

**DESPITE OBSERVING THAT DISMISSAL OF PUBLIC EMPLOYEE
FOR EXCESSIVE AND INAPPROPRIATE INTERNET USAGE IS
“DISPROPORTIONATELY HARSH,” COMMONWEALTH COURT
UPHOLDS HIS TERMINATION**

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In Thompson v. State Civil Commission, 863 A.2d 180 (Pa. Commw. 2004), the Commonwealth Court upheld the conclusion of the State Civil Service commission that there was merit-based just cause to terminate a county employee for excessive and inappropriate internet usage during work hours. The Court remarked that it found the punishment harsh, but refused to substitute its judgment for the judgment of the Civil Service Commission which issued the termination.

Richard Thompson had worked for the Beaver County Area Agency on Aging (“Agency”) for approximately twelve (12) years, and at the time of his termination his title was “Program Manager/Aging Care Manager 2.” His duties entailed oversight of subcontracted services to the elderly, including writing and developing proposals and contracts, contract compliance and monitoring, and technical assistance.

In May or June 2001, all employees of the Agency were cautioned against inappropriate use of computers, email and the internet. The Agency had a written policy in place prohibiting personal use of the internet during work hours and electronic communications displaying offensive or explicit language or images. The policy also stated that all electronic information stored in the Agency’s computers is the Agency’s property and subject to inspection at any time without notice. In late 2002, Thompson was confronted about personal use of the Agency’s computers during work hours. During the period from August 2002 through January 2003, Thompson devoted roughly 20% of each day and almost 30% of his total work time online visiting websites unrelated to his job. Thompson admitted to viewing sites depicting nudity for roughly ten (10) to fifteen (15) minutes per day.

Under the Civil Service Act, a civil service employee may be removed from employment only for just cause. 71 P.S. § 741.807. The public employer has the burden of proving just cause for removal, Western Center Department of Public Welfare v. Hoon, 143 Pa. Cmwlt. 212, 598 A.2d 1042 (Pa. Commw. 1991), and it must be merit-related. Department of Environmental Resources v. Galant, 144 Pa. Cmwlt. 85, 600 A.2d 701 (Pa. Commw. 1991), *reversed on other grounds*, 534 Pa. 17, 626 A.2d 496 (Pa. 1993). Merit-related criteria include whether the employee failed to properly execute his duties or has acted in such a way that hampers or frustrates the execution of his duties. *Id.* The criteria must in a rational and logical way touch on the employee’s competency and ability. *Id.* The Commission found that the cumulative effect of Thompson’s time spent online and his daily visits to websites displaying nudity, along with evidence that he deleted his internet history combined to provide just cause for his removal.

Courts are bound to a very limited standard in reviewing decisions of the State Civil Service Commission. Judicial review is limited to determining whether findings of fact are supported by competent evidence, whether errors of law have been committed, and whether Constitutional rights have been violated. Ellerbe-Pryer v. State Civil Service Commission, 803 A.2d 249 (Pa. Commw. 2002). The Court will not re-weigh the evidence or substitute its judgment for that of the Agency, even though it might have reached a different conclusion. Balas v. Department of Public Welfare, 151 Pa. Cmwlth. 53, 616 A.2d 143 (Pa. Commw. 1992), *petition for allowance of appeal denied*, 535 Pa. 639, 631 A.2d 1010 (Pa. 1993).

In this case, the Court upheld the agency's decision, but cautioned:

The Court must observe that based on the nature and lack of severity of Thompson's infraction, the discipline he received, termination of employment, seems disproportionately harsh. While the Commission has the power to modify the action of the appointing authority even where the charges brought against the employee are proven, this Court will not separately weigh evidence or substitute its judgment for that of the Commission even though we may have reached different factual conclusions. Because the credited evidence supports the Commission's findings and conclusions, the order of the Commission is affirmed.

Thompson, 863 A.2d at 180. (internal citations omitted) As such, the Court upheld that just cause, as defined by the Civil Service Act, existed for the dismissal of this employee for inappropriate and excessive use of the internet for personal use during work hours.