

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin Wynn,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
State Civil Service Commission	:	
(Department of Health),	:	No. 475 C.D. 2013
Respondent	:	Submitted: August 30, 2013

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: October 25, 2013

Kevin Wynn (Wynn) petitions this Court for review of the State Civil Service Commission’s (Commission) March 1, 2013 order that sustained the decision of the Department of Health (Department) removing him from his position as a regular status Laboratory Examiner.<sup>1</sup> Wynn raises three issues for this Court’s review: (1) whether the Department sustained its burden of proving just cause to terminate his employment; (2) whether the Commission committed reversible error when it admitted and considered a Federal Monitoring Report that was not properly authenticated and contained hearsay; and, (3) whether the Commission erred when it denied Wynn’s request to present evidence of alleged bias and discrimination. We affirm.

The Department employed Wynn as a regular status Laboratory Examiner from August 1989 until March 18, 2011. Wynn’s direct supervisor was

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<sup>1</sup> At the hearing before the Commission, the parties used the terms “laboratory inspectors,” “laboratory surveyors” and “laboratory examiners” interchangeably.

Melissa Sealie (Sealie), the Department's Laboratory Improvement Division's Laboratory Examiner Section Supervisor. Wynn's job duties included inspecting clinical laboratories to confirm compliance with state and federal standards. Although different policies and procedures apply under the state Clinical Laboratories' Regulations<sup>2</sup> than the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA),<sup>3</sup> the reviews may be performed simultaneously. After completing inspections, Laboratory Examiners return to the office and enter inspection information into the state "Starlink" computer system which, according to the record, generates the appropriate forms and letters. If a Laboratory Examiner determines a laboratory to be compliant with state law, a letter of compliance is placed in Sealie's bin for her review along with the lab folder for her review. In contrast, Laboratory Examiners who conclude laboratories are not in compliance with state law prepare and send the laboratory a deficiency letter. Under the Federal CLIA program, Federal inspectors may conduct simultaneous or after-the-fact (look-behind) surveys during which they review and verify information gathered by the state Laboratory Examiners. Federal inspectors send these CLIA Federal Monitoring Reports (Federal Report) based upon look-behind surveys to Sealie who uses them to assess her employees' job performance.

On March 11, 2010, Wynn conducted a state and federal compliance survey at the Mariette Austin, Ph.D., M.D. Laboratory (Austin Laboratory). Wynn recorded that he spent 45 minutes at the Austin Laboratory and found no deficiencies. In January 2011, Sealie received a Federal Report following a look-behind survey of the Austin Laboratory on June 2, 2010 that reflected significant differences with Wynn's inspection. In response, Sealie reviewed supporting documents from Wynn's

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<sup>2</sup> 28 Pa. Code §§ 5.1-5.104. The regulations were issued under The Clinical Laboratory Act, Act of September 26, 1951, P.L.1539, *as amended*, 35 P. S. §§ 2151-2165.

<sup>3</sup> 42 U.S.C. § 263a. CLIA surveys are administered by the United States Department of Health and Human Services.

March 2010 survey and compared them with the information contained in the Federal Report. Based upon her review, Sealie noted several concerns with Wynn's inspection including: Wynn's on-site survey took only 45 minutes; Wynn found no deficiencies; Wynn's submission did not include employee competency or training records for the laboratory employees; and, Wynn's submission did not include any proficiency testing information. Sealie reported her conclusions to the Department's Human Resources Unit (Human Resources), and a pre-disciplinary conference (PDC) was scheduled to address the matter.<sup>4</sup>

Sealie also notified Human Resources that issues pertaining to Wynn's 2009 laboratory survey of the Family Medical Society Laboratory (FMS Laboratory) should also be made a part of the PDC. Sealie's concerns regarding the FMS Laboratory inspection were based on a winter 2010 review of her staff's contacts with FMS, in light of the criminal investigation of FMS' Laboratory Director, Kermit Gosnell, M.D. (Gosnell).

Sealie's review of the FMS Laboratory file revealed that her staff's most recent contacts with the FMS Laboratory had been on-site surveys conducted in February 2009 and April 2009. The February 10, 2009 on-site inspection had been conducted by Wynn and a Laboratory Examiner trainee, Oyenike Oladipo (Oladipo).<sup>5</sup> The documents prepared as a result of the FMS Laboratory inspection included a record of Wynn and Oladipo's initial February 10, 2009 survey, a record indicating

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<sup>4</sup> The Department had taken prior disciplinary action against Wynn. By letter dated March 26, 2010, the Department suspended Wynn for five days for falsification of records, unsatisfactory job performance and failure to follow procedure. The letter also included a final warning of employment termination for any future falsification of records. By letter dated August 9, 2010, the Department suspended Wynn for five days for providing false information to a supervisor, being absent without approved leave and failing to follow the call-off procedure. By October 13, 2010 letter, the Department imposed an alternative discipline in lieu of a five-day suspension for unsatisfactory work performance.

<sup>5</sup> At the time of the FMS Laboratory survey, Oladipo was not authorized to independently conduct either state or federal inspections.

that Wynn conducted a federal survey of the FMS Laboratory on April 15, 2009, and a letter from Sealie, dated May 18, 2009, advising Gosnell that based upon the April 15, 2009 survey, his facility was compliant with both state and federal regulations. The May 18, 2009 letter directly contradicted a February 10, 2009 letter from Sealie that informed Gosnell that, based upon the February 10, 2009 on-site survey, the FMS Laboratory was not in compliance with state regulations.

Sealie noted that, although the only on-site inspection of the FMS Laboratory occurred on February 10, 2009, Wynn had prepared and submitted records into the federal system indicating that the Department had conducted an on-site CLIA review of the FMS Laboratory on April 15, 2009, and that no deficiencies had been found. Importantly, a CLIA review may not be performed until 90 days after the effective date on a laboratory's certificate of registration. The FMS Laboratory had allowed its license to lapse, and was required to have a CLIA survey no sooner than 90 days after the submission of its January 14, 2009 request to renew its certificate. Thus, although the CLIA review actually occurred on February 10, 2009, the use of April 15, 2009 created the appearance of compliance with the CLIA requirement because April 15, 2009 is 91 days following the January 14, 2009 effective date for the FMS Laboratory's registration.

The PDC was held on March 3, 2011. Wynn responded to concerns regarding his failure to find deficiencies at the Austin Laboratory by stating that he reviews a cross-section of the laboratory and only a portion of the personnel record. Notably, when confronted with the Federal inspector's representation that he had found no evidence of staff competency assessments since 2007, Wynn could not provide an explanation for his "OK" response to a survey question asking "are competency assessments performed semi-annually during the first year and annually thereafter?" Notes of Testimony, August 23, 2011-April 23, 2012, (N.T.) at 210, 729-730; Reproduced Record at 14. Finally, during the PDC, Wynn admitted that he was

in Pittsburgh on April 15, 2009 and did not conduct an on-site survey at the FMS Laboratory in Philadelphia on that date.

On March 4, 2011, Wynn did not report to work. Consequently, Sealie called Wynn but Wynn did not answer his telephone. Sealie left a message directing Wynn to report to work. Wynn did not return Sealie's call, but did return to work.

On March 10, 2011, a second PDC was held to further discuss Wynn's job performance and to address charges stemming from his March 4, 2011 absence. By letter dated March 16, 2011, Wynn was notified that he would be removed from his position effective at the close of business March 18, 2011. Wynn appealed his removal to the Commission. Hearings were held on August 23, 2011, October 26-27, 2011, February 23, 2012, and April 23, 2012 before a Hearing Officer. By March 1, 2013 order, the Commission dismissed Wynn's appeal and sustained the Department's action removing Wynn from his Laboratory Examiner position. Wynn appealed to this Court.<sup>6</sup>

Wynn first argues that the Department failed to meet its burden of establishing just cause to remove him from his Laboratory Examiner position. Wynn specifically contends that the Commission erroneously concluded that the Department's evidence pertaining to the Austin Laboratory inspection, the FMS Laboratory inspection, and Wynn's absence without approved leave was sufficient to establish just cause for his removal.

Wynn denies that his handling of the Austin Laboratory inspection supported the Department's charge of unsatisfactory job performance. Wynn maintains that there was no basis for the Department's assertion that he spent an insufficient amount of time performing the inspection since there is no set minimum

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<sup>6</sup> "Our review is limited to determining whether the Commission's findings were supported by substantial evidence, whether the Commission erred as a matter of law or whether it violated constitutional rights." *Perry v. State Civil Serv. Comm'n (Dep't of Labor & Indus.)*, 38 A.3d 942, 947 n.3 (Pa. Cmwlth. 2011).

time required to complete a survey. Wynn also asserts that Sealie's concerns regarding the inspection must be considered in the context of her lack of knowledge of the Austin Laboratory and her relative lack of inspection experience as compared to his.<sup>7</sup> Finally, Wynn challenges the Department's and the Commission's reliance on the Federal Report in concluding that his performance was unsatisfactory.

Wynn further contests the evidence offered by the Department pertaining to his FMS Laboratory inspection. Wynn argues that despite his entry of an inaccurate inspection date into the federal database, he never tried to mislead anyone to believe that he conducted the inspection on that date. Instead, Wynn asserts that the evidence clearly demonstrated that Sealie was aware as early as April 2009 that Wynn did not and could not have conducted an April 15, 2009 on-site inspection at FMS Laboratory because Wynn was in Pittsburgh at the time and Sealie knew his schedule. Despite this knowledge, Sealie admitted to adding a hand-written statement to Wynn's surveyor schedule in October 2009 indicating that Wynn conducted the FMS Laboratory inspection on April 15, 2009. According to Wynn, Sealie's May 18, 2009 letter to Gosnell referencing Wynn's April 15, 2009 FMS Laboratory on-site inspection demonstrates that Sealie similarly falsified documents and, thus, his conduct of entering the April 15, 2009 date into the system did not constitute just cause for removal from his position. Finally, Wynn contends that the Commission's finding that he was absent without leave was not supported by the evidence.

This Court has stated:

Section 807 of the Civil Service Act, [Act of August 5, 1941, P.L. 752, *as amended*,] 71 P.S. § 741.807, states: 'No regular employe in the classified service shall be removed

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<sup>7</sup> Wynn notes that the Department's Survey Procedures and Interpretive Guidelines for Laboratories and Laboratory Services state that "the surveyor's professional judgment is the most critical element in the survey process." Reproduced Record at 1.

except for just cause.’ The term ‘just cause’ is not defined in the Act. Just cause must be merit-related, and the criteria for determining whether an appointing authority had just cause for removal must touch upon the employee’s competency and ability in some rational and logical manner.

**What constitutes just cause for removal is largely a matter of discretion on the part of the head of the department.** However, to be sufficient, the cause should be personal to the employee and such as to render the employee unfit for his or her position, thus making dismissal justifiable and for the good of the service. Whether the actions of a civil service employee constitute just cause for removal is a question of law fully reviewable by this Court.

*Perry v. State Civil Serv. Comm’n (Dep’t of Labor & Indus.)*, 38 A.3d 942, 951 (Pa. Cmwlth. 2011) (citations, quotation marks and footnote omitted; emphasis added). It is the appointing authority’s burden to establish just cause for removal. See *Thompson v. State Civil Serv. Comm’n (Beaver Cnty. Agency on Aging)*, 863 A.2d 180 (Pa. Cmwlth. 2004). Moreover, it is well-established that:

[i]n civil service cases, the Commission is the sole fact-finder. As such, determinations as to witness credibility and resolution of evidentiary conflicts are within the Commission’s sole province, and we will not reweigh the evidence or substitute our judgment even though we might have reached a different factual conclusion. When reviewing a Commission decision, we view the evidence, and all reasonable inferences arising from the evidence, in a light most favorable to the prevailing party.

*Perry*, 38 A.3d at 948 (citations omitted).

Here, the Commission relied upon the testimony of the Department’s witnesses in concluding that Wynn’s review of the Austin Laboratory demonstrated his unsatisfactory job performance. Testifying as to her expectations of the Laboratory Examiners, Sealie stated:

[An inspector] will make sure that that lab is in compliance with all of the state or federal regulations. They are to look at proficiency testing, back to the time of the last inspection. If there was any failed proficiency testing that is citable, which it has to be a hundred percent for the state, then they need to cite that. They need to look at corrective action that the lab is putting in place.

And not only do they identify how the failure happened, but how to not have it happen again in the future. And also to do a patient look-back to make sure that none of the patients were affected by this deficient practice. **They need to make sure all of the personnel there are qualified. They need to look at transcripts, Board Certifications, anything else that can help them determine that these personnel are qualified under the state and federal regs to be doing the type of lab work that they're doing.**

N.T. at 56-57 (emphasis added). Sealie further reported as to her review of the documentation from Wynn's inspection of the Austin Laboratory on which Wynn marked no deficiencies, stating:

[T]his laboratory had several . . . failures in which there was no corrected action and should have been cited. There were no employee competency or training records, they should have been cited for that. The procedure manuals were not updated, and they were not signed off by the lab director, that would be another citation.

. . . .

[The Federal Report] told me the discrepancies between the regional officer and the lab examiner, who I supervised - - - so my investigation was into this survey folder where Mr. Wynn had put that all these things were ok, and I could not find documentation as to where they were okay.

. . . .

The proficiency testing would have definitely been inside the folder, and that was not in the folder. . . . Employee competencies and reviews, he would have noted on the quality assessment document how they qualified, were they

Board Certified, tagged, something, nothing was there, it just said okay.

N.T. at 88-92. Accordingly, Sealie concluded that Wynn “missed several condition level deficiencies that could put patients’ health in jeopardy.” N.T. at 102. Sealie also testified about her discussion with Wynn during his PDC, including her inquiry about the conflict between the Federal Report that noted a lack of staff competency assessments since 2007, and Wynn’s response of “OK” to a survey request asking whether competency assessments had been performed regularly:

Wynn was asked about how he missed these things that the federal agent saw. And Mr. Wynn replied that he doesn’t know, sometimes he sees things . . . differently than the federal regional officer does. He says he only looks at a cross section of the lab, he doesn’t have to look at it all. **He stated that he only looks at part of the personnel record. And then when it was brought to his attention that there were only two people working there, he said he doesn’t know how he missed their training and competency records.**

N.T. at 210 (emphasis added). Jerry Sheehan, the Department’s Human Resource Analyst, testified:

The determining factor, it was [the Austin] [L]aboratory inspection. We determined he had an unsatisfactory performance during that inspection. **We determined that based on the time frame that it took, 45 minutes, compared to his quality assessment document that has everything this laboratory does is either not applicable or marked off in the affirmative as okay, that it had been checked. In consulting with Ms. Sealie, we’ve determined that 45 minutes to check all those items outlined on that was not adequate,** and it was an unsatisfactory job performance.

....

The time and the depth of the survey. Those two factors combined indicated --- the amount of things indicated as

okay and the amount of time spent demonstrate an unsatisfactory job performance.

N.T. at 798-800 (emphasis added).

Although there is significant disagreement as to Wynn's responsibility for the February 2009 FMS Laboratory inspection,<sup>8</sup> Wynn admits that he knowingly misstated the date of the federal survey on documents and knowingly entered the incorrect date into the federal database. N.T. at 1085-89. Our Supreme Court has held that an employee's falsification of records constitutes just cause for removal. *Pennsylvania Game Comm'n v. State Civil Serv. Comm'n (Toth)*, 561 Pa. 19, 747 A.2d 887 (2000). Wynn's contention that Sealie's alleged knowledge of his

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<sup>8</sup> Although the deficiency report was prepared by Oladipo, she was not authorized to independently conduct either state or federal inspections. Wynn testified that Oladipo was the principal examiner for the February 2009 examination of the FMS Laboratory, and that Oladipo had requested Wynn to accompany her on the examination. N.T. at 1053-55, 1065. In contrast, Oladipo testified that she accompanied Wynn to **his** scheduled review at the FMS laboratory. N.T. at 914-15. Wynn testified that Oladipo conducted laboratory technician interviews while he obtained other information at the site. Testimony established that Wynn had previously denied conducting the proficiency testing portion of the inspection report, however, Oladipo testified that he had done so. N.T. at 967-70. Wynn also denied preparing related documents and testified that he first saw the documents when he returned from Pittsburgh and was directed by Sealie to "process the paperwork to put in the federal database for the CLIA, for Ms. Oladipo's survey." N.T. at 1070. Wynn's testimony to that effect is inconsistent with statements he made during the second PDC where he stated he did not know why he would have signed a survey report form dated April 15, 2009 indicating that he had performed a survey at FMS Laboratory on that date. Although he stated in that meeting that he would have signed if he were instructed to do so, he did not remember who would have asked him to sign, and accordingly, did not identify Sealie as that individual. N.T. at 231-32. In further contradiction to his statement at the second PDC, Wynn testified that he advised Sealie at the time of her request that he had not performed the February 2009 inspection of the FMS Laboratory, and that Oladipo had done it. According to Wynn, Sealie told him that "Oladipo couldn't do it, and therefore [Wynn] had to do it." N.T. at 1082. Wynn advised Sealie that he didn't have the relevant paperwork, and Sealie provided it to him. Wynn admitted that after consulting with Oladipo, he prepared a Statement of Deficiencies, noting a survey completion date of April 15, 2009 and concluding that the facility was in compliance, and a CLIA Survey Report Form for the FMS Laboratory also noting the date of the survey as April 15, 2009. Wynn processed the information contained in the documents in the federal database using the April 15, 2009 inspection date. Wynn claimed that he used the April 15, 2009 date to allow the computer system to process the paperwork due to FMS' registration date. N.T. at 1083-89.

falsification should somehow protect him from liability for his actions is without merit. Even if Sealie had known that Wynn had not inspected the FMS Laboratory on April 15, 2009 and had given Wynn consent or directed him to misrepresent the date of his inspection, the Department would still have just cause to remove Wynn from his position. “[A] public employee in a position of trust and oversight . . . cannot blindly follow orders which he knows or should know violates the law. ‘I was just following orders’ does not operate as a legal justification when one is in a position of oversight and responsibility . . . .” *Pennsylvania Game Comm’n*, 561 Pa. at 29, 747 A.2d at 892.

In *Pennsylvania Game Commission*, Toth, Chief of Personnel Services for the Pennsylvania Game Commission, was discharged for falsifying co-workers’ anniversary dates in the Commonwealth payroll system to increase their pay scale, despite his supervisor’s approval of his actions. The Court determined that Toth’s conduct directly undermined his job responsibility to protect the payroll system’s integrity.

Wynn attempts to distinguish *Pennsylvania Game Commission* by arguing that, in contrast to Wynn’s actions, Toth engaged in conduct “designed to benefit others in order to affect pay increases [and] was clearly an act of fraud in order to obtain some pecuniary benefit.” Wynn’s Br. at 26. Wynn further notes that Toth was charged with a crime and his supervisor who directed the conduct was also removed from his position. *Id.* Thus, Wynn argues, Toth’s actions were much more egregious. We do not find Wynn’s argument convincing.

Wynn, as a Laboratory Examiner performing both state and federal inspections, was entrusted to perform a task that is crucial to public safety.<sup>9</sup> Both the

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<sup>9</sup> A preamble to the Clinical Laboratory Act provides:

Department who is charged with protecting public safety, as well as the federal government relied upon and trusted Wynn to perform his job responsibilities, use his professional judgment and accurately document his work. Like Toth, Wynn cannot avoid responsibility for his actions by attempting to blame his supervisor.<sup>10</sup>

Finally, we conclude that the evidence regarding Wynn's absence without leave was sufficient to provide support for the removal action. Sealie testified that she did not hear Wynn make a request to take the day off as he claimed and thus did not approve his leave. She further stated that she did not know why Wynn had not reported to work the next morning. Despite Wynn's assertion that he specifically asked Sealie for permission and was granted the day off, the Commission as factfinder, found Sealie's testimony to be credible. The Commission was entitled to determine the weight to give the witnesses' testimony, and "we will not reweigh the evidence or substitute our judgment . . . ." *Perry*, 38 A.3d at 948. That evidence, considered in light of a prior disciplinary action against Wynn for the same action of being absent without approval, provided additional support for the Department's action. Based upon the record evidence of the Austin Laboratory inspection, the FMS Laboratory inspection, and Wynn's unapproved absence, we conclude that the Commission properly found these incidents "render[ed Wynn] unfit for his . . .

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Whereas, **the health and lives of the citizens of this Commonwealth are endangered by incompetent supervision** of clinical laboratory tests; and

Whereas, a due regard for public health and preservation of human life demands that none but scientists competent and properly qualified by sufficient training in the fundamental sciences and experienced in their applications in the clinical laboratory shall be permitted to supervise the work of such laboratories.

35 P.S. § 2151 (Historical and Statutory Notes) (emphasis added).

<sup>10</sup> What actions, if any, the Department chooses to take against Sealie do not serve to minimize Wynn's wrongful conduct.

position, thus making dismissal justifiable and for the good of the service[.]” and accordingly, the Department established just cause for Wynn’s removal. *Perry*, 38 A.3d at 951.

Wynn next argues that the Commission erred when it permitted the introduction of the Federal Report because it does not fall within the business records exception<sup>11</sup> to the hearsay rule, it was not properly authenticated, and it contained opinion evidence. We disagree.

The term ‘hearsay’ is defined as an out-of-court statement, which is offered in evidence to prove the truth of the matter asserted. Hearsay statements are generally inadmissible unless they fall under an enumerated exception. An out-of-court statement is not hearsay when it has a purpose other than to convince the fact finder of the truth of the statement.

*Commonwealth v. Busanet*, \_\_ Pa. \_\_, \_\_, 54 A.3d 35, 68 (2012) (citations omitted).

Here, the Commission clearly explained in its opinion that it did not rely on the substance of the Federal Report. The Commission stated:

Whether deemed a business record or an expert’s report, the document is not hearsay insofar as its use before this Commission is concerned. Whether the statements and conclusions contained in the document are accurate is irrelevant to our determination; **the document was only considered as a basis for the [Department’s] decision to review the adequacy of the inspection conducted by [Wynn].**

Commission’s Op. at 42 (emphasis added). Because the Commission did not rely upon the contents of the Federal Report for the truth of the matter asserted, the document was not hearsay. Instead, it was used to show why Sealie initiated her investigation into Wynn’s Austin Laboratory inspection. *See Architectural Testing, Inc. v. Unemployment Comp. Bd. of Review*, 940 A.2d 1277 (Pa. Cmwlth. 2008).

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<sup>11</sup> 42 Pa.C.S. § 6108.

Because the Commission did not rely on the Federal Report for truth of the matters contained therein, Wynn's argument is without merit.

Wynn finally contends that the Commission erred when it denied his request to present evidence of alleged bias and discrimination.

Section 105.12 of the Commission's Regulations provides, in relevant part:

(b) The person appealing shall state clearly and concisely the:

(1) Grounds of the interest of the person in the subject matter.

(2) Facts relied upon.

(3) Relief sought.

**(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.**

4 Pa.Code § 105.12 (emphasis added). Wynn's Appeal Request Form provided the following responses:<sup>12</sup>

A. What action(s) occurred which led you to believe you were discriminated against?

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<sup>12</sup> Wynn's responses are italicized.

*Comments regarding my length of service suggesting age bias, unwarranted write-up and discipline, refused proper request for time off.*

B. Where and when did this action occur?

*It began in the early part of 2010 after the previous director retired.*

C. Who discriminated against you? Provide name(s) and job-title(s).

*Melissa Sealie, Supervisor or [sic] Division of Laboratory Improvement[.]*

D. Do you believe the Civil Service Act and/or Rules were violated? If so, what section(s)?

*At this time, I believe that the Act and Rules were not followed as I was given unwarranted write-ups and discipline.*

E. Provide any other information which you believe is relevant.

*I did complain on prior occasions to Ms. Sealie's supervisor and the Bureau Director regarding her treatment of me, which complaints were ignored.*

Reproduced Record at 47a. The Commission's hearing notice denied Wynn's discrimination claim as insufficient.

This Court has held, “[t]he burden of prosecuting [an appeal based upon discrimination] rests with the employee. The underlying factual basis of the claimed discrimination must be **enumerated specifically**. Discrimination cannot be inferred; there must be affirmative factual support to sustain the allegations.” *Keim v. Dep’t of Health*, 543 A.2d 1261, 1264 (Pa. Cmwlth. 1988) (citations omitted; emphasis added). “[M]ere general and conclusory allegations of discrimination are not adequate. **There must be specific factual allegations of discrimination** within the context of Section 105.12(c) of the Civil Service Rules . . . .” *Allen v. Civil Serv.*

*Comm'n (Pennsylvania Bd. of Prob. & Parole)*, 992 A.2d 924, 929 (Pa. Cmwlth. 2010) (emphasis added).

Wynn's Appeal Request Form fails to set forth specific factual allegations describing particular incidences of discrimination and there is no explanation of how Wynn was treated differently from other similarly situated employees, as required by Section 105.12(c) of the Commission's Regulations. *Allen*, 992 A.2d at 928. Accordingly, we conclude the Commission properly dismissed Wynn's discrimination claim.

For all of the above reasons, the Commission's order is affirmed.

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ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin Wynn,	:	
	:	
Petitioner	:	
	:	
v.	:	
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State Civil Service Commission	:	
(Department of Health),	:	No. 475 C.D. 2013
Respondent	:	

ORDER

AND NOW, this 25<sup>th</sup> day of October, 2013, the State Civil Service Commission's March 1, 2013 order is affirmed.

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ANNE E. COVEY, Judge