

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kathy DiMenichi, :
Petitioner :
 :
v. : No. 971 C.D. 2012
 : Submitted: November 2, 2012
State Civil Service Commission :
(Department of Labor and Industry), :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: November 30, 2012

Kathy DiMenichi (DiMenichi), *pro se*, petitions for review of an order of the State Civil Service Commission (Commission) denying her appeal, without a hearing, of her dismissal from probationary employment with the Department of Labor and Industry (Department) because she failed to allege specific acts of discrimination in her appeal request from. For the reasons that follow, we affirm.

DiMenichi was employed by the Department on a probationary basis as a Civil Service Unemployment Compensation (UC) Claims Intermittent Intake Interviewer in the Allentown UC Service Center. On February 16, 2012, DiMenichi received an Interim Employee Performance Report (EPR) informing her that she needed to improve her work performance to successfully complete her probationary

period.¹ Because DiMenichi ultimately failed to achieve a satisfactory level of performance, the Department dismissed her from probationary employment.

DiMenichi appealed her termination to the Commission. On her appeal request form, DiMenichi stated that her dismissal was improper because “refresher training was never given” and because she “endured contradictory instructions, lack of direction, etc.” (Certified Record at 1). DiMenichi left blank Part III of the appeal request form where allegations of alleged discriminatory actions and the type of discrimination alleged were to be set forth. She attached an eight-page document to her appeal request form in which she described various incidents preceding her removal from employment. The Commission, without a hearing, denied DiMenichi’s appeal because she “has not indicated acts, which, if proven, would constitute discrimination although requested to do so on the Appeal Request Form.” (Certified Record at 2). DiMenichi then petitioned for review in this Court claiming that she “never received the training requested and at least 3 or 4 other people did.” (May 23, 2012 Petition for Review at 1).²

A probationary status civil service employee does not enjoy the job security afforded persons on regular status, who may be removed only for just cause.

¹ Specifically, the EPR indicated that DiMenichi needed improvement in the following areas: job knowledge/skills, work results, communications, initiative/problem solving and work habits.

² Our scope of review of a determination of the Civil Service Commission is limited to determining whether constitutional rights have been violated, an error of law has been committed and whether necessary findings of fact are supported by substantial evidence. *Williams v. State Civil Service Commission*, 811 A.2d 1090, 1092 n.1 (Pa. Cmwlth. 2002).

Section 603(a) of the Civil Service Act (Act);³ *Norristown State Hospital v. Bruce*, 450 A.2d 1093, 1094 (Pa. Cmwlth. 1982). However, a probationary employee may seek administrative and judicial review of his or her dismissal if he or she alleges that the action was based upon unlawful discrimination which is set forth in Section 905.1 of the Act.⁴ That section provides:

No officer or employee 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. Under the Commission's regulations, the Commission may dismiss an appeal when an aggrieved party fails to allege discrimination with sufficient specificity.⁵

³ Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §741.603(a), provides, in relevant part:

No appointment to a position in the classified service shall be deemed complete until after the expiration of a probationary period....At any time during the probationary period, the appointing authority may remove an employe if in the opinion of the appointing authority the probation indicates that such employe is unable or unwilling to perform the duties satisfactorily or that the employe's dependability does not merit continuance in the service.

⁴ *Added by* Act of August 27, 1963, P.L. 1257.

⁵ The Commission's regulations at 4 Pa. Code §105.12, provide, in relevant part:

(Footnote continued on next page...)

A review of DiMenichi's appeal request form, including the attachment, shows that it does not set forth a cognizable claim of discrimination. The place on the form where claims of discrimination are to be made was left blank. The attachment, while providing great detail regarding the circumstances leading up to her removal from employment, only describes numerous incidents in which she was allegedly reprimanded by her supervisors; provides several examples of instances in which she received contradictory instructions; alleges that she did not receive refresher training as promised in the EPR; and lists a number of positive work habits and steps she took in order to improve her performance. None of those claims allege that DiMenichi was treated differently than others similarly situated or how any allegedly different treatment constituted discrimination. Because there was nothing alleged that constituted illegal discrimination, the Commission properly dismissed her appeal without a hearing. Accordingly, the Commission's order is affirmed.

DAN PELLEGRINI, President Judge

(continued...)

(c) Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the appeal form include:

- (1) The acts complained of.
- (2) How the treatment differs from treatment of others similarly situated.
- (3) When the acts occurred.
- (4) When and how the appellant first became aware of the alleged discrimination.

