

# Adams County Legal Journal

Vol. 62

October 9, 2020

No. 23, pp. 34-40

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association,  
Edward G. Puhl, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

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JOYCEANN DEAL VS.  
GETTYSBURG AREA SCHOOL DISTRICT

1. Where a complete record of the administrative proceeding exists, an appellate court's scope of review is limited to determining whether constitutional rights were violated, an error law was committed, or the agency's findings of fact were not supported by substantial evidence.

2. Appellant does not specifically claim the factual findings were not supported by the record but rather argues a different conclusion should have been reached from alternative testimony. This Court, however, does not accept Appellant's invitation to reevaluate evidence and credibility determinations made by Appellee during the administrative proceeding.

3. Legal and factual issues not presented before the hearing board may not be asserted for the first time on an administrative appeal.

4. Even if not waived, Appellant's argument concerning violations of policy/guidelines as a basis to excuse nonperformance is unsupported by any legal authority.

5. Appellant was given great latitude in describing her perception of her work environment as well as how she was personally treated by her supervisor. Indeed, as acknowledged by Appellant, the hearing officer actually accepted her argument that Appellant did not fully comply with its various policy/guidelines. Thus, Appellant cannot credibly argue prejudice in the event it is assumed, in arguendo, that the hearing officer committed evidentiary error.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, 2019-SU-1499, JOYCEANN DEAL VS.  
GETTYSBURG AREA SCHOOL DISTRICT.

Sara A. Austin, Esq., Attorney for Plaintiff

Robert L. McQuaide, Esq. and Kalani E. Linnell, Esq., Attorneys  
for Defendants

George, P. J., September 9, 2020

OPINION

In this appeal under the "Local Agency Law," 2 Pa. C.S.A. § 551 *et seq.* and § 751 *et seq.*, JoyceAnn Deal ("Appellant") challenges her termination from the Gettysburg Area School District ("Appellee"). Appellant was terminated by Appellee for incompetency, violation of school laws, and other improper conduct pursuant to Section 514 of the Public School Code of 1949, as amended, 24 P.S. § 514 ("School Code"). In her appeal, Appellant claims the evidence produced at hearing was insufficient to establish a violation of the School Code. She further claims the hearing officer improperly limited her ability to call and question witnesses during the administrative proceeding. Finally, she sets forth numerous due process

claims alleging a conflict of interest on behalf of the hearing officer; lack of clear notice of the allegations against her; and the inclusion of allegations in the notice that preceded the tenure of the signatory superintendent. A full record of the administrative hearing has been developed and certified to this Court. The matter is now ripe for disposition.

Where a complete record of the administrative proceeding exists, an appellate court's scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or the agency's findings of fact were not supported by substantial evidence. *Spencer v. City of Reading Charter Bd.*, 97 A.3d 834, 839 n.5 (Pa. Cmwlth. 2014). In weighing whether factual findings are supported by substantial evidence, the query focuses upon whether "there is a rational support in the record, when reviewed as a whole, for the agency action." *Republic Steel Corp. v. Workmen's Compensation Appeal Bd.*, 421 A.2d 1060, 1062-63 (Pa. 1980). In *Spencer*, the Commonwealth Court quantitated the amount of proof necessary to constitute substantial evidence:

It is axiomatic that findings of fact in a local agency's adjudication must be supported by substantial evidence. Substantial evidence is evidence that a reasonable mind might accept as sufficient to support a conclusion. An appellate court may not reweigh the evidence or make credibility determinations. However, an appellate court may overturn a credibility determination if it is arbitrary and capricious or so fundamentally dependent on a misapprehension of material facts, or so otherwise flawed, as to render it irrational.

*Id.* A.2d at 842 (*quotations omitted*).

A review of the record establishes that substantial evidence existed to support Appellee's action. Appellee's justification for the termination focused on Appellant's inability to accomplish assigned tasks. The hearing officer's findings of fact cite significant testimony from numerous witnesses who described a history of uncompleted tasks by Appellant. In addition, the referenced testimony clearly established Appellant's inability to properly maintain important records. As noted by the hearing officer, the record evidences repeated discussions between Appellee's management and Appellant identifying

her deficiencies and directing corrective action on her part. Indeed, as pointed out by the hearing officer, Appellant acknowledged during performance evaluations conducted over multiple years that her performance needed improvement. At hearing, she admitted to being overwhelmed by work which was within her assigned tasks.

Appellant does not specifically claim the factual findings were not supported by the record but rather argues a different conclusion should have been reached from alternative testimony. This Court, however, does not accept Appellant's invitation to reevaluate evidence and credibility determinations made by Appellee during the administrative proceeding. Questions resolving conflicts in evidence, witness credibility, and evidentiary weight were properly within the exclusive discretion of the fact-finding agency and not usually subject to reevaluation by a reviewing court. *Birdsboro & Birdsboro Municipal Authority v. Dept. of Environmental Protection*, 795 A.2d 444, 448 (Pa. Cmwlth. 2002). The fact that there may have been contrary testimony or uncontradicted evidence is not critical as a finder of fact is not under obligation to accept any evidence as conclusive. *Id.*

In her challenge to the sufficiency of the evidence, Appellant argues that Appellee's alleged noncompliance with their own policy excuses her nonperformance. In addressing this issue, it is important to distinguish the claims which Appellant blends together. She devotes significant argument in her brief to violations of Appellee "policies/guidelines." She then cites to School Board Policy 317 and Administrative Guideline 512. The distinction is significant because issues related to alleged violation of Policy 317 were not raised before the hearing board. Appellant neither expressly raised any issue concerning the alleged violation of Policy 317 nor elicited testimony to support such a position prior to this appeal. Legal and factual issues not presented before the hearing board may not be asserted for the first time on an administrative appeal. 2 Pa. C.S.A. § 753(a) (a party may not raise upon appeal any question not raised before the agency); see *DeMarco v. Jones & Laughlin Steel Corp.*, 522 A.2d 26, 29 (Pa. 1987); *Barnes v. Phila. Historical Comm'n.*, 216 A.3d 590, 593 n.4 (Pa. Cmwlth. 2019). This principle has practical purpose as a party is incapable of factually or strategically defending claims on appeal which are unknown at the time the

record is developed. By way of example, there currently appears to be an unresolved factual question as to whether the policy alleged to have been violated by the Appellee actually exists yet Appellant's argument treats the question as beyond reproach.<sup>1</sup>

Even if not waived, Appellant's argument concerning violations of policy/guidelines as a basis to excuse nonperformance is unsupported by any legal authority. Perhaps in recognition of this deficiency, Appellant paints the issue as one of credibility.<sup>2</sup> Unfortunately for Appellant, the Appellee rejected this argument based upon their determination of the credible evidence. It is not the prerogative of this Court to overturn such a determination. See *Birdsboro*, *supra*.

Appellant next challenges the hearing officer's preclusion of the testimony of several witnesses during Appellant's presentation of her case. Appellant points to numerous instances where she was not permitted to question and/or call witnesses to support her claim that Appellee failed to follow their own policy/guidelines by creating a hostile work environment and making adverse employment decisions based upon age.

Local agencies, in hearing disciplinary matters, are not bound by the technical rules of evidence. 2 Pa. C.S.A. § 554; *Kazmarek v. New Bethlehem Borough Council*, 478 A.2d 514, 517 (Pa. Cmwlth. 1984). As such, the admission or exclusion of evidence on the grounds of relevance is committed to the sound discretion of the local agency. *Mulberry Market, Inc. v. City of Philadelphia, Bd. of License & Inspection Review*, 735 A.2d 761, 768 (Pa. Cmwlth. 1999). Absent an abuse of discretion, a reviewing court should not disturb the local agency's evidentiary rulings. *Id.* An abuse of discretion is more than an error in judgment but rather requires a finding that the discretion exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. *Commonwealth v. Tigue*, 184 A.3d 560, 572 (Pa. Super. 2018).

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<sup>1</sup> See Nov. 18, 2019 Tr., pg. 15, wherein the Appellee's solicitor denies the existence of formal policy in response to Appellant's counsel's argument that the Appellee does "not follow policy when it comes to Guidelines, Corrective Action Plans, things like that."

<sup>2</sup> In her brief, Appellant argues, "While on the one hand demanding that [Appellant] handle priority tasks thrown at her and get caught up with filing, on the other hand the [Appellee] was not following its own Policies/Guidelines." Appellant's Brief, pg. 27.

In her brief, Appellant cites to five separate evidentiary rulings and the preclusion of three witnesses. As mentioned, Appellant’s purpose in seeking admission of the evidence was to establish that Appellee administration did not follow its own policy.<sup>3</sup> In weighing the basis advanced by Appellant for admission of the questioned evidence, it cannot be said that the hearing officer’s preclusion of the testimony constituted an abuse of discretion. As previously mentioned, Appellant has failed to advance any authority that her non-performance is shielded by the alleged policy violations on the part of Appellee.

An item-by-item consideration of the specific errors pointed out by Appellant supports her inability to establish an abuse of discretion. Appellant’s first challenge refers to an objection sustaining her hearsay testimony that another employee filed a “complaint” with Appellee management at the same time she complained about her supervisor’s behavior. Appellant did not subsequently attempt to call the witness and when questioned about relevance could only claim it went to the general office “environment and the M.O.”<sup>4</sup> This Court cannot find an abuse of discretion by the hearing officer in precluding Appellant’s attempt to establish a conclusion that she was being discriminated against through evidence of unrelated conduct allegedly directed towards separate third party. *See* Pa. Rule of Evidence 401.

Appellant next complains the hearing officer erred in sustaining a relevance objection concerning her subjective thoughts when hearing the word “retire.”<sup>5</sup> This challenge is meritless as the subjective thoughts of one subjected to age discrimination are irrelevant. *See generally Kroptavich v. Pennsylvania Power and Light Co.*, 795 A.2d 1048, 1056 (Pa. Super. 2002).

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<sup>3</sup> According to her brief, Appellant sought to counter Appellee’s evidence by showing Appellee “did not follow its own policies and guidelines...by creating a hostile work environment and making adverse employment decisions based on age.” Appellant’s Brief, pg. 9. Later, she argues that by “[n]ot being able to fully present her evidence to counter the charges against her prejudiced [Appellant’s] defense and made it appear as if the [Appellee] was not in violation of its own policy...” Appellant’s Brief, pg. 10. In neither her appeal nor brief has Appellant presented any other argument in regard to the evidence’s relevance.

<sup>4</sup> Nov. 13, 2019 Tr., pg. 102, lines 18 through pg. 103, line 6

<sup>5</sup> Q. When you heard the word retire, what did you think?

[Appellee’s counsel]: Objection. What’s the relevance? ...

[Appellant’s counsel]: It’s a policy that prohibits discrimination based on age.  
Nov. 13, 2019 Tr., pg. 171, lines 5 through 11

The remaining challenged evidentiary rulings related to incidents involving other business office staff unconnected to management's interaction with Appellant.<sup>6</sup> In considering these objections, it is important to note that Appellant inaccurately describes the objectionable testimony as being related to both age and a hostile work environment. Rather, at best, the testimony may have circumstantially related solely to a hostile work environment. For instance, testimony related to an incident of an employee other than Appellant crying at work in approximately 2015.<sup>7</sup> Similarly, without context, other objectionable testimony spoke of another employee other than Appellant getting her blood pressure checked. This Court cannot find error with the hearing officer sustaining the objections at issue. As previously mentioned, all testimony related to employees other than Appellant in an effort to paint a broad conclusion unrelated to specific application to Appellant and the matter at issue. The evidentiary relevance is further attenuated by any lack of context. Appellant neither proffered any specific nexus between Appellant and the proposed testimony nor argued a basis for relevance other than a general claim of hostile work area. For instance, there is no indication as to when the incidents occurred, whether Appellant was present or aware of them, and the precipitating thought processes or other causation of the reactions of the persons which the witness was attempting to describe.<sup>8</sup>

Finally, Appellant is unable to show any prejudice resulting from the preclusion of this evidence. Appellant was given great latitude in describing her perception of her work environment as well as how she was personally treated by her supervisor. Indeed, as acknowledged by Appellant, the hearing officer actually accepted her argument that Appellee did not fully comply with its various policy/guidelines.<sup>9</sup> Thus, Appellant cannot credibly argue prejudice in the event it is assumed, in *arguendo*, that the hearing officer committed

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<sup>6</sup> In her brief, Appellant challenges the following objections: Nov. 13, 2019 Tr., pg. 209, line 10; pg. 244, line 15; and page 246, line 15.

<sup>7</sup> The witness testified she was last employed by Appellee four years prior to her testimony. Nov. 13, 2019 Tr., pg. 197.

<sup>8</sup> For instance, Appellant failed to offer any corroboration permitting a fact-finder to conclude that an employee's high blood pressure was caused by a hostile work environment rather than the myriad of medically recognized causations of the condition.

<sup>9</sup> Appellant's brief, pg. 27, citing Nov. 18, 2019 Tr., pg. 15, lines 19-21.



evidentiary error. Under these circumstances, I cannot find error in the hearing officer's refusal to entertain an assault on the character of Appellant's supervisor which does not directly implicate the employer/employee relationship between the parties.

For the same reasons, Appellant's challenges to the preclusion of witnesses at hearing lack merit. Indeed, the relationship between the issues before the board and the observations of the precluded witnesses may be even more tenuous.<sup>10</sup>

Appellant's final claim of error raised due process violations alleging a conflict of interest by the hearing officer and vagueness in the Board's notice of reasons for termination. In a related argument, Appellant claims the notice was improper as it was signed by the current school superintendent who was not the superintendent for the first three years of the allegations in the notice. These issues are waived as a litigant must first preserve the issues at the administrative agency hearing in order to obtain judicial review. *Sharp Equipment v. Bd. of Review*, 808 A.2d 1019, 1025-26 (Pa. Cmwlth. 2002); *Chapman v. Unemployment Compensation Bd.*, 20 A.3d 603, 611 (Pa. Cmwlth. 2011) citing *Wing v. Unemployment Compensation Bd. of Review*, 436 A.2d 179 (Pa. 1981). As a review of the record reveals Appellant did not provide the Board an opportunity to consider or respond to the claims at the hearing level, this Court will not consider the claims for the first time.

For the foregoing reasons, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 9th day of September, 2020, the action of the Gettysburg Area School District in terminating the employment of JoyceAnn Deal is affirmed. The appeal in this matter is dismissed.

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<sup>10</sup> The notice advising Appellant of the basis for her termination outlines conduct beginning in 2012. Exhibit A-1. However, one of the precluded witnesses was last employed by Appellee in 2009. Nov. 18, 2019 Tr., pg. 32. The second witness was last employed by Appellee in 2014. Tr., pg. 33.



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION****ESTATE OF JANE L. ARMACOST, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Counsel Trust Company, 307 Leader Heights Road, York, PA 17402

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF ROBERT L. BOLIN, SR. a/k/a ROBERT L. BOLIN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Jolene M. Wentz, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

**ESTATE OF DOUGLAS CRAIG DAVIS, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Administratrix CTA: Lynn Marice Davis, 134 Pleasant View Court, East Berlin, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF GENEVIEVE M. E. REAVER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Brian J. Reaver, 523 N. Broad Street, Apt. 104, Philadelphia, PA 19123; Keith M. Reaver, 1050 Jack Road, Orrtanna, PA 17353

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF KATHRYN P. ARASIN, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix: Elizabeth Caley, 271 Meadow Drive, Gettysburg, PA 17325

Attorney: Todd A. King, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

**ESTATE OF EARL D. BUCKLEY, a/k/a EARL D. BUCKLEY, SR., DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executrixes: Dennis W. Buckley, 1707 Heidlersburg Road, Aspers, PA 17304; Earl D. Buckley, Jr., 640 White Church Road, York Springs, PA 17372

**ESTATE OF DONNA DENISE BURRELL a/k/a DONNA DENISE KING, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Administratrix: Akia Whitehead, 1471 Quaker Valley Road, Biglerville, PA 17307

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF TIMOTHY A. DIEHL, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Personal Representative: Jody D. Chronister, 240 Table Rock Road, Gettysburg, PA 17325

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

**ESTATE OF TIMOTHY LEE KRAJEWSKI a/k/a TIMOTHY L. KRAJEWSKI, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Jacqueline J. Moore, 43 Ashfield Drive, Littlestown, PA 17340

Attorney: Ann C. Shultis, Esq., Salzmann Hughes, P.C., 1147 Eichelberger Street, Suite F, Hanover, PA 17331

**ESTATE OF FREDA LENNON, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Janet L. Shearer Polsky, 8392 Hillhead Drive, Huntington Beach, CA 92646

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

**ESTATE OF MEARL C. McDANNELL, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Co-Executors: Debra McDannell, c/o Andrew H. Shaw, Esq., 2011 West Trindle Road, Carlisle, PA 17033; Mark McDannell, c/o David F. Spang, Esq., Walker, Connor & Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201

Co-Attorneys: David F. Spang, Esq., Walker, Connor & Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201; Andrew H. Shaw, Esq., 2011 West Trindle Road, Carlisle, PA 17033

**ESTATE OF DONNA K. PHILLIPS a/k/a DONNA KAY PHILLIPS, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Administratrix: Susan I. Hedrick, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

**THIRD PUBLICATION****ESTATE OF ANNA M. BANKERT a/k/a ANNA MAE BANKERT, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Stacey J. Kimmey, Esq., 1932 Smith Station Road, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF DONALD G. DeWALD, DEC'D**

Late of Silver Spring, Montgomery County, Maryland

Executrix: Laura Schindler, 12509 Eastbourne Drive, Silver Spring, Maryland 20904

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF WILDA G. GRACE, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Merton E. Grace II, c/o James D. Hughes, Esq., Salzmann Hughes PC, 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015

Attorney: James D. Hughes, Esq., Salzmann Hughes PC, 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015

**THIRD PUBLICATION CONTINUED**

ESTATE OF JAMES T. GRIMES, DEC'D  
Late of the Borough of Littlestown,  
Adams County, Pennsylvania

James H. Grimes, 53 George Street,  
Taneytown, MD 21787

Attorney: David K. James, III, Esq.,  
234 Baltimore Street, Gettysburg,  
PA 17325

ESTATE OF WILLIAM JOSEPH GROFT,  
DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Executor: Eric W. Groft, 279 Lowell  
Street, Somerville, MA 02145

ESTATE OF JACOB LUTHER HOWE, JR.  
a/k/a J. LUTHER HOWE, JR., DEC'D

Late of Straban Township, Adams  
County, Pennsylvania

Executor: Michael E. Howe, c/o  
Genevieve E. Barr, Esq., 11 Carlisle  
Street, Hanover, PA 17331

Attorney: Genevieve E. Barr, Esq., 11  
Carlisle Street, Hanover, PA 17331

ESTATE OF KEVIN E. LINCOLN, DEC'D

Late of the Borough of Gettysburg,  
Adams County, Pennsylvania

Administrator: Keith Lincoln, 211  
Schoolhouse Hill Road, Fayetteville,  
PA 17221

Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

ESTATE OF CLAIR A. MORITZ, DEC'D

Late of Huntington Township, Adams  
County, Pennsylvania

Co-Executrices: Deb Zepp Slaybaugh,  
121 Old US Route 15, York Springs,  
PA 17372; Kimberly Kennedy, 2625  
Coon Road, Aspers, PA 17304

Attorney: John A. Wolfe, Esq., Wolfe,  
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