 4-17.
28. Appellant's failure to timely and accurately enter data into SAMS resulted in a consumer's approval for home deliveries being delayed by four days, delayed another consumer's care management services, and delayed a third consumer's receipt of linen change services. N.T. pp. 208-210, 235-236, 239-241; AA Exs. 7, 14, 16.

29. Appellant's failure to enter timely data into SAMS caused an eighteen-day delay in the completion and signing off on a new assessment, which caused the appointing authority to be out of compliance with the ten-day state deadline. N.T. pp. 190-199; AA Ex. 4.
30. On July 30, 2024, the appointing authority initiated a time study with appellant that both Wheeler and appellant signed. N.T. pp. 81-86, 457-458, 588; AA Ex. 51.
31. A time study is a schedule broken into one-hour increments where appellant was instructed to mark down what he did during his workday. N.T. pp. 83-86, 457-459; AA Exs. 51-56.
32. The purpose of the time study was to improve appellant's time management by identifying those areas of appellant's day where time was being wasted. N.T. pp. 83-84.
33. On July 31, 2025, Wheeler and Shaffer had appellant sign a Corrective Action Plan (hereinafter, "CAP") in conjunction with the time study. N.T. pp. 103-105, 502-503; AA Ex. 57.

34. A CAP is used by the appointing authority to identify areas of an employee's job performance that need improvement, and outlines goals with a timeframe to complete those goals. N.T. pp. 104-104; AA Ex. 57.
35. The CAP was not implemented because appellant revoked his acceptance of the CAP the day after he signed it. N.T. pp. 104-105, 652; Ap. Ex. 6.
36. On August 5, 2025, appellant was issued a written warning for violating state regulations that stated:

Care Manager is not completing assessments in an accurate timely and thorough manner independently with little to no mistakes. Assessments routinely turned into Supervisor late. A Care Managers responsibilities are to ensure AAA is payer of last resort, all mandatory questions are answered and all informal supports are utilized. This is directly impacting our consumers.

N.T. pp. 68-69, 531-532; AA Ex. 3.
37. Appellant refused to sign the written warning; however, it was witnessed by Wheeler and signed by Shaffer. AA Ex. 3.

38. On September 17, 2024, Shaffer personally witnessed appellant sleeping at his desk during work hours. N.T. pp. 51-52.
39. On September 18, 2024, Shaffer issued a written warning to appellant for sleeping at his desk during work hours for the September 17, 2024 incident. N.T. pp. 51-59; AA Ex. 18.
40. Appellant refused to sign the written warning. AA Ex. 18.
41. Both Shaffer and Wheeler had found appellant sleeping at his desk during work hours on at least ten separate occasions both before and after issuance of the September 18, 2024, written warning. N.T. pp. 51-59.
42. On October 7, 2024, appellant was issued a one-day suspension without pay for violating state regulations for the following:

There continues to be multiple errors in regards to state regulations since the written warning on 8/5/24. These errors include, but are not limited to, the most recent assessment that was updated incorrectly which in turn appears as we are non-compliant as an agency. These errors also include

journals, details page, A&R's, assessments, service deliveries, referrals and terminations.

N.T. pp. 76-79, 531-532; AA Ex. 42.

43. Appellant refused to sign the notice of the one-day suspension without pay. AA Ex. 42.
44. The notice of the one-day suspension was signed by Shaffer, and Wheeler signed as a witness. N.T. p. 79; AA Ex. 42.
45. Between August 5, 2024, and October 6, 2024, Wheeler had numerous documented email conversations with appellant to address approximately twenty-five separate errors related to data entry, journals, deadlines, and service deliveries. N.T. pp. 243-245, 247-249, 250-253, 254-266, 274-282, 285-291, 293-300, 302-312; AA Exs. 2, 19, 21, 22, 24-36.
46. In the email communications between Wheeler and appellant from August 5, 2024, to October 6, 2024, appellant did not deny making the alleged errors. AA Exs. 2, 19, 21, 22, 24-36.

47. The errors made by appellant between August 5, 2024, and October 6, 2024, included but were not limited to appellant violating consumer confidentiality by discussing one consumer with another consumer on September 18, 2024. N.T. pp. 298-299; AA Exs. 2, 34-35.
48. Following imposition of the one-day suspension, appellant continued to have issues with SAMS data entry, time management, complying with the time study, and information technology (hereinafter, “IT”) computer issues. N.T. pp. 60-62, 190, 312-319; AA Exs. 39-41, 51-56.
49. Between October 7, 2024, and November 12, 2024, Wheeler had numerous documented email conversations with appellant to address approximately twelve separate errors related to data entry, journals, deadlines, and service deliveries. N.T. pp. 309-322; AA Exs. 2, 37, 39-41.
50. In the email communications between Wheeler and appellant from October 7, 2024, and November 12, 2024, appellant did not deny making the alleged errors. AA Exs. 2, 37, 39-41.

51. The errors made by appellant between October 7, 2024, and November 12, 2024, included but were not limited to:
- Modifying a past consumer's assessment in the SAMS instead of creating a new assessment, which could have resulted in negative consequences for the appointing authority during a state audit. N.T. pp. 312-314; AA Ex. 39.
 - Failure to input journal entries into the SAMS within the three-day state required deadline on four separate occasions. N.T. pp. 309-312; AA Ex. 37.
 - Failure to complete an assessment to obtain bathing assistance services for a consumer who indicated she needed assistance with bathing. N.T. pp. 316-318; AA Ex. 39.
52. Appellant also had IT issues throughout this time period. N.T. pp. 60-62, 190.
53. Appellant had been instructed to contact Wheeler if he was locked out of SAMS so IT could be contacted to resolve the issue. N.T. pp. 60-62, 190.
54. Several times appellant failed to inform Wheeler he was locked out of SAMS, until Wheeler questioned him about why he was not completing his SAMS data entries. N.T. pp. 60-62, 190.

55. Appellant had issues accurately completing the time study. N.T. pp. 86-87.

56. On October 11, 2024, appellant sent an email to Shaffer he had previously sent to Wheeler stating:

You seemed to be at a loss for solutions to what the goal of the time study was about. In the meeting we had on Monday at 3:58PM you mentioned you had no answers about how I can improve. So then this shows the time study has failed to produce any positive results.

It is the solution to the problem. Stop the time study so I can use the extra time to do case management for senior citizens. The time study does nothing to help senior citizen.

N.T. pp. 79-85; AA Ex. 47.

57. Shaffer responded to appellant's email the same day stating:

... Completing your work in a timely manner is the most effective way to help the senior citizens. We have referrals waiting for services but can't give them to you because of the amount of work you have out. Lauren [Wheeler] and I have offered numerous suggestions on how to help

improve your time management but you have yet to follow many of the suggestions....

N.T. pp. 79-85; AA Ex. 47.

58. Due to appellant's continued issues, the appointing authority scheduled a Loudermill hearing on November 12, 2024. N.T. pp. 527-528; AA Ex. 2.
59. A Loudermill hearing is a due process hearing to apprise an employee of the reasons that removal is being considered. N.T. pp. 527-528.
60. The appointing authority's disciplinary process follows the progression of: verbal warning; written warning; suspension; corrective action plan; a Loudermill hearing; and, ultimately a decision following the Loudermill hearing regarding removal. N.T. pp. 529-530.
61. On November 12, 2024, a Loudermill Hearing was held at which time appellant was apprised of the alleged violations to include a list of thirty-seven data entry related errors. N.T. pp. 527-528; AA Ex. 2.

62. The Loudermill Hearing was attended by appellant, Shaffer, Wheeler, Human Resources Manager Audrey Campbell, and County Labor Counsel David Mitchell. N.T. pp. 526-527, 612-615.

DISCUSSION

The issues before the Commission are whether there is just cause for appellant's removal and whether the appointing authority's decision to remove appellant was based upon any discriminatory factor.

The appointing authority presented the testimony of Executive Director Lisa Shaffer¹, Aging Care Manager Supervisor 1 Lauren Wheeler², and Human Resources Manager Audrey Campbell.³ Appellant testified on his own behalf and presented the testimony of Executive Director Lisa Shaffer.

¹ Shaffer has been employed at the appointing authority since November 22, 2022. N.T. pp. 26-27. In October of 2023, Shaffer was appointed Acting Executive Director and became Executive Director in June of 2024. N.T. pp. 26-27. Shaffer has been employed with the Commonwealth for eleven years. N.T. p. 25.

² Wheeler has held her current position and been employed with the Commonwealth since February 22, 2017. N.T. pp. 161-162. Wheeler was appellant's direct supervisor. N.T. pp. 162-163.

³ Campbell has held her current position since June of 2018 and has been employed with the Commonwealth since August of 2010. N.T. pp. 522-523.

The Commission will begin by addressing whether there was just cause for appellant's removal. In an appeal challenging the removal of a regular status employee, the appointing authority bears the burden of proving just cause for the removal. *Long v. Commonwealth of Pennsylvania Liquor Control Board*, 112 Pa. Commw. 572, 535 A.2d 1233 (1988). Just cause for removal must be merit related. *Woods v. State Civil Service Commission*, 590 Pa. 337, 912 A.2d 803 (2006). Merit-related criteria includes whether the employee failed to properly execute his duties or has acted in such a way that hampers or frustrates the execution of his duties. *Id.* The criteria must in a rational and logical way touch upon the employee's competency and ability. *Id.*

In addressing the issue of just cause, we will initially determine if the appointing authority presented sufficient evidence to establish the violations alleged in the removal letter.

We will first address if appellant continually made inaccurate documentation in the SAMS affecting consumers eligibility and service distribution after prior instruction and prompting to the contrary. Both Shaffer and Wheeler testified appellant had almost daily documentation errors with the SAMS throughout his time as an Aging Care Manager 2 (hereinafter, "ACM2") to include errors as to grammar, spelling, timing, and late entry of data. N.T. pp. 47-50, 186-187. Shaffer testified generally these errors can negatively impact services to consumers and affect the appointing authority's funding if revealed through scheduled state audits. *See Findings of Fact 29*; N.T. p. 42. Wheeler specifically testified how appellant's errors impacted consumers to include delays in approval of home meal deliveries,

care management services, linen change services, and bathing assistance. *See* Findings of Fact 27-28, 46-52. Wheeler testified to numerous email communications she had with appellant regarding his data entry errors, and in none of the email communications did appellant dispute these errors. *See* Findings of Fact 27-29, 45-51.

In response, appellant testified when he was hired the appointing authority was aware he was sixty years old and not a genius with computers. N.T. pp. 582-583. Specifically, appellant testified:

I admit I'm not the best person when it comes to data entry. Did I make mistakes? Sure. A lot of people in the office make mistakes. You know, it's a natural thing. As I mentioned, when I was . . . when I applied for this job, made no secret of it, that I'm not a genius . . . that I'm not really great at data entry. I'm in my 60s. It's hard to learn new tricks, as I said. So they knew. They knew what they were getting. They hired me anyway.

N.T. p. 645. Further, appellant testified he did not think he made all the mistakes alleged by the appointing authority. N.T. p. 616.

Having reviewed all the testimony, evidence, and the briefs of the parties we find the appointing authority presented sufficient evidence to prove appellant made continual ongoing data entry errors in the SAMS, and these errors negatively affected consumers. Shaffer and Wheeler credibly testified that appellant made almost daily errors.⁴ Appellant continued to make these same errors even after

⁴It 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).

receiving verbal warnings in the form of numerous emails, a written warning, and a one-day suspension. *See* Findings of Fact 36, 42, 46-52. Appellant did not dispute he made these errors in his emails with Wheeler. Significantly, at the hearing appellant acknowledged he made errors, but attempts to use his age and the fact he told the appointing authority when he was hired, he was not good at data entry as an excuse. This testimony by appellant is not a defense but only serves to corroborate Shaffer and Wheeler's testimony as to his numerous data entry errors. Finally, these errors did affect consumers by delaying their receipt of services through the appointing authority. Accordingly, the appointing authority established appellant made continual inaccurate documentation errors in the SAMS, which negatively impacted the delivery of services to consumers.

We will now turn to the allegations related to appellant's insubordination and disrespect. Both Shaffer and Wheeler testified it took appellant six months to adhere to the open-door policy. *See* Findings of Fact 23-26. Shaffer testified during this time appellant constantly questioned why the open-door policy was put in place and stated he didn't feel *he* needed to have an open-door policy. N.T. pp. 32-33. Wheeler also testified appellant questioned her about the need for the open-door policy. Both Wheeler and Shaffer testified appellant did not accurately complete the time study and asked for it to be stopped. *See* Findings of Fact 55-57; N.T. pp. 51-52, 86-87, 485-486; AA Ex. 45. Appellant did not directly address these issues in his testimony at the hearing, but appellant did acknowledge in his brief he did ask his supervisors to end the time study because he felt it was taking his focus from his job duties. Ap. Br. p. 3.

The Commission finds the appointing authority presented sufficient evidence to prove the charges of insubordination and disrespect. We find credible Shaffer and Wheeler's testimony that appellant questioned the need for the open-door policy and time study. Further, we find credible their testimony appellant did not fully adhere to the open-door policy for six months and also failed to cooperate with the time study. Appellant sent emails to Shaffer and Wheeler questioning the need for the time study and acknowledged in his brief he questioned Wheeler and Shaffer about the need for the time study and asked them to end it. *See* Finds of Fact 55-56. Appellant's failure to adhere to policies and continual questioning of those policies to his supervisors after adequate explanation is the very definition of insubordination and disrespect. Accordingly, the appointing authority established appellant was insubordinate and disrespectful towards Shaffer and Wheeler.

Next, we will discuss the allegation appellant was found sleeping on the job. Shaffer testified she personally observed appellant sleeping at his desk during work hours on seven separate occasions. N.T. pp. 58-59. Specifically, Shaffer testified she observed appellant sleeping at his desk on September 17, 2024, and issued appellant a written warning for that incident. N.T. pp. 53-56; AA Ex. 18. Shaffer explained she observed appellant on September 17, 2024, at his office desk with his eyes shut and his head down. N.T. pp. 55-56. Shaffer then woke up appellant and testified he stated he did not get enough sleep. N.T. p. 56. Shaffer testified she observed appellant sleeping during work hours both before and after issuing the written warning. N.T. pp. 51-59. Wheeler testified she also personally observed appellant sleeping during work hours on at least five occasions. N.T. pp. 170-174. Wheeler explained on one occasion she observed appellant at his office desk with his eyes closed and head slouched down, and she had to jostle his chair to wake him up. N.T. pp. 171-173.

Appellant neither admitted nor denied he was sleeping during work hours at the hearing, but he did address the issue in his brief. N.T. pp. 576-660. In his brief appellant states, “I have never admitted to sleeping during work hours during my testimony,” and “[n]o supervisor ever woke me up from sleeping.” Ap. Bf. p. 3. Appellant then argues the testimony of Shaffer and Wheeler regarding this issue is not credible because he was never issued a verbal warning and they did not keep records of every time they saw appellant sleeping during work hours. Ap. Brief, pp. 3-4. Appellant concludes by arguing Shaffer and Wheeler failed to explain how they determined he was sleeping and contended just because a person has their eyes closed, does not mean the person is asleep. Ap. Bf. p. 4.

Having reviewed all testimony, evidence, and argument regarding this issue, we find the appointing authority provided sufficient evidence to establish appellant was sleeping during work hours. In reaching this conclusion, we find credible the testimony of both Shaffer and Wheeler regarding this issue. Both Wheeler and Shaffer provided similar testimony. They both observed appellant at his desk with his eyes closed and his head slouched down sleeping, and they needed to wake him up. Shaffer documented at least one incident by issuing appellant a written warning for sleeping during work hours. A person need not possess special skills or training to know if someone is sleeping. Further, appellant did not deny he was sleeping either at the hearing or in his brief. Appellant simply states in his brief he never admitted to sleeping during the hearing. Accordingly, the Commission finds the appointing authority presented sufficient evidence to prove appellant was sleeping during work hours.

Last, we will address whether appellant failed to follow IT instructions causing weekly computer and technology issues. Appellant testified his laptop did not always work without internet or a hotspot, however, he also acknowledged on cross examination he can access SAMS manually without the internet. N.T. pp. 638-639, 653. In his brief, appellant argues the appointing authority did not have anyone from IT testify he was having ongoing IT issues or that he caused the IT problems. Ap. Br. p. 5. The Commission agrees with appellant that no one from IT testified, however, Wheeler's credible testimony was appellant failed to adhere to her instructions that he needed to call her if he was locked out of SAMS. N.T. pp. 60-62, 190. Once appellant contacted her, Wheeler would then contact IT to resolve appellant's IT issue. N.T. pp. 60-62, 190. Wheeler provided appellant this instruction, which she testified he failed to adhere to, because appellant only notified her of his IT issues when Wheeler questioned him about not timely entering data into SAMS. Accordingly, on this basis we find the appellant failed to follow instructions to address IT issues with his computer.

Having found the appointing authority established the violations outlined in the removal letter, we also find the appointing authority had just cause for appellant's removal. Appellant's job duties included assessing consumer's needs and eligibility for services, delivering those services to consumers, and maintaining documentation. *See* Findings of Fact 6-7. In order to deliver services, assessments must be timely and accurately entered into the SAMS. Appellant failed to timely and accurately enter data into SAMS at least thirty-seven times between August 5, 2024, and November 12, 2024. These failures caused service delivery delays to consumers. Appellant's failure to properly enter data into the SAMS touched on his ability and competency to properly execute his job duties and hampered his ability to deliver services to eligible consumers and maintain documentation. Appellant's

ability to deliver needed services to consumers was also hampered when he was sleeping during work hours and did not have access to his computer due to unreported IT issues. Finally, appellant's insubordinate and disrespectful conduct towards Shaffer and Wheeler touch on his competency and ability to do his job because he has a responsibility to conduct himself in a respectful manner at work. Accordingly, the appointing authority had just cause to remove appellant.

Having addressed just cause, we will now turn to appellant's discrimination claims. In an appeal alleging discrimination, appellant bears the burden of establishing that the personnel action was due to discrimination. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990). Section 2704 of Act 71 of 2018 (hereinafter "Act 71") 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.⁵ In applying this language, the

⁵ Section 905.1 provides:

905.1 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.

courts have held these provisions address both “traditional” and “procedural” discrimination. *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 439, 539 A.2d 456, 462 (Pa. Commw. Ct. 1988). “Traditional discrimination” encompasses claims of discrimination based on race, sex, national origin, or other non-merit factors. Discrimination based upon a non-merit factor includes claims of mistake of fact discrimination. *See State Correctional Institution at Albion v. Bechtold*, 670 A.2d 224 (Pa. Commw. Ct. 1996). To establish a claim of “procedural discrimination,” the employee must show he was harmed because of the procedural noncompliance with the Act, or that, because of the peculiar nature of the procedural impropriety, he could have been harmed, but there is no way to prove for certain. *Pronko*, 539 A.2d at 462.

In his brief, appellant states he did not fill out the portion of the Commission’s appeal request form as to discrimination. Comm. Ex. B; Ap. Br. p. 6. Appellant is correct, however, in his appeal request he also stated he believed he was wrongfully discharged because the appointing authority violated its removal policy. Comm. Ex. B. Based on this statement, the Commission granted appellant a hearing under Section 3003(7)(ii) of Act 71 of 2018 on a potential claim of procedural discrimination.

The appointing authority’s disciplinary process is not in dispute.⁶ At the hearing, appellant testified the appointing authority violated the disciplinary process by going straight to implementation of a CAP without first providing

⁶ The disciplinary policy follows the progression of: verbal warning; written warning; suspension; corrective action plan (hereinafter, “CAP”); Loudermill hearing; ultimate decision to remove. *See Findings of Fact 60.*

appellant a verbal warning followed by a written warning. N.T. pp. 586-589. Appellant testified he felt pressured and intimidated when he signed the CAP on July 31, 2024. N.T. pp. 588-589. Because he felt intimidated, appellant rescinded his acceptance of the CAP on August 1, 2024. N.T. pp. 104-105, 652; Ap. Ex. 6. Appellant makes the same arguments in his brief claiming the appointing authority failed to follow their disciplinary process because he never received a verbal warning and a CAP was never implemented. Ap. Br. pp. 2-3.

Based on our review of the record, we find the appellant failed to present sufficient evidence to prove a procedural discrimination claim. First, the reason the CAP was never implemented was because appellant chose to rescind his acceptance. Appellant cannot now claim procedural discrimination based on a missing step in the disciplinary process he chose not to accept. Further, the time study implemented by the appointing authority served a similar purpose as the CAP and greatly mitigates the missing step in the disciplinary process. Second, all other steps in the disciplinary process were followed. Appellant received numerous verbal warnings from Wheeler through emails about his data entry errors. Additionally, appellant received a written warning, suspension, and Loudermill hearing before his removal. Third, appellant failed to show how he was harmed by the procedural non-compliance. Again, the appointing authority followed all the other steps of the disciplinary process except for the one step, the CAP, appellant chose not to accept. Fourth, the Commission is not aware of any legal authority, nor did appellant cite to any authority this missed step in the disciplinary process violated the Civil Service Reform Act. Accordingly, appellant failed to make out a procedural discrimination claim.

Before concluding, we will address briefly the claim of age discrimination appellant raised in his brief. Appellant states in his brief, “[m]aybe one of the reasons they decided to terminate my employment is that I am getting older, and they do not think I am fast enough to do the work. Maybe this is what they call age discrimination.” Ap. Br. p. 7. During the hearing, appellant testified at numerous points in his testimony the appointing authority was aware when they hired him, he was sixty years old and not the greatest with computers and data entry. N.T. pp. 582-583. Appellant presented nothing to add substance to his speculative claim his age was, maybe, a factor in his removal. Significantly, appellant failed to establish how his removal was connected to his age, and not based on his numerous data entry errors, sleeping on the job, IT issues, and insubordination. For these reasons, we find appellant failed to prove a *prima facie* case of age discrimination.⁷ Accordingly, we enter the following:

CONCLUSIONS OF LAW

1. The appointing authority has presented evidence sufficient to establish just cause for removal under Section 2607 of Act 71 of 2018.

⁷ Moreover, if the burden of proof had shifted to the appointing authority, the appointing authority credibly established numerous legitimate non-discriminatory reasons for appellant’s removal as addressed by the Commission in this adjudication when we determined the appointing authority had just cause for appellant’s removal.

2. The 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 David T. Notto challenging his removal from regular Aging Care Manager 2 (Local Government) employment with the Armstrong County Area Agency on Aging, and sustains the action of the Armstrong County Area Agency on Aging in the removal of David T. Notto from regular Aging Care Manager 2 (Local Government) employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Issued: December 23, 2025