

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica M. Irizarry, :  
Petitioner :  
 :  
v. : No. 1566 C.D. 2007  
 : Submitted: December 14, 2007  
 :  
State Civil Service Commission :  
(SCI-Camp Hill), :  
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE McCLOSKEY

FILED: January 29, 2008

Jessica M. Irizarry (Petitioner) petitions for review of an order of the State Civil Service Commission (Commission), which denied her request for reconsideration relating to her termination of employment with the State Correctional Institution at Camp Hill, Pennsylvania (SCI-Camp Hill). We now affirm.

On May 11, 2007, Petitioner was terminated from her employment at SCI-Camp Hill as a Corrections Officer Trainee. At the time of her termination, she was on “probationary status.” Petitioner’s employment termination was based upon alleged violations of Sections A4 and B6 of the Department of Corrections (DOC) Code of

Ethics (Code of Ethics),<sup>1</sup> relating to an incident that occurred on or about March 12, 2007, when she accepted a candy bar from an inmate.

Petitioner sought an appeal before the Commission by completing an appeal form, which was postmarked on May 23, 2007. (R. at Tab 1). Petitioner asserted that she was discriminated against when she was removed from her probationary position at SCI-Camp Hill. As to the type of discrimination, she checked the box that read “other non-merit factors (explain).”<sup>2</sup> Id. The appeal form requested that Petitioner answer five (5) additional questions as completely as possible relating to the basis for the claim of discrimination. The form stated that failure to answer the questions as completely as possible “may result in denial of your appeal.” Id. With regard to questions seeking information about the actions that led her to believe she was discriminated against, she wrote on the form only that her employment was “terminated over [a] minor infraction” that occurred in the SCI-Camp Hill on March 12, 2007. Id. She also stated that the “three step process – written, verbal, termination – were not used.” Id. Additionally, Petitioner failed to answer two (2) of the questions, relating to who discriminated against her and whether the Civil Service Act (the Act)<sup>3</sup> and/or rules were violated. Petitioner attached DOC’s letter of termination, dated May 9, 2007,

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<sup>1</sup> Section A4 of the Code of Ethics provides, in part, that “employees ... shall not directly or indirectly solicit, accept, or agree to accept any gift of money or goods, loans or services for personal benefit which would influence the performance of their work duties or decision making.” Section B6 of the Code of Ethics provides, in part, that “there shall be no fraternization or private relationship with inmates.... This includes, but is not limited to, ... receiving gifts....” (R. at Tab 1). “R.” refers to the Original Record; Petitioner was excused from filing a Reproduced Record.

<sup>2</sup> Petitioner did not check boxes that related to “race” or “sex.”

<sup>3</sup> Act of August 5, 1941, P.L. 752, as amended, 71 P.S. §§741.1-741.1005.

which briefly referenced the reason for her dismissal as being a result of accepting a candy bar from an inmate.

By order dated June 22, 2007,<sup>4</sup> the Commission denied Petitioner's request for a hearing, stating that "there was an insufficient allegation of discrimination." (R. Tab 2). The order read, in part, as follows:

As a probationary employee, [Petitioner] has the burden of going forward to establish a claim of discrimination as the basis of appeal. 4 Pa. Code §105.12(c). However, [Petitioner] has not indicated, acts, which, if proven, would constitute discrimination, although requested to do so on the Appeal Request Form.

Id.

By letter received July 10, 2007, Petitioner requested reconsideration by the Commission. In so doing, she stated that she was discriminated against because of her gender and race. (R. Tab 3). Petitioner provided no other reasons why the request for reconsideration should be granted. By letter dated July 19, 2007, the Commission denied the request for reconsideration.

Petitioner then filed the subject petition for review with this Court, alleging in detail the circumstances surrounding the incident with the candy bar. Petitioner

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<sup>4</sup> In her brief, Petitioner states that she seeks review of the order dated June 22, 2007, which she describes as determining that she violated the Code of Ethics. She also states that she was unable to obtain a copy of the June 22, 2007 order. Regardless, Petitioner attaches to her brief the Commission's order dated June 20, 2007, which includes a mailing date of June 22, 2007. Upon review of the record, it appears to this Court that Petitioner is mistaken that two (2) orders were issued by the Commission: one (1) dated June 20, 2007, and another dated June 22, 2007. In reality, only one (1) order was issued with a date of June 20, 2007, and a mailing date of June 22, 2007. In order to eliminate confusion, we will refer to the order as the "order dated June 22, 2007" in this opinion. Also, as a point of clarification, the order dated June 22, 2007, did not address whether Petitioner violated the Code of Ethics.

requests that this Court reverse the order, dated July 19, 2007, denying the request for reconsideration. However, in her brief to this Court, Petitioner requests that the Court review the Commission's order dated June 22, 2007. In support of her request, Petitioner argues that: she is a Hispanic female; she did not violate the Code of Ethics; and that DOC used the incident on March 12, 2007, as a pretext for terminating her employment. She sets forth facts not of record before the Commission, and she further argues that her termination was actually due to discrimination based on her gender, race or other non-meritorious reasons in violation of the Act.<sup>5,6</sup>

Initially, we must determine what questions we may review at this time. Petitioner in her brief essentially seeks to have us review this matter in its entirety, including the initial order by the Commission, dated June 22, 2007, denying a request for a hearing. However, Petitioner failed to petition this Court to review the order dated June 22, 2007. Instead, on August 17, 2007, Petitioner filed a petition for review with this Court, seeking review of the denial of request for reconsideration which occurred on July 19, 2007. Also, we note that as a petition for reconsideration does not operate to extend the thirty-day period for appeal of an original order, the time period for filing a petition for review of the initial order dated June 22, 2007, had expired before Petitioner

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<sup>5</sup> By order dated November 29, 2007, this Court granted the Commission's application to strike from Petitioner's brief the transcript of Petitioner's pre-disciplinary conference. Petitioner attached the transcript to her brief although it had not been part of the record before the Commission.

<sup>6</sup> As to the merits, the Commission argues that it did not abuse its discretion by denying Petitioner's request for reconsideration. Petitioner failed to state on her Appeal Request Form facts, which if proven, would constitute discrimination. Also, Petitioner failed to provide sufficient additional information on her request for reconsideration so as to entitle her to a hearing. Moreover, the Commission notes that Petitioner included additional information in her petition for review and brief to this Court that was not in either her original appeal request or in her request for reconsideration. The Commission argues that this additional information cannot be considered by this Court when determining the propriety of the Commission's actions.

sought relief from this Court. Hence, our review must be limited solely to the Commission's denial of reconsideration. See Muehleisen v. State Civil Service Commission, 443 A.2d 867 (Pa. Cmwlth. 1982), affirmed, 501 Pa. 335, 461 A.2d 615 (1983).

In the case at hand, Petitioner has waived the only issue that could properly be brought before this Court, i.e., whether the Commission's denial of the request for reconsideration constituted an abuse of discretion.<sup>7</sup> Petitioner's statement of questions and argument focused on the order dated June 22, 2007, and addressed whether Petitioner's actions constituted a violation of the Code of Ethics. Appellant did not address whether the Commission's denial of the request for reconsideration, based upon the information before the Commission at the relevant time, constituted reversible error, despite the fact that this was the only issue properly before this Court for review. Such failure to include the issue in the "statement of questions involved" or to develop it in an argument with citations constitutes a waiver. See Pa. R.A.P. 2116; see also Coraluzzi v. Commonwealth, 524 A.2d 540 (Pa. Cmwlth. 1987) (ordinarily, no point will be considered which is not set forth in the statement of questions involved or suggested thereby); Rapid Pallet v. Unemployment Compensation Board of Review, 707 A.2d 636 (Pa. Cmwlth. 1998) (holding that arguments not properly developed are deemed waived).

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<sup>7</sup> The decision to grant or deny a request for reconsideration is a matter of discretion and, as such, will only be reversed for an abuse of discretion. Muehleisen. Courts will not review the actions of administrative tribunals involving acts of discretion in the absence of bad faith, fraud, capricious action or abuse of power. Pennsylvania State Association of Township Supervisors v. State Ethics Commission, 499 A.2d 735 (Pa. Cmwlth. 1985).

Accordingly, we must affirm the Commission's denial of Petitioner's request for reconsideration.

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JOSEPH F. McCLOSKEY, Senior Judge

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**ORDER**

AND NOW, this 29<sup>th</sup> day of January, 2008, the denial by the State Civil Service Commission of the request for reconsideration by Jessica M. Irizarry is hereby affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge