

**CHAPTER 105. NOTICE AND HEARINGS****NOTICE**

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**NOTICE****§ 105.1. [Reserved].****Authority**

The provisions of this § 105.1 deleted under section 506 of The Administration Code of 1929 (71 P.S. § 186); and 71 Pa.C.S. Part III.

**Source**

The provisions of this § 105.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa.B. 1442; deleted June 9, 2023, effective June 10, 2023, 53 Pa.B. 3082. Immediately preceding text appears at serial pages (336073) to (336074).

**§ 105.2. Personnel actions.**

Written notice shall be required for:

- (1) Appointment.
- (2) Promotion.
- (3) Removal.
- (4) Suspension.
- (5) Demotion.
- (6) Furlough.
- (7) Retirement.
- (8) Resignation.

- (9) Transfer.
- (10) Reassignment.
- (11) Leave of absence.
- (12) Extension or reduction of probationary period.
- (13) Compensation changes, except salary increments, general pay increases, or special pay for such things as overtime or out-of-class work.
- (14) Performance evaluation.
- (15) Reclassification.

#### Source

The provisions of this § 105.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial pages (150314) to (150315).

#### Notes of Decisions

##### *Furlough*

The State Civil Service Commission did not err in allowing the Department of Community Affairs to present testimony and evidence indicating that the employee was furloughed due to lack of work even though the furlough notice indicated that he was being furloughed for lack of funds, where this regulation does not direct the appointing authority to provide reasons for a furlough, and where, because there can only be two reasons for a furlough, an employee is on notice that he or she is being furloughed due to lack of funds or work. *McAndrew v. State Civil Service Commission*, 736 A.2d 26 (Pa. Cmwlth. 1999); appeal dismissed 758 A.2d 1167 (Pa. 2000).

Although the list provided by this section is not exclusive, written reprimands are distinguishable from performance evaluation reports and may not be interpreted as “personnel actions” which are appealable. *McGuire v. Department of Aging*, 592 A.2d 830 (Pa. Cmwlth. 1991).

Service ratings are appealable personnel actions under paragraph (14). *Boris v. Department of Environmental Resources*, 474 A.2d 722 (Pa. Cmwlth. 1984).

Pay reductions are not among the types of personnel actions encompassed by the Civil Service Act and listed in this section; therefore, deductions from store manager’s pay by the Liquor Control Board because of unexplained cash shortages are not appealable. *Coventry and Independent State Store Union v. Liquor Control Board*, 473 A.2d 249 (Pa. Cmwlth. 1984).

The notice requirement of this section protects only those persons directly subject to personnel action such as transfer, appointment or suspension from a violation of their due process right to be apprised of any change in employment status. Written notice of another employee’s promotion to fill a vacancy is not a “personnel action” within the meaning of this section. *Taylor v. State Civil Service Commission*, 447 A.2d 1098 (Pa. Cmwlth. 1982).

Loss of supervisory authority, without more, is not a personnel action. *Tempero v. Department of Environmental Resources*, 403 A.2d 226 (Pa. Cmwlth. 1979).

### § 105.3. [Reserved].

#### Authority

The provisions of this § 105.3 deleted under section 506 of The Administration Code of 1929 (71 P.S. § 186); and 71 Pa.C.S. Part III.

#### Source

The provisions of this § 105.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; amended March 12, 2004, effective March

13, 2004, 34 Pa.B. 1442; deleted June 9, 2023, effective June 10, 2023, 53 Pa.B. 3082. Immediately preceding text appears at serial pages (336075) to (336076).

#### **§ 105.4. Signatory authority.**

Personnel action notices shall be personally signed by the agency head, or a designated subordinate. If this responsibility has been delegated within the appointing authority, the delegation shall be submitted in writing to the Director and identify the designees by specific work title. Subordinates properly delegated signatory authority by the appointing authority may not further delegate the authority. For performance evaluations, the designated subordinate shall be the employe's immediate supervisor and the appointing authority is not required to submit written notification of work titles to the Director for this purpose.

##### **Source**

The provisions of this § 105.4 adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial page (150316).

#### **§ 105.5. [Reserved].**

##### **Authority**

The provisions of this § 105.5 deleted under section 506 of The Administration Code of 1929 (71 P.S. § 186); and 71 Pa.C.S. Part III.

##### **Source**

The provisions of this § 105.5 adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; deleted June 9, 2023, effective June 10, 2023, 53 Pa.B. 3082. Immediately preceding text appears at serial page (336077).

### **HEARINGS**

#### **§ 105.11. General.**

Hearings granted to employees demoted under 71 Pa.C.S. § 2503 (relating to demotions), furloughed under 71 Pa.C.S. § 2602 (relating to furlough), resigned under 71 Pa.C.S. § 2606 (relating to resignation), removed under 71 Pa.C.S. § 2607 (relating to removal), suspended under 71 Pa.C.S. § 2603 (relating to suspension) or persons alleging discrimination under 71 Pa.C.S. § 2704 (relating to prohibition of discrimination) shall be public hearings. At least 10 working days notice in advance of the date of the hearing shall be tendered in writing to the employee affected and to the appointing authority and others interested in the case, informing them of the date, time and place of hearing. Notice of the hearings shall be posted on the bulletin board located in or near the principal office of the Commission. The Civil Service Commissioners may grant requests for continuances. The Commission, on its own motion, may grant a continuance if the scheduled hearing lasts longer than 2 hours.

**Source**

The provisions of this § 105.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa.B. 1442. Immediately preceding text appears at serial page (292975).

**Notes of Decisions**

The employee must actually receive the notice at least 10 days prior to the scheduled date of the hearing, and merely placing the notice in the mail at least 10 days prior to the hearing date is not sufficient. *Courtney v. Civil Service Commission*, 391 A.2d 6 (Pa. Cmwlth. 1978).

In an action which does not involve an allegation of discrimination, and is not pursuable under section 951(a) or (b) of the Civil Service Act (71 P. S. § 751.951(a) or (b)), the provisions of this section do not provide an employee with an adequate remedy; the employee is therefore not required to exhaust administrative remedies available. *Magnelli v. Civil Service Commission*, 383 A.2d 561 (Pa. Cmwlth. 1978).

**§ 105.12. Requests.**

- (a) Requests for hearings shall be:
  - (1) Made in writing.
  - (2) Personally signed by the individual appealing.
  - (3) Received or postmarked not more than 20 calendar days after the employee receives notice of the challenged personnel action. A person appealing discrimination under 71 Pa.C.S. § 2704 (relating to prohibition of discrimination) shall appeal within 20 calendar days of the alleged discrimination.
- (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.
- (d) Acceptance of an amendment to an appeal is solely at the discretion of the Commissioners.
- (e) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.9 and 35.10 (relating to formal complaints generally; and form and content of formal complaints).

#### Source

The provisions of this § 105.12 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial pages (132381) to (132382).

#### Notes of Decisions

An appeal alleging that, although the name of a public employee had on two occasions appeared on a Commission promotion list due to his top performance on a civil service examination, the employee had not on either occasion received any notice of promotions or vacancies or of interviews connected with filling those two vacancies, and that on both occasions a black person was hired to fill the position in question, is sufficiently specific to assert a racial discrimination claim. *Filice v. Department of Labor and Industry*, 625 A.2d 148 (Pa. Cmwlth. 1993), aff'd, 660 A.2d 241 (Pa. Cmwlth. 1995).

The Commission's finding of employment discrimination was reversed in light of the public employee's failure to introduce evidence of disparate treatment from those who were similarly situated in order to establish a prima facie case. *Department of Health v. Nwogwugwu*, 594 A.2d 847 (Pa. Cmwlth. 1991).

Letters written by the petitioner to the Commission were amendments sufficiently specific to constitute allegations of discrimination for purposes of this section. *Pannacci v. Department of Public Welfare*, 560 A.2d 288 (Pa. Cmwlth. 1989); appeal after remand 560 A.2d 288 (Pa. Cmwlth. 1989).

The fact that an employee wrote letters which did not indicate his intent to file an appeal of a non-selection and also failed to allege specific facts of discrimination precluded treating those letters as a timely appeal to the Commission. *Shepta v. Board of Probation and Parole*, 555 A.2d 297 (Pa. Cmwlth. 1989).

It is within the discretion of the Commission to deny or entertain an amendment to an appeal alleging discrimination. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

This section permits the Commission to dismiss sua sponte an appeal for failure to specifically allege discrimination; the dismissal does not violate due process. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

An allegation that the appellant was a union member coupled with an allegation that the successful applicant was a nonunion member was insufficient to state a cause of action for discrimination. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

An appeal alleging discrimination in violation of section 905.1 of the Civil Service Act (71 P. S. § 905a) must include specific allegations; conclusory allegations may be dismissed for failure to state a cause of action. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

A letter setting forth details of alleged discrimination following an appeal request form which lacked sufficient facts may provide information sufficient to entitle a civil service employee to a hearing. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986).

In determining propriety of Commission's dismissal of appellant's appeal, Court would not consider facts which were not of record before the Commission where there had been no allegation that the facts were unavailable at the time appellant filed his appeal with the Commission. *Behm v. Civil Service Commission*, 494 A.2d 1166 (Pa. Cmwlth. 1985).

#### *Sufficiency of Allegations*

Employee satisfied the pleading requirement as to race discrimination by listing allegations of high rate of minority discharge and disparities in the amount of work assigned to minorities, as well as including the names of those who discriminated against him during a specified time period. The

Commission's dismissal for insufficiency of allegations was therefore reversed. *Craig v. State Civil Service Commission*, 800 A.2d 364 (Pa. Cmwlth. 2002).

Employee's request for a hearing contained only a general and conclusory allegation concerning sex discrimination, and no factual support as to discrimination based on disability. Therefore, the Commission's denial of those claims for insufficiency was correct. *Craig v. State Civil Service Commission*, 800 A.2d 364 (Pa. Cmwlth. 2002).

#### Cross References

This section cited in 4 Pa. Code § 95.71 (relating to review of eligibility or examination results).

### § 105.13. Form of hearing.

(a) The hearing shall be formal, but not all of the strict rules of evidence need be enforced. Evidence offered should be the best evidence available. Documents which constitute reliable evidence or whose contents or meaning are in dispute should be brought to hearing and entered into evidence. Whenever possible, the original document should be available to be offered into evidence.

(b) A complete stenographic, electronic or other exact record of the proceedings shall be made.

(c) A Civil Service Commissioner or a hearing officer designated by the Commission may conduct hearings.

#### Source

The provisions of this § 105.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa.B. 1442. Immediately preceding text appears at serial pages (292977) to (292978).

#### Notes of Decisions

This section requires that a complete stenographic record be made of the proceedings, nothing more. Section 105.13 does not require that a free copy of the notes of testimony be provided. *Silvia v. Department of Public Welfare*, 437 A.2d 535 (Pa. Cmwlth. 1981).

### § 105.14. Legal representation.

(a) Appointing authorities shall be represented by counsel presently admitted to practice before the Supreme Court of Pennsylvania.

(b) Appellants may represent themselves, or may be represented by anyone presently admitted to practice before the Supreme Court of Pennsylvania. This does not prohibit representation on behalf of either an appointing authority or an appellant by a legal intern certified under the Pennsylvania Bar Admission Rules.

(c) A person other than one noted in subsection (b) will not be permitted to represent an appellant at a hearing of the Commission.

(d) In all cases, where a legal representative represents an appellant, notices of the date of hearing and of the decision, and other communication arising from the case, shall be directed to the legal representative. The communication shall have the same force and effect as though personally given to the appellant.

**Source**

The provisions of this § 105.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; corrected June 19, 1992, effective April 4, 1992, 22 Pa.B. 3064. Immediately preceding text appears at serial pages (164782) to (164783).

**§ 105.14a. Subpoenas.****(a) Procedure for requesting subpoenas.**

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Chairperson of the Commission or the Commissioner presiding at hearing, with a copy to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be proved thereby.

(3) Failure to adhere to the requirements of this subsection may result in the refusal by the Commission to issue the requested subpoenas.

(4) Subpoenas for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the Commission, except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

**(b) Service.**

(1) A subpoena shall be served personally upon the witness.

(2) Subpoenas for the production of documents shall be served personally or by first-class mail upon the individual in possession of the documents, if known, or the agency head, who may designate a knowledgeable alternate as custodian of the documents, or the legal counsel for the appointing authority.

(3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to hearing, unless the witness agrees to waive the 48-hour requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to hearing.

(4) Failure to adhere to the requirements of this subsection may result in a ruling by the Commission denying the enforceability of the subpoena.

**(c) Compensation of witnesses.**

(1) Witnesses subpoenaed to appear before the Commission shall be paid a witness fee at the rate specified for the courts of common pleas by the party requesting the subpoena.

(2) Witnesses subpoenaed to appear before the Commission shall be paid, by the party serving the subpoena, mileage at the rate specified for the courts of common pleas for each mile actually and necessarily traveled between the

place named in the subpoena and either the place of residence of the witness or the work site, whichever distance is less.

(3) At the time a witness is served with a subpoena, the witness shall, upon demand, be paid the witness fee and travel expenses provided in this subsection by the party serving the subpoena. If no demand is made by the witness at the time of service, the fee shall be tendered to the witness prior to the start of the hearing.

(4) Paragraphs (1)—(3) supersede 1 Pa. Code § 35.139 (relating to fees of witnesses).

(d) *Supplementation.* Subsections (a)—(c) supplement 1 Pa. Code § 35.142 (relating to subpoenas).

#### Source

The provisions of this § 105.14a adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa.B. 1442. Immediately preceding text appears at serial pages (292978) to (292979) and (228459).

### § 105.14b. Depositions and discovery.

(a) *Depositions.* At the discretion of the Commission, depositions—statements of witnesses under oath—may be transcribed and submitted in lieu of testimony at the hearing, where the witness will be unavailable to testify at hearing because of unavoidable absence from the jurisdiction, illness or other compelling reasons. The costs of depositions shall be borne by the requesting party.

(b) *Discovery of documents.* At the discretion of the Commission, relevant documents may be obtained from an opposing party prior to the hearing.

(1) Requests for discovery of documents shall be in writing and shall initially be served upon the opposing party or legal representative in sufficient time to allow completion of discovery prior to the hearing.

(2) If the parties are unable to agree upon a reasonable scope of discovery, requests for discovery may then be forwarded in writing to the Commission, which may, in its discretion, issue appropriate subpoenas under this title.

(c) *Witness list.* Each party shall attempt to determine the witnesses they intend to call at the hearing and the names shall be provided to the Commission no later than 3 work days in advance of the hearing, with a copy to the opposing party. Calling a witness whose name does not appear on the list may be permitted at the discretion of the Commission.

#### Source

The provisions of this § 105.14b adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial page (142737).

**§ 105.14c. Settlement.**

(a) Parties, at their discretion, may enter into agreements to settle or otherwise terminate a proceeding before the Commission at any point in the appeal process prior to adjudication. All parties shall notify the Commission in writing in a timely manner of a settlement agreement. Upon receipt of notice from the appellant or the appellant's legal representative, an appeal shall be deemed withdrawn.

(b) Unless the Commission is requested to review and approve the settlement, the Commission will not be responsible for the enforcement of a settlement agreement.

(c) When the Commission finds in favor of the appellant and the appointing authority complies with the order, questions about the sufficiency of compliance shall be submitted to the Commission within 20 calendar days of the appointing authority's action.

**Source**

The provisions of this § 105.14c adopted November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334.

**§ 105.14d. Prehearing conferences.**

(a) *Prehearing conference.* To facilitate the submission and consideration of issues and facts, the Commission may schedule a prehearing conference and request the parties to participate in the proceeding. The conference may be conducted by telephone or in person, either by a Commissioner or by an attorney employed by the Commission to consider the following:

- (1) Simplification of the issues.
- (2) Stipulations of fact and authenticity of documents.
- (3) Admissibility and relevance of witness testimony.
- (4) Admissibility and relevance of exhibits, which will be identified and exchanged at the conference.
- (5) Subpoenas and all issues related to subpoenas.
- (6) Offers of settlement or proposals for adjustment, if appropriate.
- (7) Other matters that would facilitate the efficiency of the proceeding.

(b) *Prehearing conference memorandum.* No later than 3 work days in advance of the prehearing conference, the parties will submit to the Commission an original memorandum, plus three copies, that contains the following:

- (1) Caption identifying the parties and the appeal by its assigned appeal number.
- (2) Statement of issues to be decided by the Commission. If a party intends to move the Commission to dismiss the appeal, that issue should be noted, but a Motion to Dismiss must be filed separately.

- (3) Statement of stipulations, or facts not in dispute, that includes requested stipulations of fact and any agreements already reached by the parties regarding undisputed facts.
  - (4) Witness list with brief description of testimony of each witness listed.
  - (5) Exhibit list with brief description of exhibits and a brief explanation of the relevance of each exhibit listed.
  - (6) Estimate of time anticipated to complete presentation of evidence to the Commission.
  - (7) Requests for subpoenas may be included with the memorandum.
  - (8) At the hearing, the parties may be limited to those witnesses and exhibits set forth in the memorandum unless one or more of the following apply:
    - (i) A supplemental memorandum is submitted to the Commission at least 1 business day prior to the hearing.
    - (ii) There has been proper notice to other parties and there is no showing of undue inconvenience or prejudice.
    - (iii) The parties have conferred and agree to the additional witnesses or exhibits, or both.
- (c) *Supplementation.* Subsections (a) and (b) supplement 1 Pa. Code § 35.113 (relating to initiation of conferences).

**Source**

The provisions of this § 105.14d adopted March 12, 2004, effective March 13, 2004, 34 Pa.B. 1442.

**§ 105.15. Procedure under 71 Pa.C.S. § 3003(7)(i).**

- (a) The appointing authority shall go forward to establish the charge or charges on which the personnel action was based. If, at the conclusion of its presentation, the appointing authority has, in the opinion of the Commission, established a prima facie case, the employee shall then be afforded the opportunity of presenting his case.
- (b) If, after due notice, the appellant fails to appear at the scheduled hearing, the appointing authority has no burden to go forward and the appeal may be dismissed without the presentation of evidence.
- (c) While in each case the Commission may adapt the procedures and conduct of the hearing in accordance with the requirements of justice and due process, generally the routine shall follow the following order:
  - (1) The presiding commissioner shall open the hearing and shall enter as exhibits a copy of the letter initiating the action taken by the appointing authority, the written appeal of the appellant from the action, and evidence of proper notification to all parties in interest.
  - (2) The parties shall, subsequent to the presiding commissioner's introduction of documents, present any preliminary motions.

(3) The appointing authority shall call witnesses to testify after being sworn by the presiding commissioner.

(4) The appointing authority may, through witnesses or by stipulation, offer any other relevant evidence for introduction into the record.

(5) The appointing authority shall cite all relevant provisions of law and all relevant rules and regulations.

(6) The appellant may object to questions directed to the witnesses and to the introduction of any evidence offered.

(7) The appellant shall be allowed reasonable opportunity to cross-examine the witnesses.

(8) At the conclusion of the appointing authority's case, the appellant may move to dismiss on the ground that no prima facie case has been established.

(9) If no motion to dismiss is made, if the motion is denied, or if the Commission defers ruling on the motion, the appellant may present the defense by the testimony of witnesses, the introduction of relevant evidence, and the citation of relevant provisions of law, rules or regulations.

(10) The appointing authority may object to questions directed to the witnesses and to the introduction of any evidence offered.

(11) The appointing authority shall be allowed reasonable opportunity to cross-examine the witnesses.

(12) When all the evidence has been introduced, the Commission may hear oral argument.

(13) The transcript of the record will be prepared as soon as practicable after the hearing. A copy of the transcript shall be available at the Commission's Harrisburg office for inspection, or upon request, at one of the other Commission offices.

(14) The parties may submit briefs within a period of time fixed by the Commission. Failure by either party to file its brief within the fixed time may lead to the refusal of the Commission to consider the brief in making its determination.

(15) The record shall be considered as closed upon receipt of transcripts, depositions and briefs and the hearing shall be deemed concluded at that time. The Commission will determine the facts upon the evidence of record and decide relevant questions of law within 90 calendar days after the conclusion of the hearing.

(16) A copy of the adjudication in writing, containing findings and reasons, as a result of a resolution adopted by a quorum at a meeting of the Commission, shall be prepared as a decision of the Commission, and, when signed by one of the members of the Commission under its seal, shall be final. A copy of adjudication shall be sent to the appellant and to the appointing authority.

**Source**

The provisions of this § 105.15 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial pages (142737) to (142740).

**Notes of Decisions**

The civil service employe was properly furloughed by the Department of Public Welfare (Department) as according to the county furlough unit set up by Department of which only two people had the same job title and the furloughed employe's performance evaluation review which was then "due" was the lower evaluation of the two. *Valence v. Department of Public Welfare*, 641 A.2d 644 (Pa. Cmwlth. 1994).

The Department of Environmental Resources proved that the furlough of a Civil Service employe was justified by showing that the furlough resulted from a lack of work as the employe's main duty no longer existed. A noncivil service employe assumed only some of the employe's duties, and that change was part of a reorganizational streamlining by the Department to achieve greater efficiency. *Haskins v. Department of Environmental Resources*, 636 A.2d 1228 (Pa. Cmwlth. 1994).

Where a corrections officer challenged his demotion which was based on alleged unsatisfactory performance under the Civil Service Act (71 P. S. §§ 741.1—741.1005), the appointing authority of the State Correctional Institute at Muncy proved that the officer did not satisfactorily perform the duties of the position to which he was appointed by showing that the officer misused his authority, performed an inadequate investigation which constituted a negligent discharge of his duties and treated his superiors with disrespect. *Bennett v. State Correctional Institution at Muncy*, 637 A.2d 753 (Pa. Cmwlth. 1994).

A furlough, which was actually implemented prior to the date of approval for reorganization, entitled appellant to reimbursement of wages and emoluments for the period, but did not entitle him to have the furlough procedure declared void ab initio. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

It is not necessary to prove intent in cases brought under section 951(b) of the Civil Service Act (71 P. S. § 741.951(b)) where a technical violation of the act constitutes the alleged discrimination. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

Where a regular status employe appeals a furlough, alleging what is in essence a statutory violation of section 802 of the Civil Service Act (71 P. S. § 741.802) and where the employe is harmed or it is impossible to determine whether he could have been harmed, the violation is best analyzed under section 951(a) of the Civil Service Act (71 P. S. § 951(a)). *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

In appeals under section 951(a) of the Civil Service Act (71 P. S. § 741.951) the burden is on the appointing authority to set forth a prima facie case demonstrating compliance with the act, as opposed to section 951(b) which places the burden on the complaining individual. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

A furlough of a State civil servant may only be validly implemented on the basis of a lack of work or a lack of funds and when the furlough is of a regular status employe, the Appointing Authority bears the burden of demonstrating the lack of work or lack of funds. *Dougherty v. Department of Health*, 538 A.2d 91 (Pa. Cmwlth. 1988).

The Commission must set forth its findings and reasons in an adjudication in order to conform with this section and the omission of findings and reasons is a denial of due process. *Henderson v. Office of Budget*, 537 A.2d 85 (Pa. Cmwlth. 1988); appeal denied 574 A.2d 73 (Pa. 1990).

The Commission is empowered to make a credibility determination regarding an appointing authority's evidence of lack of work to support a furlough and may refuse to weigh evidence if it determines that no prima facie case exists. *Pennsylvania Public Utility Commission v. Taylor*, 537 A.2d 45 (Pa. Cmwlth. 1988).

Appointing authority bears the burden of establishing a prima facie case to support an action for dismissal of a civil service employe for just cause, after which the employe may present his case in rebuttal. Where an employe has failed to disclose his financial interests, as required by State Ethics Act and Governor's Code of Conduct, and instructions for disclosure are unambiguously provided on Code of Conduct form, prima facie case has been established. *Department of Community Affairs v. Colston*, 521 A.2d 509 (Pa. Cmwlth. 1987); appeal denied 561 A.2d 743 (Pa. 1989).

Even though this section states that the Commission shall rule promptly on an oral motion to dismiss for failure to state a prima facie case, a ruling was properly deferred when only one of the three appointed Commissioners was present at the time the motion was made. *Turzai v. Liquor Control Board*, 495 A.2d 639 (Pa. Cmwlth. 1985); cert. denied 107 S. Ct. 315 (U. S. 1986).

Where county presented only general statements about the county's prior-year deficit and testimony showing policy decision to limit personnel costs, the county failed to meet its burden of proof to present a prima facie case in establishing a lack of funds. *Beaver County Children and Youth Services v. Funk*, 492 A.2d 118 (Pa. Cmwlth. 1985).

When there has been called into question the validity of furlough, the appointing authority has the burden of going forward with proofs to establish a prima facie case justifying the furlough, viz. that the furlough resulted from a lack of funds or a lack of work. *Department of State v. Stecher*, 484 A.2d 755 (Pa. Cmwlth. 1984); 459 A.2d 851 (Pa. Cmwlth. 1983).

This section places the burden on the appointing authority to establish a prima facie case justifying employes' furloughs. *Pavia v. Department of Transportation*, 466 A.2d 735 (Pa. Cmwlth. 1983).

The Insurance Department had the burden to go forward with evidence to show that a furlough was not in violation of the Civil Service Act, as charged under 71 P. S. § 951(a). *Insurance Department v. Tracz*, 466 A.2d 269 (Pa. Cmwlth. 1983).

In upholding a dismissal of a Health Department official for just cause, the Court noted that this section imposes a burden on the employing authority to establish a prima facie case to support its action with the burden of production then shifting to the employe to present his case to rebut the employer's case. *Hoffman v. Department of Health*, 458 A.2d 303 (Pa. Cmwlth. 1983).

When someone other than the final decision maker conducts a hearing, due process is not breached as long as the decision maker appraises and considers the evidence prior to reaching a determination. *Kakas v. Department of Public Welfare*, 442 A.2d 1243 (Pa. Cmwlth. 1982).

The appointing authority has the duty to go forward in the establishment of the charges upon which its personnel action is based and in so doing establish a prima facie case in justification of that action, and if the party with the burden of proof prevails in a Commission hearing, the reviewing court is limited to a determination of whether constitutional rights were violated, an error of law was committed, or a necessary finding of fact was unsupported by substantial evidence. *Laws v. Philadelphia County Board of Assistance*, 412 A.2d 1377 (Pa. Cmwlth. 1980).

The Commission should be particularly astute to exclude hearsay evidence where the State is attempting to remove a veteran employe from a well-paid position of great responsibility requiring difficult decisions on sensitive public matters. *Bleilevens v. Civil Service Commission*, 312 A.2d 109 (Pa. Cmwlth. 1973).

#### *Burden of Proof*

The Commonwealth Court properly allocated the burden to the city employe to demonstrate that her termination was not for economic reasons, where the city had presented substantial evidence that the city employe's dismissal had been based on economic considerations. *Sadowski v. City of Pittsburgh*, 741 A.2d 180 (Pa. 1999).

#### **Cross References**

This section cited in 4 Pa. Code § 105.16 (relating to procedure under section 951(b) of the act (71 P. S. § 741.951(b))).

**§ 105.16. Procedure under 71 Pa.C.S. § 3003(7)(ii).**

(a) The appellant shall go forward to establish the charge or charges of discrimination. If at the conclusion of this presentation, the appellant has, in the opinion of the Commission, established a prima facie case, the appointing authority shall then be afforded the opportunity to reply to the charges.

(b) Apart from the order of going forward, the remainder of the procedure shall follow that prescribed in § 105.15(c) (relating to procedure under 71 Pa.C.S. § 3003(7)(i)). If an appellant fails to attend the hearing, the appeal may be immediately dismissed for failure to prosecute.

**Source**

The provisions of this § 105.16 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial pages (142740) and (153411).

**Notes of Decisions***Burden of Proceeding*

An employee who appeals a nonselection for promotion may do so only on the basis of discrimination as provided by section 905.1 of the Civil Service Act (71 P. S. § 741.905.1). The burden of prosecuting a discrimination appeal under the Act rests with the employee and discrimination cannot be inferred. There must be affirmative factual support to sustain the allegations. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409 (Pa. Cmwlth. 1996); appeal denied 688 A.2d 174 (Pa. 1997).

A correctional officer trainee met his burden of proving discrimination on the basis of a nonmerit factor by demonstrating the Department of Corrections' mistake of fact which served as the grounds for his dismissal. *Department of Corrections v. Morse*, 596 A.2d 897 (Pa. Cmwlth. 1991).

Applicant, who claims his name was removed from the list of persons eligible for position of corrections officer trainee for discriminatory reasons due to family connections, carries the burden of presenting evidence to support the charge. *Department of Corrections v. Colyer*, 576 A.2d 416 (Pa. Cmwlth. 1990).

A probationary civil servant may appeal a personnel action before the Commission only by alleging discrimination and that employee bears the burden of proof. *Department of Public Welfare v. Sanders*, 518 A.2d 878 (Pa. Cmwlth. 1986).

A letter setting forth details of alleged discrimination following an appeal request from which lacked sufficient facts may provide information sufficient to entitle a civil service employee to a hearing. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986); appeal after remand 560 A.2d 288 (Pa. Cmwlth. 1989).

In any action challenging nonselection, the party seeking to prove discrimination has the burden of proof. *Liquor Control Board v. Venesky*, 516 A.2d 445 (Pa. Cmwlth. 1986).

Employee who presented evidence of county's financial state and testimony to establish improper motive met burden to go forward in establishing discrimination. *Beaver County Children and Youth Services, v. Funk*, 492 A.2d 118 (Pa. Cmwlth. 1985).

Three instances of falsification of training records constituted substantial evidence in support of the Commission's findings of good cause for suspension under this section. *Wagner v. Department of Transportation*, 463 A.2d 492 (Pa. Cmwlth. 1983).

The furloughed employee bears the burden of going forward and of proving a discriminatory basis for the furlough. *Insurance Department v. Tracz*, 466 A.2d 269 (Pa. Cmwlth. 1983).

If a petitioner fails to sustain her burden of proving charges of discrimination before the Commission, court review is limited to a determination of whether the Commission capriciously disregarded competent evidence in its resolution of that issue. The burden of proving a discriminatory basis for

suspension and removal from employment rests with the petitioner. *Laws v. Philadelphia County Board of Assistance*, 412 A.2d 1377 (Pa. Cmwlth. 1980).

**§ 105.17. Petition for reconsideration.**

(a) *Form.* Petitions for rescission or modification of an adjudication shall be in writing and shall set forth in numbered paragraphs the findings or orders alleged to be erroneous and the points relied upon by the petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) *Specification of errors.* Petitions for reconsideration shall state concisely the alleged errors in the adjudication or other order of the Commission. If an adjudication or other order of the Commission is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(c) *Filing and service.* Every petition for reconsideration shall be filed within 15 calendar days after issuance of the Commission order involved.

(d) The requirements of this provision supersede those set forth in 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

(e) The procedure for reconsideration contained in this subsection does not alter or replace any procedures provided elsewhere for the timely filing of appeals of Commission adjudications to appellate courts.

**Source**

The provisions of this § 105.17 adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334. Immediately preceding text appears at serial pages (153411) to (153412).

**Notes of Decisions**

The Commission lacks subject matter jurisdiction to consider a petition for reconsideration of its own decision where the Commission fails to file an order granting reconsideration within 30 days of its original decision. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986); appeal after remand 560 A.2d 288 (Pa. Cmwlth. 1989).

**§ 105.18. [Reserved].**

**Authority**

The provisions of this § 105.18 deleted under section 506 of The Administration Code of 1929 (71 P.S. § 186); and 71 Pa.C.S. Part III.

**Source**

The provisions of this § 105.18 adopted November 15, 1991, effective November 16, 1991, 21 Pa.B. 5334; deleted June 9, 2023, effective June 10, 2023, 53 Pa.B. 3082. Immediately preceding text appears at serial page (336087).

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