

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Valerya McGriff,	:	
Petitioner	:	
	:	
v.	:	No. 345 C.D. 2012
	:	SUBMITTED: January 11, 2013
State Civil Service Commission	:	
(Department of Public Welfare),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: May 30, 2013

Valerya McGriff petitions *pro se* for review of an order of the State Civil Service Commission (Commission) that dismissed her appeal challenging her removal from employment as a regular income maintenance caseworker with the Department of Public Welfare at its Philadelphia County Assistance Office (PCAO). We affirm.

McGriff worked for PCAO as an income maintenance caseworker for approximately eighteen years. PCAO “is responsible for overseeing the delivery of cash, medical and food stamp benefits to clients within its designated area” Commission’s Finding of Fact No. 5. McGriff was last assigned to the food stamp unit of the Ridge/Tioga District, one of PCAO’s ten districts.

In March 2011, PCAO issued an email to a group of employees, including McGriff, which provided: “This is to inform staff that the following booth is strictly for the issuing of [SEPTA TransPasses]. Please do [not] have clients in booth 29 unless all other booths are being used.” November 4, 2011 Hearing, Appellant’s Exhibit 3. On June 8, 2011, the officer manager advised McGriff’s superiors that he had observed McGriff using the dedicated booth and that all of the other booths were vacant. When confronted, McGriff advised her superiors that “she would continue to use the booth and that it was foolishness to require that other booths be used.” Finding of Fact No. 9. Later that morning, McGriff’s superiors again advised her not to use the booth and she once more indicated her refusal to comply with the directive and characterized it as foolish. Accordingly, the director of human resources in a June 10th letter advised McGriff that a pre-disciplinary conference would be held on June 24th to examine the charges stemming from the June 8th incidents.

On June 17th, prior to the pre-disciplinary conference, the district administrator met with McGriff and advised her that her actions violated a policy that he had implemented. She told him that his policies were ludicrous and foolish and that she would continue to service her clients. At the conclusion of that initial meeting, the district administrator concluded that McGriff’s actions and attitude warranted termination. The subsequent pre-disciplinary conference confirmed his belief.¹ At that conference, McGriff submitted and read aloud a letter wherein she reiterated her refusal to comply with the booth policy and asserted that “servic[ing]

¹ A review of McGriff’s files prior to the pre-disciplinary conference indicated that she had been the subject of sixteen previous disciplinary actions, dating from March 2006 to March 2011.

a client according to [Department of Public Welfare] policy and procedures does not constitute a charge of failure to follow instruction[.]” Appointing Authority’s Exhibit 18. Having concluded that McGriff was unwilling to comply with any established policies and procedures, the district administrator initiated the steps necessary for her removal from employment.

In August 2011, PCAO advised McGriff that it was removing her from her position for failure to follow instructions, insubordination and unprofessional conduct. In its letter, PCAO specified the offending conduct:

[O]n June 8, 2011[,] you were instructed to not use the interviewing booth that is used to issue the Septa Transportation Allowances and you responded in a [sic] unprofessional manner stating “I already told you that I will utilize that booth because it’s the closest one from the corridor and the rule in place is pure foolishness.” You continued to repeat “I will use the booth Ms. Velazquez, so you might as well do what you have to do.” You were also given a directive and you refused to follow the directive by stating “I already told you that I will continue to use that booth, I told you to do what you have to do and then I will e-mail the secretary of the state all the way to the governor’s office if I have to.”

Appointing Authority’s Exhibit A at 1. Upon McGriff’s timely appeal from her removal, the Commission conducted a hearing at which both parties appeared and presented evidence. Ultimately, the Commission dismissed McGriff’s appeal, concluding that PCAO established just cause for her removal from employment and that she failed to present evidence establishing illegal discrimination as a basis for the removal.² McGriff’s timely appeal to this Court followed.

² Pursuant to 4 Pa. Code § 105.5, which requires advance notice of at least one workday for personnel actions, the Commission directed PCAO to modify its records to reflect August 3, **(Footnote continued on next page...)**

Section 807 of the Civil Service Act (Act), Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. § 741.807, provides that “[n]o regular employe in the classified service shall be removed except for just cause.” Although the Act does not define just cause, courts have held that it relates to merit and touches upon the competency and ability of an employee to perform her duties in a rational and logical manner. *Pa. Bd. of Prob. & Parole v. State Civil Serv. Comm’n*, 4 A.3d 1106, 1112 (Pa. Cmwlth. 2010). The appointing authority has the burden to demonstrate just cause. *Id.* at 1111 n.8. Further, the Commission is the sole fact-finder and has exclusive authority to assess the credibility of witnesses and resolve the evidentiary conflicts. *Perry v. State Civil Serv. Comm’n (Dep’t of Labor & Indus.)*, 38 A.3d 942, 948 (Pa. Cmwlth. 2011). As an appellate court, we cannot reweigh the evidence or substitute our judgment regarding which witnesses to believe. *Id.* Whether the employee’s actions constitute just cause for removal, however, is a question of law subject to our plenary review. *Pa. Bd. of Prob. & Parole*, 4 A.3d at 1112.

In the present case, McGriff indicated her awareness of the directive at issue when she submitted a copy of the March 2011 email at the hearing as Appellant’s Exhibit 3. Further, she acknowledged that she failed to follow the directive, characterizing it as either foolish or ludicrous. November 4, 2011 Hearing, Notes of Testimony (“N.T.”) at 164. Indeed, PCAO’s witnesses, whose testimony the Commission accepted as credible, testified as to McGriff’s repeated refusal to comply with the directive and her response to their reminders regarding

(continued...)

2011, rather than August 2, 2011, as the effective date of McGriff’s removal. Further, it directed that McGriff be awarded backpay for the one day of improper removal.

use of the booth. Just cause has been found where employees failed to follow direct orders, refused to cooperate with the administration, demonstrated an inability to get along with others, made derogatory comments about their co-workers and administration, and performed their work in a manner that impeded the functions of the agency.³ We conclude that the Commission's findings support the legal conclusion that McGriff's defiant and admittedly persistent refusal to comply with a clear directive was both unprofessional and insubordinate and constituted just cause for her removal.

Moreover, we reject McGriff's attempt to justify her refusal on the grounds that the directive was contrary to department policy and procedure. The district administrator's directive was in the nature of a managerial prerogative and her refusal to recognize his authority was, quite simply, insubordination. Indeed, this case presents a classic example of insubordination, which "denotes either disobedience or defiance or contempt of authority and is quite literally an unwillingness to submit oneself to the authority of organizational superiors." *McCain v. Dep't of Educ., East Stroudsburg State College*, 454 A.2d 667, 669 (Pa. Cmwlth. 1983). As we further noted in *McCain*:

Supervisors, selected by the appointing authority, may rightfully expect from their subordinates an outward display of respect and courtesy even if such display is

³ See, e.g., *Gonzales v. Dep't of Pub. Welfare*, 408 A.2d 893, 895 (Pa. Cmwlth. 1979) (holding there was just cause to remove an employee who refused to leave the employer's premises after being instructed to do so); *Kachmar v. Dep't of Pub. Welfare*, 559 A.2d 606, 609 (Pa. Cmwlth. 1989) (holding there was just cause to remove an employee who had been counseled about her attitude in the past and made derogatory comments about the staff and administrators during an orientation program she conducted for new hires); *Dep't of Health v. Howell*, 354 A.2d 21, 24 (Pa. Cmwlth. 1976) (holding that the inability to get along with others is just cause for removal).

bottomed on no more than the participants' relative organizational status. A superior need not countenance disrespect or contumacy from employees who believe, rightly or wrongly, that the supervisor is undeserving of his command position. A subordinate's failure to comply with this standard of behavior is insubordination.

Id. at 670.

Finally, we agree with the Commission that McGriff failed to establish her claim of discriminatory or retaliatory removal. A party asserting improper grounds has burden of proving her claim. *Pa. Bd. of Prob. & Parole*, 4 A.3d at 1111 n.7. McGriff in her appeal request form marked the box indicating that her discrimination claim was premised on "violation of Civil Service Act/rules." Appointing Authority's Exhibit B. In her attachment to that form, she described the appointing authority's alleged personal vendetta against her and essentially characterized its actions as retaliatory. At the hearing, however, she failed to present evidence supporting her claim of retaliation.

Accordingly, inasmuch as the credited evidence supports the Commission's findings and the hearing was devoid of error, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

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 v. : No. 345 C.D. 2012
 :
 :
 State Civil Service Commission :
 (Department of Public Welfare), :
 Respondent :

ORDER

AND NOW, this 30th day of May, 2013, the order of the State Civil Service Commission is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge