

records, the Department uncovered evidence of extensive and intimate contact between Pinkney and inmate Qua Hanible.¹

Pinkney was suspended pending further investigation, effective August 18, 2008; that same day, she submitted a resignation letter. On October 30, 2008, the Department conducted a pre-disciplinary conference, after which it terminated Pinkney from employment by letter informing Pinkney that she was being discharged for violations of Sections B#6, B#14, B#23, B#28 and B#29 of the Department of Corrections' Code of Ethics.² Explaining the violations, the letter stated that: Pinkney

¹ According to the Commission's findings, Hanible was imprisoned in the Philadelphia County prison system from November 2007 to July 24, 2008. He was then incarcerated at State Correctional Institution (SCI)-Graterford from July 24, 2008, through August 4, 2008, at SCI-Camp Hill from August 4, 2008, through September 24, 2008, and at SCI-Coal Township from September 24, 2008, through at least February 16, 2009. (Findings of Fact Nos. 10, 17, 21 and 35.)

² This termination letter revised an earlier termination letter by clarifying that Pinkney was being discharged for violating B#6 rather than B#16. Section B#16 is a prohibition against bringing personal weapons onto state property without advanced written approval, while Section B#6 of the Department's Code of Ethics provides:

There shall be no fraternization or private relationship of staff with inmates, parolees, or members of their families. This includes, but is not limited to trading, bartering, or receiving gifts, money, and favors from either the inmate or the inmate's friends, relatives or representative. Moreover, employees are not to deliver gifts or money to inmates' friends, relatives, or representatives.

Despite the typographical error, the initial termination letter sufficiently notified Pinkney that she was being discharged for fraternization with an inmate.

Section B#14 provides: "Employees will promptly report to their supervisor any information which comes to their attention and indicates violation of the law, rules, and/or regulations of the Department of Corrections by either an employee or an inmate, and will maintain reasonable familiarity with the provisions of such directives."

(Footnote continued on next page...)

had an intimate relationship with an inmate while he was incarcerated at SCI-Graterford and other correctional facilities; there was documented evidence of many phone calls, letters and pictures exchanged between Pinkney and the inmate; phone discussions between Pinkney and the inmate involved talk of monetary gifts and drug exchanges; and Pinkney never reported any of this information to the appropriate staff at SCI-Graterford. The letter further provided that: Pinkney communicated with and visited this inmate without permission; Pinkney used various phone numbers and addresses to conceal the fact that she had a relationship with an inmate; and, during the course of investigation into the matter, Pinkney was unwilling to divulge information regarding illicit activities that might be occurring at SCI-Graterford. The

(continued...)

Section B#23 provides:

During off-duty hours, employees will conduct themselves in such a manner so as to demonstrate the public's trust and confidence inherent in their position as a public servant. Any conduct which brings discredit to their profession, responsibilities, the Department of Corrections, or public service at large shall be subject to immediate discipline.

Section B#28 provides: "All employees have the responsibility to provide their supervisor with their current address and telephone number."

Section B#29 provides: "All employees shall comply and cooperate with internal investigations conducted under the authority of the Department of Corrections, and respond to questions completely and truthfully. Procedure in cases that may result in criminal prosecution will include those rights accorded to all citizens of the Commonwealth."

Although the Department also initially charged Pinkney with a violation of Section B#22 (relating to submission of timely, truthful, work-related reports), that charge was ultimately dismissed. For citations to the Department's Code of Ethics, *see* (Certified Record, (C.R.), Commission Ex. AA-9.)

letter also stated that Pinkney denied the seriousness of her relationship with the inmate, lied about ending the relationship when the inmate became incarcerated, and lied by stating, during her interview, that she had submitted the proper paperwork in order to visit the inmate and communicate by phone and mail with him. (Certified Record, (C.R.), Commission Ex. A.)

After her termination, Pinkney appealed to the Commission, which considered whether the Department had just cause to remove Pinkney from her corrections officer position pursuant to section 807 of the Civil Service Act (Act),³ 71 P.S. §741.807 (providing that “[n]o regular employe in the classified service shall be removed except for just cause”). The Commission stated:

Based upon a review of the record, we find that the appointing authority has presented sufficient evidence to support the multiple charges presented. Specifically, we find that during her multiple conversations with Hanible, [Pinkney] expresses a full understanding of the risks she was taking by continuing her relationship with Hanible while she remained employed by the appointing authority. In addition, her several visits to Hanible while he was incarcerated clearly indicate that she fraternized with an inmate. During her initial fact-finding, [Pinkney] was evasive and did not truthfully answer all of the questions she was asked. [Pinkney] did not report all of her telephone number changes properly and never sought permission to have contact with an inmate. [Pinkney] did not cooperate with the investigative process. [Pinkney’s] improper behaviors discussed above, provides the appointing authority with valid reasons to distrust her.

³ Act of August 5, 1941, P.L. 752, *as amended*.

(Commission's decision at 18-19.) Pinkney now petitions this court for review of the Commission's decision upholding her discharge.⁴

First, Pinkney argues that she was improperly questioned about criminal activity, without benefit of counsel, in violation of section B#29 of the Department's Code of Ethics. In this regard, Pinkney asserts that she answered questions as honestly as she could without placing herself at risk of criminal prosecution. However, the Commission found that Pinkney was evasive and did not respond truthfully to questions during the initial course of the investigation. This finding is supported by the credible testimony of Security Captain Thomas Dohman,⁵ who explained that, after an initial denial, Pinkney admitted to having a relationship with Hanible, which ended when Hanible became incarcerated.⁶ Moreover, although the

⁴ Our scope of review of a Commission determination is limited to whether constitutional rights have been violated, whether legal error has been committed, or whether necessary findings of fact are supported by substantial evidence. *Williams v. State Civil Service Commission*, 811 A.2d 1090 (Pa. Cmwlth. 2002).

⁵ Determinations of credibility are for the Commission. *Wei v. State Civil Service Commission*, 961 A.2d 254 (Pa. Cmwlth. 2008), *appeal denied*, ___ Pa. ___, 973 A.2d 1008 (2009).

⁶ Dohman testified to this effect:

Well, Ms. Pinkney at the beginning of the interview was denying the relationship with Mr. Hanible. One of her statements was that she stopped the relationship when he became incarcerated. We had a little timeout and I explained to her that at this point in time lying wouldn't be beneficial for her or her predicament. We came back into the interview and she admitted to having a relationship but still said that it ended when he got incarcerated.

(C.R., Vol. 1, at 219-20.)

question of Pinkney's relationship with Hanible was fundamental to the issue of whether just cause existed to remove Pinkney from her corrections officer position, a forthright answer to this question would not have placed Pinkney in jeopardy of criminal prosecution. In fact, Pinkney was not in custody at the time that Captain Dohman questioned her, (C.R., Vol. 1, at 238), and she does not allege that criminal charges arose from the Department's investigation. Therefore, we reject Pinkney's assertion that the Department violated her rights when it questioned her in the absence of counsel.

Pinkney also argues that she was improperly charged with fraternizing with Hanible. According to Pinkney, she did not violate the Code of Ethics because she never returned to work at SCI-Graterford after Hanible was imprisoned there; she conversed with Hanible (ostensibly during his state incarceration) only after she left work; and she visited Hanible while he was in state custody after her suspension on August 18, 2008. However, although the record reflects, and the Commission found, that Pinkney did not return to her job as a Corrections Officer I after taking leave on July 22, 2008,⁷ Pinkney does not deny that she had contact with an incarcerated Hanible prior to her November 18, 2008, discharge from state employment. Furthermore, Captain Dohman testified that the Department's Code of Ethics would apply to an employee in suspended status. (C.R., Vol. 1, at 218-19.) Thus, we reject Pinkney's argument that she was wrongly charged with fraternizing with Hanible.

⁷ On this date, Pinkney was granted sick leave under the Family and Medical Leave Act (FMLA), 29 U.S.C. §§2601-2654.

Next, Pinkney argues that the Department obtained much of its evidence from the Philadelphia County prison system, and the Commission should not have considered this evidence with respect to Pinkney's violation of the Department's Code of Ethics. However, Captain Dohman specifically testified that it is against Department policies and procedures for Department staff to maintain contact with inmates in non-Department facilities, unless the employee obtains permission through the office of the Department Superintendent, and Pinkney did not do so. (C.R., Vol. 1, at 152-53.) The Commission, which is an administrative agency, is considered an expert on matters within its own jurisdiction, *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 413 (Pa. Cmwlth. 1996), *appeal denied*, 547 Pa. 720, 688 A.2d 174 (1997), and we are satisfied that it properly considered evidence from the county prison system in ruling on Pinkney's Departmental violation.

Pinkney further argues that her suspension exceeded sixty working days in violation of section 803 of the Act, 71 P.S. §741.803,⁸ and the Commission did not properly consider this issue. However, the Department acknowledged its mistake and apparently paid Pinkney for the seven days that she was suspended beyond the statutory period. Pinkney does not deny that she received such payment. Therefore, even if the Commission erred in overlooking the Department's violation, this error is, at most, harmless.

⁸ This section provides, in pertinent part: "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...."

Next, Pinkney argues that the Commission erred by limiting its consideration of her appeal to Section 951(a) of the Act, 71 P.S. §741.951(a), and not considering her claims of discrimination under section 951(b) of the Act, 71 P.S. §741.951(b).⁹ “We have held that ‘in a § 951(b) action an employee must recite specifically the basis underlying his claim of discrimination [and that where the employee fails to do so], the Commission has no choice but to deny a hearing.’” *Balas v. Department of Public Welfare*, 563 A.2d 219, 223 (Pa. Cmwlth. 1989) (citation omitted). A review of Pinkney’s appeal request form satisfies us that she did not sufficiently allege discrimination under section 951(b); moreover, although somewhat inartfully expressed, the Commission’s decision reflects that it properly considered all of her claims under section 951(a) and rejected them. Therefore, Pinkney’s allegations of error in this regard are also without merit.¹⁰

⁹ Section 951 of the Act was added by the Act of August 27, 1963, P.L. 1257. In *Department of Environmental Resources v. Bartal*, 618 A.2d 1062, 1066 n.7 (Pa. Cmwlth. 1992), this court stated:

In a Section 951(a) hearing the appointing authority has the burden of proving proper reasons for separation, suspension for cause, furlough or demotion. Under Section 951(b) the employee has the burden of proving a violation of Section 905.1 of the Act, added by Section 25 of the Act of August 27, 1963, 71 P.S. §741.905a, which prohibits discrimination in any personnel action in the classified service on the basis of political or religious opinions or affiliations or labor union affiliations “or because of race, national origin or other non-merit factors.”

¹⁰ *Cf. Balas*, 563 A.2d at 223 (holding that petitioners were entitled to a hearing under section 951(b) because they alleged facts sufficient to support the question of “whether a downward reclassification in order to equalize a pay differential constitute[d] non-merit discrimination”).

Finally, Pinkney complains that she was willing to resign, but the Department nonetheless insisted on removing her. She argues that the Commission should have held that removal was excessive because her conduct was not severe enough to cause a breach of security, or even a failure of trust. In *Wei v. State Civil Service Commission*, 961 A.2d 254 (Pa. Cmwlth. 2008), *appeal denied*, ___ Pa. ___, 973 A.2d 1008 (2009), this court explained that just cause for removal must be related to merit, and the criteria must touch upon an employee’s competency in a manner that is both rational and logical. Although Pinkney may not view her actions as amounting to just cause for removal, this court has stated that “[t]he appearance of wrongdoing by an employee in a sensitive position reflects unsatisfactorily on the employee’s ability to perform his duties and supports his dismissal for just cause.” *Department of Corrections v. Roche*, 654 A.2d 64, 69 (Pa. Cmwlth.), *appeal denied*, 541 Pa. 644, 663 A.2d 695 (1995) (citation omitted). Under this standard, Pinkney’s actions gave the Department just cause to remove her from her employment as a corrections officer.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Samiyyah Pinkney,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1186 C.D. 2009
	:	
State Civil Service Commission	:	
(Department of Corrections),	:	
Respondent	:	

ORDER

AND NOW, this 25th day of March, 2010, the order of the State Civil Service Commission, dated May 21, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge