

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stefano Kiniropoulos, :
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 :
 : Petitioner : No. 2104 C.D. 2011
 : Submitted: April 20, 2012
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 v. :
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 : State Civil Service Commission :
 : (Northampton County Department :
 : of Human Services), :
 :
 : Respondent :
 :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: June 29, 2012

Stefano Kiniropoulos (Petitioner) petitions for review of the October 7, 2011, order of the State Civil Service Commission (Commission), which dismissed his appeal and sustained Northampton County Department of Human Services' (County) removal of Petitioner from regular employment as a County Caseworker 2 under section 807 of the Civil Service Act (Act).¹ We affirm.

Petitioner began working as a County Caseworker 2 on September 28, 2005. (Findings of Fact, Nos. 4-5.) From mid-2008 until his removal, Petitioner worked in the Children's Integrated Services Unit (Unit), which provides traditional

¹ Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §741.807. Section 807 of the Act provides that “[n]o regular employe in the classified service shall be removed except for just cause.” *Id.*

foster care services as well as services for children with developmental disabilities, mental health needs, and drug and alcohol issues. (Findings of Fact, Nos. 9-10.) Caseworkers are required to visit each foster child at least once per month in the foster home. (Findings of Fact, No. 11.) Caseworkers are also required to visit each client in a group home or residential placement at least once per month. (Findings of Fact, No. 12.)

Rachel Schienholz was Petitioner's immediate supervisor from May 2007 until his removal. (Findings of Fact, No. 35.) In early May 2010, Petitioner asked to take a vacation from May 27, 2010, through June 10, 2010, which Schienholz approved. (Findings of Fact, No. 36.) Between January and May 2010, Petitioner had eight clients. (Findings of Fact, No. 57.)

At the start of Petitioner's vacation on May 27, 2010, Schienholz took over Petitioner's caseload. (Findings of Fact, No. 46.) The next day, Schienholz began receiving calls about problems with Petitioner's cases. (Findings of Fact, No. 48.)² Schienholz told her supervisor, Gary Ruschman, that she had discovered that many items in Petitioner's files were incomplete. (Findings of Fact, No. 52.) At Ruschman's direction, Schienholz contacted the providers with whom Petitioner worked to make sure that his clients were safe and provided for. She asked the providers if Petitioner had visited his clients on the dates he indicated on his contact sheets. None of the dates on the contact sheets from January through March 2010

² On May 28, 2010, Schienholz had to perform a home visit for one of Petitioner's clients because the client told her that Petitioner had not visited in May. (Findings of Fact, No. 49.) On June 1, 2010, a foster parent told Schienholz that Petitioner failed to make a referral to a service agency that he had informed the court he would make. (Findings of Fact, No. 50.)

matched the dates Petitioner had visited his clients. (Findings of Fact, Nos. 53-55.) Schienholz then compared the contact sheets with Petitioner's monthly travel reimbursement forms and his daily attendance sheets. Again, the information did not match up. (Findings of Fact, Nos. 56-57.)³

On June 10, 2010, Ruschman called Petitioner and told him that he needed to meet with him on June 14, 2010, to discuss concerns about his caseload. (Findings of Fact, Nos. 133, 135.) Petitioner did not attend the meeting, but his union representative attended and submitted a letter from Petitioner. (Findings of Fact, No. 137.)

By letter dated June 14, 2010, the County notified Petitioner that he was being suspended without pay, effective immediately, for substandard work and suspected theft of services. (Findings of Fact, No. 1.) By letter dated September 21, 2010, Ruschman notified Petitioner of the charges against him and offered him the opportunity to respond to the charges by October 1, 2010. (Findings of Fact, No. 142.) On October 8, 2010, Ruschman received Petitioner's written response, which did not address most of the charges. (Findings of Fact, No. 143.)

By letter dated October 18, 2010, the County notified Petitioner that he was being removed from his position as County Caseworker 2 for violating County policies as well as state regulations. The County alleged that, between January 2010 and May 2010, Petitioner falsified monthly mileage reimbursement records and time

³ The Commission outlined the discrepancies in Petitioner's records, which are too numerous to summarize here, at pages 15 through 38 of its Adjudication.

reports, failed to perform work he claimed to have completed, and fabricated documentation pertaining to such work. (Findings of Fact, No. 2.)

Petitioner appealed his removal to the Commission, which held a two-day evidentiary hearing. The County presented eight witnesses, including Ruschman and Schienholz. Ruschman testified about the structure of the Unit, the policies applicable to County employees, and his involvement in the investigation and removal of Petitioner. (N.T., 2/14/11, at 17-29.) Schienholz testified about the procedures governing reimbursement for caseworkers' travel expenses and the specific discrepancies in Petitioner's records from January through April 2010. (*Id.* at 57-86.)⁴ Christoph Broubalow, another County witness, testified that he has worked for the County since March 2003 and has been a caseworker since June 2010. (*Id.* at 136.) After Petitioner's removal, Broubalow assumed responsibility for six of Petitioner's cases and discovered deficiencies in how Petitioner had managed them. (*Id.* at 137, 143.) Broubalow testified that several children did not even know who Petitioner was. (*Id.* at 143-44.)

Petitioner testified that he worked for the County for five years and that he had more cases than the other caseworkers. (*Id.*, 2/15/11, at 295, 324-25.) Regarding the discrepancies in his records, Petitioner testified that he never intended to do anything inappropriate. (*Id.* at 334.) Petitioner testified that he met with his clients on a monthly basis. (*Id.* at 344.) Sometimes the facilities requested that he

⁴ For example, on his January 2010 travel reimbursement form, Petitioner claimed to have traveled 168 miles to Paoli, Pennsylvania, for a hospital visit on January 8, 2010; however, none of Petitioner's clients was hospitalized in Paoli on that date. (*See* N.T., 2/14/11, at 59.)

sign in, but other times the facilities allowed him to enter without signing in. (*Id.* at 319.) Regarding his mileage reimbursement for a trip to Bayonne, New Jersey, Petitioner testified that he went there to meet his client's sister. (*Id.* at 300.) He explained that it was typical for a caseworker to meet with a family member and not the client. (*Id.* at 343.) When asked about client S.J.'s testimony that Petitioner did not visit her on the dates indicated on his time sheets, Petitioner testified that S.J. was lying. (*Id.* at 354.)

On cross-examination, Petitioner acknowledged that he made "an honest mistake and a typo" about claiming mileage reimbursement for a trip to Macungie, Pennsylvania, on January 18, 2010. (*Id.* at 341.)⁵ Petitioner further testified that he believed that his removal was a "malicious and blatant attack" on his morality and work ethic. (*Id.* at 333, 362.)

After the hearing, the Commission dismissed Petitioner's appeal and sustained the County's decision. In concluding that the County established just cause for Petitioner's removal, the Commission stated:

The appointing authority has provided credible and legitimate, merit-related reasons for removing [Petitioner]. We find that the decision to remove [Petitioner] resulted from a discovery while [Petitioner] was on vacation that he had falsified records and failed to perform his duties as a

⁵ Schienholz testified that Petitioner indicated on his travel reimbursement form that he traveled to Macungie on January 18, 2010, for a family visit and sought reimbursement for 51 miles. However, no caseworkers worked that day because it was Dr. Martin Luther King, Jr. Day. In fact, the holiday was noted on both Petitioner's time report and his daily attendance sheet. (N.T., 2/14/11, at 63.)

Caseworker 2, both in clear violation of the appointing authority's policies.

(Adjudication at 67.) The Commission specifically found all of the County's witnesses credible and found Petitioner not credible. (*Id.* at 64.) The Commission concluded:

To the extent [Petitioner] has provided explanations for some of the discrepancies in his records, we find these explanations are neither persuasive nor exculpatory. We are struck by both the volume and breadth of the inconsistencies in [Petitioner's] documentation, and we reject [Petitioner's] assertion that these were simple "errors." **An objective review of the evidence reveals a profound dereliction of [Petitioner's] duty to perform required visits to vulnerable individuals placed in the foster care system, and deliberate and systematic falsification of mileage reimbursement records, time reports, and contact sheets in violation of applicable policies.** This misconduct clearly goes directly to the heart of [Petitioner's] competency and ability to perform his duties as a Caseworker 2, and establishes just cause for his removal.

(*Id.* at 64-65 (emphasis added).) Petitioner now seeks review of that decision.⁶

On appeal, Petitioner asserts that the County failed to establish just cause for his removal.⁷ We disagree.

⁶ Our scope of review is limited to determining whether the Commission's factual findings are supported by substantial evidence, whether the Commission committed an error of law, or whether the Commission violated constitutional rights. *Perry v. State Civil Service Commission (Department of Labor and Industry)*, 38 A.3d 942, 947 n.3 (Pa. Cmwlth. 2011).

⁷ Petitioner also asserted a claim of discrimination before the Commission; however, he has abandoned that claim on appeal.

In an appeal challenging the removal of a regular status employee, the appointing authority has the burden of proving just cause for the removal. *Pennsylvania Board of Probation and Parole v. State Civil Service Commission (Manson)*, 4 A.3d 1106, 1111 n.8 (Pa. Cmwlth. 2010). The appointing authority must demonstrate that the actions resulting in removal were related to the employee's job performance and touched in some rational and logical way on the employee's competence and ability. *Id.* at 1112. The determination of what constitutes just cause is primarily within the discretion of the department head. This court has recognized, however, that the cause should be personal to the employee and render the employee unfit for his or her position. *Id.*

Here, Petitioner asserts that the County failed to prove that it had a policy requiring that an employee's mileage records match the sign-in/sign-out sheets or that he knew of such a policy. He also asserts that certain forms were completed by the department secretary and that she was responsible for some of the discrepancies.⁸ However, the Commission specifically found that the County's

⁸ Petitioner testified as follows:

Q. So when you have all these inconsistencies on your sign-in/sign-out sheets compared to your travel reimbursement forms compared to your family contact sheets, are you claiming a large amount of that was due to [the secretary's] oversight or negligence?

A. Miscommunication.

Q. By whom?

A. On her part.

(Footnote continued on next page...)

Employee Policies Manual provides that “a signature on a time report constitutes the employee’s verification that the hours are accurate.” (Findings of Fact, No. 20.) The Employee Policies Manual also provides that “[c]areless, fraudulent, or negligent submission of reimbursement forms may require financial restitution to the County by the employee and may result in disciplinary action up to and including possible termination of employment.” (Findings of Fact, No. 28.) Both Ruschman and Schienholz testified about these and other County policies and the state-mandated records that caseworkers are required to maintain. The Commission found both witnesses credible, and we will not disturb those credibility determinations on appeal. *See Perry v. State Civil Service Commission (Department of Labor and Industry)*, 38 A.3d 942, 948 (Pa. Cmwlth. 2011) (stating that determinations of witness credibility and resolution of evidentiary conflicts are within the sole province of the Commission).

(continued...)

Q. On her part?

A. And on the administration’s part for having one staff member handle so much information.

Q. Was any of this your fault?

A. No, sir. I will not accept responsibility for blatant facts.

(N.T., 2/15/11, at 361 (emphasis added).)

Petitioner also claims that any inaccuracies in his records should have been discovered by his supervisors at the time he submitted the documents.⁹ This claim is entirely without merit. The overwhelming evidence showed that Petitioner did not make many of the client visits he claimed to have made and did not take many of the trips he claimed to have taken. Yet Petitioner was paid for his time and received significant sums of reimbursement for his mileage.¹⁰ As the Commission cogently explained:

An employee cannot evade responsibility for submitting inaccurate and/or untruthful information in work-related records simply because it was not discovered by a supervisor, particularly when the supervisor did not have prior notice of problems with the employee's records. Both Schienholz and Ruschman explained what they did upon discovering that there were problems with [Petitioner's] caseload, and we find their steps were reasonable.

(Adjudication at 66.) Again, the Commission credited the testimony of both witnesses, and we will not disturb those findings.

We agree with the Commission that Petitioner's misconduct went "directly to the heart of [his] competency and ability to perform his duties as a Caseworker" to children with multi-disciplinary needs. (Adjudication at 65.)

⁹ According to Petitioner, Schienholz did not begin to scrutinize his travel documents until June 2010 and only did so "to dig to find something" negative about him. (N.T., 2/15/11, at 330.)

¹⁰ In January 2010, Petitioner claimed to have traveled 1,431 miles and was reimbursed \$717.00. In February 2010, Petitioner claimed to have traveled 1,444 miles and was reimbursed \$722.00. In March 2010, Petitioner claimed to have traveled 1,563 miles and was reimbursed \$781.50. In April 2010, Petitioner claimed to have traveled 1,374 miles and was reimbursed \$687.00. (Adjudication at 45-46.)

Because we conclude that the evidence credited by the Commission was more than sufficient to establish just cause for Petitioner's removal, we affirm.¹¹

ROCHELLE S. FRIEDMAN, Senior Judge

¹¹ In the argument section of his brief, Petitioner also claims that the County violated the Act by failing to follow the proper disciplinary procedure. (*See* Petitioner's Br. at 13-14.) Petitioner, however, failed to raise this claim in his statement of questions involved on appeal. Therefore, it is waived. *See* Pa. R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.")

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State Civil Service Commission	:
(Northampton County Department	:
of Human Services),	:
	:
Respondent	:

ORDER

AND NOW, this 29th day of June, 2012, we hereby affirm the October 7, 2011, order of the State Civil Service Commission.

ROCHELLE S. FRIEDMAN, Senior Judge

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HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**CONCURRING OPINION
BY JUDGE COHN JUBELIRER**

FILED: June 29, 2012

Although I agree with the majority opinion that there is substantial evidence to support the finding of just cause in this matter, I respectfully disagree that Petitioner waived the argument that his suspension exceeded that allowed by Section 803 of the Act, 71 P.S. § 741.803. Instead, I believe this issue was preserved because Petitioner raised the issue before the Commission, it can be found in his Statement of Questions Involved, and Employer did not assert that the issue was waived in either of its briefs to this Court. I would, therefore, reach the merits of his argument.

Section 803 of the Act allows for a maximum of 60 days suspension in a given year pending an internal investigation, and Petitioner argues that he was suspended for 126 days before his removal. The Commission’s regulation states that “[w]hen the investigation has revealed cause for disciplinary action, the suspension *shall be converted*, either in whole or in part, to a disciplinary action.” 4 Pa. Code § 101.21(b)(2) (emphasis added). The Commission, in accordance with the regulation, determined that Petitioner’s suspension converted into the disciplinary action, i.e., his removal, as of June 14, 2010, the first day of his suspension. (Commission’s Adjudication at 1 n.1.) In support of his argument, Petitioner relies on our Supreme Court’s decision in Woods v. State Civil Service Commission, 590 Pa. 337, 912 A.2d 803 (2006), in which our Supreme Court refers to the limits on the number of days that a civil service employee can be suspended. However, Woods is distinguishable because there was no evidence of the result of the internal investigation or that the employee’s removal was based on the outcome of such an investigation. Id. at 348, 912 A.2d at 810. Because there was no evidence of the disciplinary action in Woods, there could be no conversion of the suspension under 4 Pa. Code § 101.21(b)(2). I would, therefore, find that the Commission correctly analyzed this issue and affirm that there was no violation of Section 803 of the Act. Because I would reach the merits of Petitioner’s claim, I write separately while concurring in the majority’s opinion.

RENÉE COHN JUBELIRER, Judge