IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kathleen A. White, Petitioner	:	
v.	:	No. 271 C.D. 2010
State Civil Service Commission (Pennsylvania Board of Probation and Parole), Respondent	:	Submitted: November 5, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: April 14, 2011

Kathleen A. White petitions for review of an order of the State Civil Service Commission (Commission) that dismissed White's appeal of her one-day suspension from her employment as a Clerk Typist with the Pennsylvania Board of Probation and Parole (Board). Also before this Court is White's Application for Relief. We deny White's Application for Relief, and affirm the Commission's order.

White works as a Clerk Typist 2 for the Board. As a result of incidents occurring on or around June 18, 2009, White was alleged to have engaged in inappropriate and unprofessional conduct in her interactions with the

Board's office cleaning staff.[1] Specifically, White was alleged to have used disrespectful and profane language in dealing with a Board/PEP janitor, and two of the janitor's supervisors, in violation of the Board's Code of Conduct (hereinafter, the Board's Code).[2] After these incidents, the Board held a fact-finding meeting conducted by Thomas Costa, the Board's Eastern Regional Director and White's supervisor. That meeting was also attended by White and Mr. Powell,[3] to whose presence White objected; White left the meeting before its conclusion due to Powell's attendance.

Subsequently, White was issued a one-day suspension from her position by letter from the Board dated August 13, 2009, for a violation of Sections B.4.a and B.4.b of the Board's Code (generally, stating an expectation of respect and proper and professional conduct with co-employees and the public, and an intolerance of unacceptable conduct and/or insolence). White timely appealed to the Commission pursuant to the Civil Service Act (Act),[4] and a hearing ensued at which White appeared *pro se*. Following its receipt of evidence and testimony from both parties, the Commission thereafter issued an Adjudication and Order

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[1] The Board's cleaning personnel work directly for Programs Employing People (PEP), which is a non-Commonwealth work program designed to employ people with disabilities. PEP is contracted by the Commonwealth to clean the Board's facilities, and PEP maintains an office space in the building that the Board occupies.

[2] The Board's Code can be found in the Certified Record (C.R.) at Item 1, Ex. AA-1.

[3] Neither Powell's first name, nor his specific position with the Board, is identifiable from the record, beyond Costa's general testimony that Powell worked for him.

[4] Act of August 5, 1941, P.L. 752, as amended, 71 P.S. §§ 741.1 – 741.1005.

dated January 29, 2010, dismissing White's appeal and sustaining the Board's one-day suspension.

In part relevant hereto, the Commission found that White had been provided with a copy of the Board's Code, and had signed an acknowledgment that she had read and received the Code. Commission Adjudication and Order (hereinafter, Adj.) at 2. The Commission found that White had been previously counseled for inappropriate and unprofessional conduct in January, 2009, and had been issued a reprimand for violating Sections B.4.a and B.4.b on April 2, 2009, due to inappropriate and unprofessional conduct with a fellow Board employee. Adj. at 3.

In relation to the incidents at issue herein, the Commission found that White verbally disrespected and cursed at Derrick Williams, a PEP/Board janitor, and at two of his PEP supervisors, on two occasions on June 18, 2009, when Williams and his supervisors were not performing their duties to White's satisfaction in an office, and in a restroom. Adj. at 4-7. In addition to the cursing, the Commission found that White told Williams that disabled state employees/persons "don't need to be here" and "shouldn't be here." Adj. at 6-7.

In her testimony to the Commission, White denied using profanity, asserted that Williams was fabricating the reported events, and asserted that Williams was retaliating against her because she had refused to give him money. White testified that it was Williams, on the date in question, that used profanity in complaining about a fellow worker. White also objected to the presence of Powell in her fact-finding meeting, in that Powell was a Board employee with whom she

did not get along. White argued that she was denied an opportunity to review witness statements and other documents related to the fact-finding meeting, and thusly could not properly respond to the charges against her.

The Commission found the testimony of Williams and one of his involved supervisors, Patricia Pittman, to be more credible than the testimony of White. The Commission concluded that the Board's evidence was sufficient to support the charges that White had engaged in inappropriate and unprofessional conduct with the cleaning staff, and that White had used profanity in the two confrontations in the Board offices, and in the restroom. The Commission further concluded that no procedural error had been made in the Board's fact-finding process. Thusly, the Commission concluded that the Board presented evidence establishing good cause for suspension pursuant to Section 803 of the Act, 71 P.S. §741.803.[5] White now petitions for review of the Commission's order.

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[5] Section 803 of the Act reads:

> Suspension
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> An appointing authority may for good cause suspend without pay for disciplinary purposes an employe holding a position in the classified service. Suspensions, including suspensions pending internal investigation, shall not exceed sixty working days in one calendar year; however, suspensions pending investigation by external agencies may be maintained up to thirty working days after conclusion of the external investigation. No person shall be suspended because of race, gender, religion or political, partisan or labor union affiliation. What shall constitute good cause for suspension may be stated in the rules. An appointing authority shall forthwith report to the director in writing every suspension, together with the reason or reasons therefor, and shall send a copy

(Continued....)

Our scope of review is limited to a determination of whether the Commission committed an error of law, whether there has been a violation of constitutional rights, or whether there is substantial evidence to support the findings of fact necessary to support the adjudication. Wernersville State Hospital v. Peters, 659 A.2d 67 (Pa. Cmwlth. 1995).

As a prefatory matter, White has filed an Application for Relief seeking to strike the Board's brief in this matter due to an untimely filing. White argues that pursuant to this Court's scheduling order the Board's brief was due on October 17, 2010, and that the brief was actually filed, and time stamped, on October 18, 2010. However, Section 1908 of the Statutory Construction Act of 1972,[6] relating to the computation of time, omits the last day of a time period which falls on a Saturday or Sunday. See also Howard v. Rendell, 957 A.2d 332 (Pa. Cmwlth. 2008). As October 17, 2010, fell on a Sunday, the Board's brief was timely filed. As such, we deny White's Application for Relief.

In her appeal, White presents 31 separate Questions Presented over three pages, in violation of Pennsylvania Rule of Appellate Procedure 2116(a).[7]

> of such report to the suspended employe. Such report shall be made a part of the commission's public records.

[6] Pennsylvania Rule of Appellate Procedure 107 incorporates by reference the rules of construction found in Chapter 19 of the Statutory Construction Act of 1972, 1 Pa. C.S. §§1901-1991.

[7] Pa.R.A.P. 2116(a) states:

> Statement of Questions Involved

(Continued....)

While this Court is mindful of the difficulties facing a *pro se* party in appeals hereto, we have also repeatedly emphasized that a layperson who chooses to represent herself in a legal proceeding must assume the risk that her lack of expertise and legal training may prove to be her undoing. Finfinger v. Unemployment Compensation Board of Review, 854 A.2d 636 (Pa. Cmwlth. 2004). Notwithstanding that axiom, however, we will address White's Questions Presented to the extent that effective appellate review is possible.[8]

> (a) General rule. **The statement of the questions involved must state concisely the issues to be resolved**, expressed in the terms and circumstances of the case but **without unnecessary detail**. **The statement shall be no more than two pages** and will be deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby. **Each question shall be followed by an answer stating simply whether the court or government unit agreed, disagreed, did not answer, or did not address the question.** If a qualified answer was given to the question, appellant shall indicate the nature of the qualification, or if the question was not answered or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

(Emphasis added.) The explanatory note to Pa.R.A.P. states, in relevant part:

> Appellate courts may find issues to be waived when they are not set forth in compliance with the Rules of Appellate Procedure. The increase from one to two pages should provide ample space for most parties to articulate their questions in an informative yet concise manner. A party requiring more than two pages for a statement of questions should file an application under Pa.R.A.P. 123 asking for extra pages, explaining why additional pages are needed, and attaching the proposed questions to the application.

[8] Several of White's Questions Presented are not actually questions; these statements will

(Continued....)

White presents the following issues, as aggregated: that the Commission erred in upholding the Board's one-day suspension; that White was denied an ability to see her "case file" and/or the allegations prior to the Board's fact finding meeting, and/or that White was denied any "opportunities" during the Board meeting; that the record evidence insufficiently supports the violations found; that the discipline at issue was retaliatory and/or vindictive, and; that the Commission failed to review an incident where White's supervisor passed along a photo of the seven dwarves making accusations about women in menopause. White has waived all of these issues by failing to present any actual argument in support thereof. Some of the foregoing issues are not addressed in any way in the remainder of White's brief. To the extent that White has addressed the foregoing issues in her brief, that address is limited to a mere sentence restating the purported issue as a statement, with no developed argument, and no citation to legal principles, statute, precedent, or the record. Issues raised in a party's Statement of Questions, but not thereafter addressed or developed within the argument section of the brief, are deemed waived. Borough of Ulysses v. Mesler, 986 A.2d 224 (Pa. Cmwlth. 2009).

Our further review of White's brief hereto, and the record in this matter, reveal that the remainder of White's Questions Presented are all variations on two general issues: that the evidence was not properly weighed in White's

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not be addressed herein. White's remaining Questions have been reordered in the interests of clarity.

favor, and that the credibility determinations of the Commission were incorrect. These issues are not within this Court's scope of review.

As the Commission's Adjudication expressly details, with specific citations to the record, conflicting evidence exists contradicting each of the presented Questions advanced by White herein. As such, White's scant argument on these issues amounts to mere requests for this Court to reweigh the evidence presented, and/or to revisit the credibility determinations made by the Commission. It is axiomatic that the Commission is the sole fact finder in civil service cases, and has exclusive authority to assess witness credibility, and to resolve evidentiary conflicts. Pennsylvania Board of Probation and Parole v. State Civil Service Commission, 4 A.3d 1106 (Pa. Cmwlth. 2010). As such, we will not disturb the Commission's credibility determinations or reweigh the conflicting evidence presented.[9]

Accordingly, we affirm.

JAMES R. KELLEY, Senior Judge

[9] Despite White's reliance on the selected testimony and evidence of record that she argues favors her view of the incidents at issue, it is axiomatic that in determining whether substantial evidence supports a finding of fact, it is irrelevant that the record reveals evidence that would support a contrary finding; the relevant inquiry is whether the record contains substantial evidence supporting the actual findings that were made. Westmoreland County v. Workers' Compensation Appeal Board (Fuller), 942 A.2d 213 (Pa. Cmwlth. 2008). Our review of the record *sub judice* reveals substantial evidence supporting all of the Commission's findings. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. City of Philadelphia v. Civil Service Commission, 965 A.2d 389 (Pa. Cmwlth. 2009).

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O R D E R

AND NOW, this 14th day of April, 2011, Petitioner's Application for Relief is denied. Further, the order of the State Civil Service Commission dated January 29, 2010, at Appeal No. 26319, is affirmed.

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JAMES R. KELLEY, Senior Judge