



Ms. Mellott was employed as a Residential Program Director 2, serving as a Supports Coordinator, where her job duties included assessing mentally-challenged consumers' needs and providing them with medical, housing or other services in the community. If a Supports Coordinator spent personal funds on behalf of a mentally-challenged consumer, he or she could submit an expense report to get reimbursed. Ms. Mellot's duties also required her to provide guidance to her subordinates regarding the Mental Health/Mental Retardation (MH/MR) Ethical Guidelines and to train new Residential Program workers about the proper protocol for reporting employee misconduct.

Ms. Mellot's discharge was the result of her dealings with one of Employer's consumers, Betty, a mentally-challenged woman who was "very set in her ways" and did not have a checking account because she did not trust banks. Ms. Mellott was Betty's Supports Coordinator assisting Betty in paying her bills, including her apartment rent, storage shed rent and utilities. When Ms. Mellott started working with Betty, most of Betty's utilities were included with her apartment rent, and Ms. Mellott would take Betty to drop off her apartment rent payment. To pay the rent on her storage shed, Betty mailed cash to the owner of the storage shed.

However, Ms. Mellott also paid some of Betty's expenses with her own funds for which she did not seek reimbursement. When Betty had no money because someone broke into Betty's apartment and stole her money, Ms. Mellott wrote out a personal check for \$60.00 for rent on Betty's storage shed and another personal check for \$171.75 for Betty's insurance. On October 29, 2004, when Betty called Ms. Mellott to say that she had locked herself out of her apartment, Ms. Mellott telephoned a locksmith who agreed to unlock the apartment if Ms. Mellott would guarantee he would be paid for his services and time. Ms. Mellott wrote a personal check for \$30.00 to pay for the locksmith on behalf of Betty. Again, on November 8, 2004, when Betty moved

into a new apartment, Ms. Mellott used her personal funds to pay the \$110.00 needed for Betty's moving expenses. Ms. Mellott never informed her supervisor, Nancy Saxman that she made any of these expenditures.

At other times, Ms. Mellott took cash from Betty, put it into her personal interest-bearing checking account, and then paid Betty's bills with a personal check. When Betty did not have money to pay her rent on the new apartment, Betty's new landlord, Tom Hagan, agreed to let Betty pay him rent at the rate of \$100.00 per month to catch up on the rent payments owed and pay the current rent due. Ms. Mellott accepted cash from Betty and wrote checks from her personal checking account to pay Betty's apartment rent. Ms. Mellott thought Betty's rent, without considering past due amounts, was \$50.00 per month. When Betty did not owe any more back rent, Betty began to pay \$50.00 in rent, \$4.00 less than she owed each month. In addition, because Betty's utilities were no longer included in her apartment rent and her insurance needed to be paid, Betty gave cash to Ms. Mellott for those bills, and Ms. Mellott deposited those funds in her personal interest-bearing checking account and then wrote checks to pay those bills.

In August 2005, Ms. Mellott took an approved leave of absence from work, and Betty's care was temporarily reassigned to Supports Coordinator Cynthia Perrin. Ms. Mellott wrote a note to Ms. Saxman explaining that Betty paid cash for some of her bills and obtained money orders to pay other bills. Ms. Mellott told Ms. Perrin that Betty's apartment rent was \$50.00 per month.

On October 19, 2005, Ms. Perrin had a telephone conversation with Mr. Hagan in which he complained that Betty had a \$94.00 deficit in her rent payments. Ms. Perrin then spoke with Ms. Mellott. Ms. Mellot set forth the amounts she paid through her checking account for Betty's rent from November 2004 through August

2005, which totaled \$500.00. Ms. Perrin then paid an additional \$100.00 to cover Betty's rent owed for the month of September. Ms. Perrin met with Mr. Hagan to review Betty's rental payments and Mr. Hagan informed Ms. Perrin that there were two months when he had been paid \$50.00, not \$100.00. Mr. Hagan also informed Perrin that Betty's rent was \$54.00 per month. Mr. Hagan requested copies of the two checks from the bank. Ms. Perrin met with Ms. Mellott again to explain her meeting with Mr. Hagan and that he was owed money.

Ms. Mellott told Ms. Perrin that she had been accepting cash from Betty and then writing a check from her personal checking account for Betty's rent. Ms. Mellott wrote out a check from her personal checking account for \$100.00 to balance out the rent Betty owed to Mr. Hagan. Ms. Perrin realized that Betty had also paid her most recently due rent and had paid \$100.00; as a result, Betty was only \$48.00 in debt for past due rent. Ms. Mellott then wrote a personal check for \$48.00 to Mr. Hagan to cover Betty's past due rent.

Because of the dispute over the rent, Employer learned of the method in which Ms. Mellott was paying Betty's bills, and an investigation ensued. By letter dated November 23, 2005, Ms. Mellott was removed from her position by Employer as Residential Program Director 2 effective November 28, 2005, for the following reasons:

1. During the period of October 2004 – November 2005, by your own admission you accepted cash from a mentally retarded consumer and placed the cash into a joint checking account owned by you and your husband. You provided copies of 19 personal checks that were to be for services provided for the consumer (i.e. rent, water bill, electric bill, insurance, etc.) By your own admission you did not have the authorization to do so from a supervisor and could not provide

receipts for cash given to you by the consumer. This commingling of consumer funds with your personal funds is a violation of MR Bulletin 6000-04-01<sup>[2]</sup> regarding the “Misuse of Funds” and MH/MR’s Ethical Guidelines.<sup>[3]</sup>

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<sup>2</sup> MR Bulletin 6000-04-01, §6000.922(a)(12), provides as follows:

(a) The following are categories of incidents to be reported within 24 hours after the occurrence of the incident: ...

(12) Misuse of funds. An intentional act or course of conduct, which results in the loss or misuse of an individual’s money or personal property. Requiring an individual to pay for an item or service that is normally provided as part of the individual support plan is considered financial exploitation and is reportable as a misuse of funds. Requiring an individual to pay for items that are intended for use by several individuals is also considered financial exploitation. Individuals may voluntarily make joint purchases with other individuals of items that benefit the household.

<sup>3</sup> The MH/MR Guidelines provide in relevant sections (R.R. at 179a-186a):

A(6) MH/MR employees have an obligation to abide by these ethics guidelines and other applicable ethic codes. MH/MR employees will actively seek advice and guidance on ethical issues from others as needed when making decisions. Lack of awareness or misunderstanding of an ethical standard is not itself a defense to a charge of unethical conduct.

...

C(12) MH/MR employees are strongly discouraged from accepting gifts, favors, or gratuities from consumers or giving gifts, favors, or gratuities to consumers with whom they work in the conduct of their MH/MR duties. Any favors or gratuities accepted or given must be reported to the employee’s supervisor and will be considered based on value, frequency, and an assessment of the consumer’s means.

...

D(1)(a) MH/MR employees are expected to develop relationships with consumers that are honest, fair, respectful, based on mutual trust and that maintain professional boundaries.

**(Footnote continued on next page...)**

2. By your own admission, you reported that at least on one occasion the consumer's rent was paid late as a result of you not sending in the money that the consumer gave to you the previous month. On another occasion you sent in a \$100 check for the rent because you were almost out of checks. You reported that you thought the consumer's rent was \$50 and did not realize that the rent was actually \$54 until a new casemanager took over the case. When you were told in November 2005 that the consumer was behind in her rent you immediately wrote out a check to the landlord for approximately \$100 (you were unclear of the exact amount) and gave it to the consumer's new casemanager. The casemanager told you the rent was behind \$48 and you then destroyed the first check and wrote out a second one.

3. You reported that you paid from your personal funds approximately \$110 to have the consumer moved and \$30 to a locksmith when she locked herself out of her apartment. Gratuities to consumers is strongly discouraged and you are required to report such actions to your supervisor which you failed to do.

Your actions violate the MH/MR Ethical Guidelines and MR Bulletin 6000-04-01 regarding the "Misuse of Funds." As a Supports Coordinator, you are providing supports to a very vulnerable population of mentally retarded consumers who can easily be taken advantage of. You did not maintain the professional boundaries required of you by commingling a consumer's funds into your personal checking account; you failed to pay a consumer's rent on time causing her to get

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**(continued...)**

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G(1) These rules and regulations have been written in the best interest of MH/MR, its employees, and the individuals we serve. Any employee who violates the provisions of these guidelines shall be subject to immediate disciplinary action up to and including termination.

behind one month in her rent; you had the consumer pay two months rent because you were almost out of your personal checks; and failed to follow agency policy regarding paying for services for a consumer from your personal funds. You can not verify that you did not exploit the consumer by accepting cash from her and placing the money into your personal checking account. Not only did your actions violate agency policy, these actions are contrary to any acceptable standard of professional conduct between any consumer and representative of this agency and will not be tolerated.

Ms. Mellott appealed her termination to the Commission, and a hearing was held pursuant to Section 951(a) of the Civil Service Act (Act).<sup>4</sup>

Employer presented the testimony of Ms. Perrin who testified that Ms. Mellott had told her that she was accepting cash from Betty and then writing checks from her own personal checking account to pay Betty's rent. On cross-examination, Ms. Perrin stated that she neither believed Ms. Mellott intentionally took advantage of Betty nor did she believe Ms. Mellott stole money from Betty. Although Employer discouraged the practice, Ms. Perrin admitted that she would pay for a consumer with her own personal money in a dining situation when that consumer would not have enough money for the bill. She also admitted that she had not been disciplined for this conduct.

Pamela Humber, Employer's Human Resources Director, testified that Ms. Mellott misused funds in violation of the "Misuse of Funds" provision in the MR Bulletin No. 6000-04-01 because she accepted Betty's cash, placed it into her own personal interest-bearing credit union checking account, she admitted on one occasion

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<sup>4</sup> Act of August 5, 1941, P.L. 752, as amended, added by the Act of August 27, 1963, P.L. 1257, 71 P.S. §741.951(a).

to paying Betty's rent late, and she earned interest on Betty's cash. Although Ms. Humbert admitted that Employer did not have a specific policy forbidding the commingling of funds with consumers, such behavior violated the MH/MR Ethical Guidelines and the "Misuse of Funds" provision in MR Bulletin No. 6000-04-01. Ms. Humbert opined that it was acceptable for a Supports Coordinator to occasionally pay for a meal if a consumer did not have enough money to pay; however, it was unacceptable for a Supports Coordinator to pay \$110.00 for a consumer to have their car repaired because it blurred the line of what was professional conduct versus what was done for a friend. Ms. Humbert concluded that paying \$110.00 for Betty's moving expenses and \$30.00 for a locksmith fell into the latter category and was unacceptable conduct.

On cross-examination, Ms. Humbert testified that employees were "strongly discouraged" from giving or accepting gifts, favors or gratuities in the conduct of their duties, and that incidents of such conduct needed to be reported to a supervisor who would consider whether such conduct was unprofessional based on the value of the gifts/gratuities, the frequency with which the gifts/gratuities were given or received and an assessment of the consumer's means. Ms. Humbert also testified that Ms. Mellott's three most recent performance evaluations all showed her job performance to be satisfactory.

Ms. Mellott testified on her own behalf. Although she admitted in hindsight that her conduct was a "big mistake," Ms. Mellott testified that at the time, she did not look at her behavior as unethical, asserting that she was helping Betty by not allowing her to send cash through the mail. Ms. Mellott interpreted the "Misuse of Funds" language within MR Bulletin No. 6000-04-01 to mean that an employee could not use the consumer's money for anything else than for the consumer's purposes, and



that she abided by that directive, using Betty's money for Betty only. Ms. Mellott admitted that there was one month when she might have accepted \$100.00 in cash from Betty and only wrote a check out for \$50.00, but such conduct was due to carelessness, and that she never intended to keep Betty's money for her own benefit.

On cross-examination, Ms. Mellott testified that her checking account was an interest-bearing credit union account, and that any cash Ms. Mellott accepted from Betty would get interest if it were in that account for any given period of time. On redirect examination, Ms. Mellott testified that when she would accept Betty's cash, she would immediately write out a check so that she would not personally profit from the interest.

On June 5, 2006, the Commission ruled that Employer had just cause to remove Ms. Mellott from her position as Residential Program Director 2. Without addressing the issue of whether Ms. Mellott violated the MH/MR Ethical Guidelines by paying Betty's locksmith and moving expenses with her personal funds, it found "just cause" existed because:

By accepting cash from Betty and commingling those funds into her personal interest bearing account, Mellott violated the standards of professional conduct between Betty and Employer;

Because cash received from Betty was placed in an interest bearing account, even though for a brief period, Mellott earned interest off the cash deposits and received a personal monetary gain;

Mellott was careless with Betty's funds because she was not sure whether Betty paid her \$100 in cash and wrote a check for \$50 for rent.

Because Ms. Mellott admitted to training new employees about the MH/MR Ethical Guidelines and had utilized the ethics review process in the past, the Commission found that Ms. Mellott should have been well aware that her actions violated acceptable standards of professional conduct making termination appropriate. Ms. Mellot then appealed to this Court.

Ms. Mellott alleged that the Commission erred in finding that just cause existed to remove her from employment for misuse of Betty's funds because there was no evidence that she engaged in "an intentional act or course of conduct, result[ing] in the loss or misuse of an individual's money or personal property." While she admitted that she commingled funds, she argued that that does not establish just cause to terminate her because the commingling of funds was not prohibited by the MH/MR Ethical Guidelines.

We agreed that there was no express prohibition against commingling funds found in the MH/MR Ethical Guidelines, and that no evidence was presented showing that Ms. Mellott used Betty's cash improperly or for personal gain. However, we determined that Ms. Mellot nevertheless "misused" Betty's funds because she placed those funds in a place over which Betty had no control. Thus, we concluded that public employees that handle their clients' money misuse those funds when they put those funds into their own personal accounts.

We also agreed with the Commission's finding that Ms. Mellot was careless with Betty's funds in that she did not keep track of the money received from Betty and wrote a check for rent in the amount of \$50.00, when she had received \$100.00 from Betty. However, we disagreed with the Commission's finding that Ms. Mellot had received a personal gain by depositing Betty's money in an interest-bearing

checking account. We noted that evidence was not provided as to the terms of Ms. Mellot's bank account.

As the Commission had relied heavily on its finding that Ms. Mellott received personal gain from placing Betty's money into a checking account, we remanded the matter to the Commission. We requested that the Commission consider whether just cause for Ms. Mellot's discharge existed, absent a finding of personal gain.

On remand, the Commission concluded that the evidence of record did not establish that Ms. Mellot intentionally misused Betty's money. The Commission also concluded that the evidence did not establish that Ms. Mellott received any personal gain through her transactions with Betty.

The Commission noted that Ms. Mellot violated Employer's policy by commingling Betty's money with the money in Ms. Mellot's checking account. The Commission also found that Ms. Mellot did not maintain proper professional boundaries in her relationship with Betty. It further determined that Ms. Mellot was careless in her receipt of the funds and in paying Betty's rent promptly.

While finding that Ms. Mellot acted improperly, the Commission concluded that mitigating factors applied, i.e. that Ms. Mellot did not intend to use Betty's money improperly or for personal gain. Therefore, the Commission concluded that Employer had failed to establish evidence to support all of the charges set forth in its discharge letter. As such, the Commission invoked its powers under Section 952(c) of the Act, 71 P.S. §952(c), to modify the discharge action taken against Ms. Mellot by Employer. The Commission revoked the discharge and ordered that Ms. Mellott serve a sixty-day suspension.

Employer now appeals to this Court. We note that the Commission is the sole finder of fact and has the sole authority to assess the credibility of the evidence.

Bosnjak v. State Civil Service Commission, 781 A.2d 1280, 1286 (Pa. Cmwlth. 2001). Thus, our scope of review is limited to determining whether constitutional rights have been violated, whether errors of law were committed or if the findings of fact are supported by substantial evidence of record. Bosnjak, 781 A.2d at 1283.

Employer alleges that the Commission erred in finding that Ms. Mellot's misconduct did not constitute just cause for her removal and erred in modifying Ms. Mellott's removal to a sixty-day suspension.

Pursuant to Section 807 of the Act, 71 P.S. §741.807, an employee may not be removed absent a finding of just cause. It is employer's burden to establish that there was just cause for removal. Long v. Pennsylvania Liquor Control Board, 535 A.2d 1233 (Pa. Cmwlth. 1988). Here, the Commission found that Employer had presented sufficient evidence of misconduct. However, pursuant to Section 952(c) of the Act:

In the case of any employe removed, furloughed, suspended, or demoted, the commission may modify or set aside the action of the appointing authority. Where appropriate, the commission may order reinstatement, with the payment of so much of the salary or wages lost, including employe benefits, as the commission may in its discretion award.

Therefore, "the Commission may modify the appointing authority's disciplinary action in an appropriate case, even where the underlying charges against the civil service employee are proven." Department of Corrections v. State Civil Service Commission (Mason), 837 A.2d 1273 (Pa. Cmwlth. 2003). We note that the Commission's authority was not without boundaries, in that it needs to be "appropriate." Department of Corrections, 837 A.2d at 1277. The appropriateness of a modification has been considered under an abuse of discretion standard. Department of Corrections v. Roche,

654 A.2d 64 (Pa. Cmwlth.), petition for allowance of appeal denied, 541 Pa. 644, 663 A.2d 695 (1995).

In Mason, Lieutenant Vincent Mason, a commissioned corrections officer, was terminated from his employment. Lt. Mason testified that on the night in question, his work shift was to end at 10:00 p.m. He had a babysitter for his children that evening. However, that babysitter had informed him that she could only work until 11:00 p.m.

Pursuant to Department of Corrections (department) policy, Lt. Mason was required to work overtime when mandated. There was also an unwritten policy that a commissioned officer was to escort an injured officer or staff member to the hospital. However, non-commissioned officers had escorted employees to the hospital on past occasions, contrary to the unwritten policy.

On the night in question, at approximately 9:30 p.m., a corrections officer trainee cut her finger and needed to be taken to the hospital. Lt. Mason was informed by Captain Kevin Jones that he would probably need to take her. Lt. Mason replied that “he did not have the f-king time.” Mason, 837 A.2d at 1275.

Lt. Mason stated that he told Captain Jones that he could not work overtime because he was obligated to pick-up his children at the babysitter’s home. Captain Jones later ordered him to escort the corrections officer trainee to the hospital. Lt. Mason refused to obey the order. Captain Jones stated that Lt. Brown did not give a reason for disobeying the order.

Lt. Mason testified that he asked Sergeant Burley Clark to volunteer to take the injured trainee to the hospital. Subsequently, Sergeant Clark took the trainee to the hospital. Lt. Mason was later terminated for not following an order, not treating a supervisor with respect and not being truthful throughout the investigation.

Lt. Mason then appealed to the Commission. The Commission agreed that Lt. Mason violated department policy by disobeying an order and using profanities. However, the Commission concluded that sufficient evidence was not present to establish that Lt. Mason was untruthful during the investigation. The Commission then modified the removal and imposed a five-day suspension with pay.

The department appealed to this Court. We held that the Commission had the discretion to modify the removal and long as to Commission's action was appropriate. We noted that in Pennsylvania Game Commission v. State Civil Service Commission (Toth), 561 Pa. 19, 747 A.2d 887 (2000) and in Roche, the Commission's decision to modify the removal was deemed inappropriate. However, in both cases the actions of the employees involved criminal wrongdoing.<sup>5</sup> As such, we determined that the actions of Lt. Mason were distinguishable from the actions of the employees in Toth and Roche. Accordingly, we determined that the Commission had not acted inappropriately in modifying the removal of Lt. Mason.

In Pennsylvania Department of Corrections v. State Civil Service Commission (Clapper), 842 A.2d 526 (Pa. Cmwlth. 2004), prison guards entered an inmate's cell to retrieve items from the inmate. Sergeant Sean Clapper opened the cell to allow the prison guards to enter. He did not personally enter the cell. Sometime later, the inmate required medical attention. Sergeant Clapper was charged with nine violations of department policy including failing to file a report of the incident, failing

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<sup>5</sup> In Roche, a corrections officer was removed for lying during an internal investigation involving assaults on inmates by prison staff, for admittedly perjuring himself before a federal grand jury and for bringing discredit upon the department. In Toth, the chief of personnel services to the Pennsylvania Game Commission admitted to purposely placing incorrect dates in the state computer system in order to give employees pay advances they were not entitled to.

to cooperate when questioned regarding the incident and later filing an inaccurate report. He was then terminated by the department.

On appeal, the Commission determined that Sergeant Clapper violated the three departmental policies stated above, but that the other six charges were not proven. The Commission then decided, pursuant to Section 952(c) of the Act, to modify the department's action to a thirty-day suspension. The department then appealed to this Court.

The department argued that the termination was valid and that the Commission's decision should be reversed pursuant to Roche and Toth. We disagreed. We noted that Sergeant Clapper did not participate in the mistreatment of the inmate and that his misconduct was not alleged to have been criminal. We noted that while Sergeant Clapper initially failed to cooperate in the investigation, he later apologized. We determined that the action did not compel a reversal of the Commission as the department did not establish that the Commission's act of discretion involved "bad faith, fraud, capricious action or abuse of power...." Clapper, 842 A.2d at 533.

In the present action, Employer did not allege that Ms. Mellott intended to take advantage of Betty or steal from her. While it was inappropriate for Ms. Mellott to commingle Betty's funds, with her own, Betty sustained no actual financial harm. Ms. Mellott's conduct was not alleged to have been criminal and Employer did not establish that the Commission's determination involved bad faith, fraud, capricious action or abuse of power. As such, as in Mason and Clapper, we conclude that this action does not compel a reversal of the Commission.

Accordingly, the order of the Commission is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge

President Judge Leadbetter concurs.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bedford-Somerset Mental	:	
Health/Mental Retardation Unit,	:	
Petitioner	:	
	:	
v.	:	No. 1246 C.D. 2007
	:	
State Civil Service Commission	:	
(Mellott),	:	
Respondent	:	

**ORDER**

AND NOW, this 17<sup>th</sup> day of January, 2008, the order of the State Civil Service Commission is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge