



The clerks in DPW's district offices create EBT cards in accordance with the following procedure. Each morning, the office manager supplies the person responsible for making the cards, the "card maker," with a number of blank EBT cards. After the office manager and "card maker" write down the number of cards and sign the record, the blank cards are loaded into a card printer.

When a client requests an EBT card, the client presents identification, but photographic identification is not required. A clerk copies the identification and asks the client to complete a form requesting his or her name, social security number and the reason for seeking an EBT card. Using the client's social security number, the clerk prints out information about the client from DPW's computer system. The clerk gives the material to an income maintenance caseworker, who completes a PW 764 form, which authorizes the issuance of an EBT card. The caseworker gives all the material to the "card maker," who signs onto a computer with his or her "card maker" identification number<sup>1</sup> and password. The "card maker" prints the client's name and a serial number on a blank EBT card in the card printer.

The serial number has nineteen digits. The first six digits are the bank identification number, which is the same for every EBT card, and the next ten digits are the client identification number. The last three numbers are randomly generated, creating a serial number that is unique to each EBT card. A computer system uses the serial number to track each EBT card's transactions.

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<sup>1</sup> JP Morgan identifies each EBT "card maker" by the identification number.

Each morning, in addition to receiving the blank EBT cards, the “card maker” receives a blank PW 419 form. After creating an EBT card, the “card maker” records the card’s serial number, issue date and client name on the PW 419. The “card maker” also signs his or her initials. The “card maker” then gives the material to the person responsible for assigning a personal identification number (PIN) to the EBT card; this person is called the “pinner.”<sup>2</sup>

The “pinner” calls the client to the front desk and checks his or her identification. The “pinner” signs on to a “pinning” device with an identification number<sup>3</sup> and password. The “pinner” then swipes the card and asks the client to enter a PIN. This completes the creation of the EBT card. The “pinner” signs the PW 764 and deposits the client’s paperwork into a basket at the front desk.

At the end of the day, the office manager collects the blank EBT cards and counts the number of entries on the PW 419 to determine how many cards were made that day and how many blank EBT cards should be left. The “card maker” signs a record showing the number of blank EBT cards that he or she returned to the office manager, and the office manager signs the PW 419.

Petitioners worked in the Snyder District Office. Jones and Kelerikh were “card makers,” and Garnett was a “pinner.” On September 1, 2005, Jones was

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<sup>2</sup> For security reasons, the “card maker” and “pinner” are different persons. Only the office manager is permitted to be both a “card maker” and a “pinner.”

<sup>3</sup> JP Morgan identifies each “pinner” by the identification number.

the primary “card maker.” Line 4 of the PW 419 for that date shows that Jones made an EBT card for client KH with serial number 0400049359339, but she wrote the word “void” next to the client’s name. Line 5 shows that Jones made a second EBT card for KH with the same serial number. However, the computer system does not allow the same serial number to be used twice for the same client; if Jones voided the first EBT card, the second card would have had a different serial number. Moreover, the computer system shows that Jones made only one EBT card for KH on September 1, 2005; if the PW 419 were correct, the computer system would show that Jones made two EBT cards for KH. The false PW 419 entries by Jones indicate that a blank EBT card was missing.

JP Morgan’s computer system shows that, on September 8, 2005, employee Sheltina Smith-Mays (Smith-Mays) made an EBT card for TM, a client who died eleven days earlier on August 28, 2005.<sup>4</sup> The system also shows that, on September 9, 2005, Garnett “pinned” this EBT card for TM. Garnett had called off work on September 8, 2005, but returned on September 9, 2005. Thus, Smith-Mays waited until Garnett was at work to have the fraudulent EBT card “pinned.”<sup>5</sup>

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<sup>4</sup> DPW did not learn about TM’s death until November 9, 2005, and did not close her case until November 21, 2005.

<sup>5</sup> Smith-Mays and James Johnson, another employee, used the fraudulent EBT card on September 9, 2005, to withdraw \$240.00 and on September 21, 2005, to withdraw another \$240.00. They tried to use TM’s old card to withdraw cash on September 10, 2005, but the attempt was unsuccessful because, whenever a client receives a new EBT card, the old one is automatically rendered inoperable. Petitioners assert in their brief that TM was the cousin-in-law of Smith-Mays and the mother of Johnson’s child. (Petitioners’ brief at 2.)

Jones was the “card maker” on October 6, 2005. Line 24 of the PW 419 for that date shows that Jones made an EBT card for client LR. Jones logged the EBT card with serial number 0020221362776. However, the computer system shows that a card with that serial number was actually made for client LR on September 19, 2005. The PW 419 entry by Jones showing the creation of an EBT card that was not actually made indicates that a blank EBT card was missing on October 6, 2005.

JP Morgan’s computer system shows that, on October 6, 2005, Smith-Mays made another EBT card for deceased client TM. However, the PW 419 does not show that Smith-Mays made a card for TM on that date. The computer system also shows that, on October 6, 2005, Garnett “pinned” the EBT card made by Smith-Mays for deceased client TM.<sup>6</sup>

Kelerikh was the “card maker” for May 18, 2006. Line 13 of the PW 419 for that date shows that Kelerikh made an EBT card for client KM with serial number 0020387890517. However, the computer system shows that this card was issued to client KM on May 15, 2002. This false entry by Kelerikh means that a blank EBT card was missing on May 18, 2006.

JP Morgan’s computer system shows that Kelerikh made an EBT card for deceased client TM on May 18, 2006, although the computer would have shown Kelerikh that TM was deceased. Kelerikh did not enter this EBT card on the PW

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<sup>6</sup> Smith-Mays and Johnson used the card on October 6, 2005, to withdraw \$260.00 and on May 14, 2006, to withdraw \$7.53.

419. James Johnson (Johnson) “pinned” the card for deceased client TM on May 18, 2006. Johnson is related to a child who had been in the custody of TM.

Kelerikh was the “card maker” for May 19, 2006. Line 19 of the PW 419 for that date shows that Kelerikh made an EBT card for client PF with serial number 8200056052002. The computer system shows that the card was actually issued to client PF on December 27, 1993. The false entry by Kelerikh meant that a blank card was missing on May 19, 2006.

JP Morgan’s computer system shows that, on May 19, 2006, Kelerikh made another EBT card for deceased client TM. Kelerikh did not enter this EBT card on the PW 419. The computer system also shows that, on May 19, 2006, Johnson “pinned” this EBT card for deceased client TM.<sup>7</sup>

Charles Coleman, the Director of Management Services, investigated the EBT cards issued to deceased client TM and could not locate PW 764 forms that authorized them. Coleman’s investigation revealed that Johnson and Smith-Mays used TM’s EBT cards. DPW terminated Smith-Mays, and Johnson retired.

By letters dated January 22, 2008, Petitioners were removed from their employment. DPW charged Kelerikh with creating EBT cards for a deceased client. DPW charged Garnett with creating PINs for two separate EBT cards for a deceased

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<sup>7</sup> Smith-Mays and Johnson used the EBT card on May 19, 2006, to withdraw \$100.00 and on May 6, 2007, to withdraw \$130.12.

client. DPW charged Jones with: (1) listing on a PW 419 that she issued an EBT card, voided that card and reissued another card with the same serial number, thereby allowing the first card to have no accounting; and (2) listing on a PW 419 that she issued an EBT card when, in fact, no such card was issued on that date.

Petitioners appealed their removals to the Commission, which, after holding hearings on the matter, concluded that DPW had just cause under section 807 of the Civil Service Act (Act)<sup>8</sup> to remove Petitioners from their employment. The Commission rejected Petitioners' claims that they are innocent of any wrongdoing and that Smith-Mays and Johnson either duped Petitioners into making the fraudulent EBT cards or stole Petitioners' passwords and made the EBT cards themselves. Petitioners now appeal to this court.<sup>9</sup>

### **I. After-Discovered Evidence**

As a preliminary matter, Petitioners have filed a petition to invoke our original jurisdiction under section 754 of the Local Agency Law,<sup>10</sup> alleging after-

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<sup>8</sup> Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §741.807. Section 807 of the Act provides that no regular employee in the classified service shall be removed except for just cause. 71 P.S. §741.807.

<sup>9</sup> Our scope of review is limited to determining whether constitutional rights have been violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. *Wei v. State Civil Service Commission*, 961 A.2d 254 (Pa. Cmwlth. 2008), *appeal denied*, 601 Pa. 705, 973 A.2d 1008 (2009).

<sup>10</sup> 2 Pa. C.S. §754.

discovered evidence. However, the Commission is not a local agency; thus, section 754 of the Local Agency Law does not apply here.<sup>11</sup>

Moreover, the after-discovered evidence in this case is the testimony that Jennifer Byrd presented at Petitioners' preliminary hearing on the criminal charges against them. According to Petitioners, Byrd, a former supervisor at the Snyder District Office, testified at the preliminary hearing that: (1) she believed Petitioners did nothing wrong; (2) Smith-Mays had access to Petitioners' passwords and security codes and could have created and "pinned" the fraudulent EBT cards; and (3) Smith-Mays could have duped an innocent "pinner" into creating a PIN for a fraudulent EBT card.

Courts will not consider after-discovered evidence unless: (1) it is new; (2) it could not have been obtained at trial with the exercise of due diligence; (3) it is relevant but not cumulative; (4) it is not for the purposes of impeachment; and (5) it is likely to compel a different result. *A.G. Cullen Construction, Inc. v. State System of Higher Education*, 898 A.2d 1145 (Pa. Cmwlth. 2006). Byrd was a witness at the proceedings before the Commission. (R.R. at i, 111a-22a.) Thus, Petitioners could have obtained her testimony about the security of passwords with the exercise of due diligence. Moreover, the Commission heard other testimony regarding the possibility that Smith-Mays stole Petitioners' passwords. Thus, Byrd's testimony is not new, is

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<sup>11</sup> Section 754(a) of the Local Agency Law provides, in part, that, in the event a "local agency" does not make a full and complete record, the court may hear the appeal *de novo*. 2 Pa. C.S. §754(a). A "local agency" is a government agency other than a "Commonwealth agency," and "Commonwealth agencies" include the commissions of the Commonwealth. 2 Pa. C.S. §101.



cumulative, is for the purpose of impeachment<sup>12</sup> and is not likely to compel a different result.<sup>13</sup>

Accordingly, we deny Petitioners' petition to invoke our original jurisdiction.

## **II. Just Cause for Removal**

In our appellate jurisdiction, Petitioners argue that the record does not contain substantial evidence to support the Commission's conclusion that there was just cause for their removal from employment. We disagree.

A civil service employee may be removed from employment only for just cause. *Webb v. State Civil Service Commission*, 934 A.2d 178 (Pa. Cmwlth. 2007). 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. *Wei v. State Civil Service Commission*, 961 A.2d 254 (Pa. Cmwlth. 2008), *appeal denied*, 601 Pa. 705, 973 A.2d 1008 (2009). The Commission is the sole fact finder and has exclusive authority to assess credibility and resolve evidentiary conflicts. *Id.*

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<sup>12</sup> Petitioners state in their brief that Byrd's testimony shows that DPW witnesses provided false testimony at the hearings before the Commission regarding password security. (Petitioners' brief at 5.)

<sup>13</sup> The Commission points out that Byrd testified before the Commission that she was aware of password security only as to the clerks she supervised. (Commission's brief at 8, citing N.T. at 310.) Thus, the Commission asserts that Byrd's testimony before the Commission was inconsistent with her testimony at Petitioners' preliminary hearing.

With respect to Jones, the Commission found that, on September 1, 2005, Jones listed on a PW 419 that she issued an EBT card, voided that card and reissued another card with the same serial number, thereby allowing the first card to have no accounting, and, on October 6, 2005, listed on a PW 419 that she issued an EBT card when, in fact, no such card was issued on that date. Jones asserts that DPW did not present substantial evidence to support that finding because the information on a PW 419 is based on a PW 764 authorization, and DPW did not present the PW 764 authorizations for those dates. In other words, Jones suggests that the PW 764 forms would have authorized her actions. However, a valid PW 764 would not have authorized two EBT cards with the same serial number because such is not possible, nor would a valid PW 764 have authorized Jones to list an EBT card on a PW 419 that had not been created that day.<sup>14</sup>

With respect to Garnett, the Commission concluded that, on September 9 and October 6, 2005, she “pinned” EBT cards for a deceased client. Garnett asserts that: (1) Smith-Mays had the opportunity to obtain Garnett’s password; (2) anyone could have identified themselves as the deceased client because DPW does not

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<sup>14</sup> Jones contends that the record contains evidence showing that PW 764 forms were easy to obtain and that Smith-Mays and Johnson could have created phony PW 764 forms. Jones also points out that the record contains evidence showing that PW 764 forms are sometimes thrown away, which would explain why DPW could not find the phony forms. However, the Commission did not believe that Smith-Mays and Johnson created phony PW 764 forms.

Jones also points out that only Smith-Mays and Johnson used the fraudulent EBT cards to withdraw funds and that Jones gained nothing from the creation of the fraudulent EBT cards. Although Jones is correct in this regard, the record contains substantial evidence to show that she falsified the PW 419 forms.

require photographic identification; and (3) there is no evidence Garnett received a financial reward from the fraudulent EBT cards. However, the Commission rejected these arguments exonerating Garnett because Smith-Mays created one of the phony EBT cards on September 8, 2005, when Garnett was off work, and Smith-Mays waited until Garnett returned to work on September 9, 2005, to have Garnett “pin” the card. The Commission explained:

EBT cards are made “on demand”; the client comes to the district office to request a card, and the clerks stop what they are doing and make and pin the card.... [I]f a pinner is unavailable, a supervisor can pin EBT cards.... [I]f Smith-Mays simply duped Garnett into pinning TM’s phony EBT cards, she would have duped one of the other pinners or a supervisor into pinning TM’s phony EBT card when she made it on September 8.... Instead, Smith-Mays waited until Garnett returned to work on September 9 ... and she had Garnett pin the phony EBT card. This departure from the usual procedure, and Smith-May’s specific use of Garnett as a pinner, indicate to the Commission that Garnett was not an innocent dupe.

(Commission’s op. at 36, R.R. at 271a.)

With respect to Kelerikh, the Commission concluded that, on May 18 and May 19, 2006, Kelerikh created EBT cards for a deceased client. Kelerikh asserts that the record contains evidence showing that Smith-Mays could have used Kelerikh’s identification number and password to create these fraudulent EBT cards. However, the Commission did not believe that evidence.

Kelerikh also contends that she should not have the burden of proving that Smith-Mays used Kelerikh’s identification number and password to create the

fraudulent EBT cards. However, the regulation at 4 Pa. Code §105.15(a) provides that, at a hearing before the Commission, if the appointing authority establishes a *prima facie* case against the employee, the employee is then afforded an opportunity to present his or her case. 4 Pa. Code §105.15(a). A *prima facie* case is production of enough evidence to allow the fact finder to infer the fact at issue and rule in the party's favor. Black's Law Dictionary 1310 (9<sup>th</sup> ed. 2009). Here, DPW produced enough evidence to allow the Commission to find that Kelerikh twice created EBT cards for a deceased client.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wanda Jones, Anna Kelerikh	:	
and Tanya Garnett,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 246 C.D. 2009
	:	
State Civil Service Commission	:	
(Department of Public Welfare),	:	
Respondent	:	

ORDER

AND NOW, this 29th day of June, 2010, the order of the State Civil Service Commission, dated January 15, 2009, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge