

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Sharon D. Williams,

Appellant,

v.

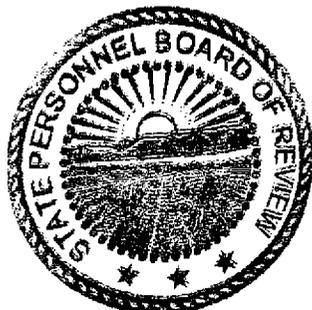
Case No. 08-REM-04-0098

Department of Mental Health Northcoast Behavioral,

Appellee.

ORDER

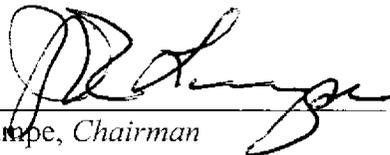
This matter came on for consideration on the motion of Appellant that the Withdrawal attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached withdrawal, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**. Accordingly, the above-referenced appeal is hereby **DISMISSED**.



Lumpe - Aye

Sfalcin - Aye

Tillery - Aye



J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 22, 2010.



Clerk

1-22-10
MH

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

SHARON WILLIAMS, :

Appellant, : CASE NO. 008-REM-04-0098

v. :

OHIO DEPARTMENT OF MENTAL : JEANNETTE GUNN
HEALTH, NORTHCOAST BEHAVIORAL : Administrative Law Judge
HEALTHCARE SYSTEM, :

Appellee. :

APPELLANT'S NOTICE OF WITHDRAWAL OF APPEAL

Appellant, Sharon Williams, hereby notifies this Board of her intent to withdraw the above-captioned appeal.

Respectfully submitted,

Chastity L. Christy

Chastity L. Christy (0076977)
 cchristy@groedel-law.com
 Caryn M. Groedel (0060131)
 cgroedel@groedel-law.com
 Jennifer L Speck (0079126)
 jspeck@groedel-law.com
 Caryn Groedel & Associates Co., LPA
 31340 Solon Road, Suite 27
 Cleveland, Ohio 44139
 Telephone: (440) 544-1122
 Facsimile: (440) 996-0064
 Attorneys for Appellant

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**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Sharon D. Williams,

Case No. 08-REM-04-0098

Appellant

v.

October 7, 2009

Department of Mental Health,
Northcoast Behavioral Healthcare System,

Jeannette E. Gunn
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her April 7, 2008, removal from employment with Appellee. A record hearing was held in the instant matter on December 4, 2008, and February 12, 2009. Appellant was present at record hearing and was represented by Chastity L. Christy, attorney at law. Appellee was present at record hearing through its designee, Chief Fiscal Officer William Von Alt, and was represented by Pooja A. Bird and Cynthia A. Kravitz, Assistant Attorneys General. Jurisdiction of the Board was established pursuant to R.C. 124.03(A) and 124.34.

The R.C. 124.34 Order of Removal provided to Appellant listed as grounds for her removal:

Policy #3.10: Dishonesty: Falsification or unauthorized altering or removal of any official document or record, Theft in or out of office of State property or the property of a patient/client – Theft includes by fraud or deception; Misusing an employee's position for personal gain.

STATEMENT OF THE CASE

Appellant testified that she had been employed by Appellee for approximately twenty-six years and held the position of Account Clerk Supervisor in the Payroll Department at the time of her termination. She noted that she had occupied the Account Clerk Supervisor position for approximately two years and was promoted to

the position by her supervisor, Mr. William Von Alt. Appellant stated that although she was responsible for processing payroll for all of Appellee's employees and directed most of the functions of payroll processing, she did not have complete authority over payroll.

Appellant confirmed that as an Account Clerk Supervisor, she supervised three Timekeeper positions, including the position occupied by Mr. Earnest Wimbley. She testified that she participated in the hiring process for employees in the Timekeeper positions, was responsible for training and evaluating those individuals, and approved their leave time. Appellant acknowledged that she was familiar with the process of completing leave requests and explained that once a leave request is completed by an employee, it is submitted to the employee's supervisor for approval and then sent to the Payroll Department to be processed by a Timekeeper; once the leave request is processed, it is placed in the employee's payroll file.

Appellant recalled that in 2004 she occupied an Account Clerk 2 position that was included in the collective bargaining unit. She confirmed that she requested and took vacation leave on December 23 and December 27, 2004 (Appellee's Exhibits I, J and Q), and noted that December 24, 2004, was a holiday.

Appellant testified that in 2007, Appellee entered into a settlement agreement for a class action grievance regarding weather emergencies occurring on December 23 and 24, 2004, and January 11, 19, 20 and 22, 2005 (the grievance settlement). She explained that the grievance settlement provided that employees who had attempted to report for work on those dates but were not able to do so as a result of the weather emergency would have their leave balances restored. Appellant acknowledged that the grievance settlement provided that employees who had taken preapproved leave for those dates would not be entitled to the restoration of leave balances (Appellee's Exhibit L).

Appellant testified that because nearly three years had elapsed between the dates in question and the grievance settlement, she could not remember whether or not she had worked on the relevant dates. She confirmed that she completed the grievance forms contained in Appellee's Exhibit H, and checked both "came to work" and "didn't go to work." Appellant explained that she completed the forms in that manner because union representatives had instructed all potentially affected employees to do it that way so that management would have the responsibility for checking leave records to decide if employees were entitled to a restoration of

balances. She acknowledged that she did not personally check her leave records to determine whether or not she had worked on the pertinent dates, as her records were in storage and she wanted to submit the forms quickly; Appellant observed that she was never made aware that she had a responsibility to do so.

Appellant stated that when she received the memorandum and attached spreadsheet instructing her to implement the grievance settlement (Appellee's Exhibit K), she spoke to Wendy Ivory because she believed her name had been mistakenly left off the award list. She recalled that Ms. Ivory instructed her to check with the union representative for clarification; Appellant indicated that she subsequently spoke with both Mary Wilson and Earnest Wimbley. Appellant confirmed that neither Ms. Ivory nor any union representative ever instructed her to add her name to the award list.

Appellant stated that after she spoke with Ms. Wilson and Mr. Wimbley, she approached her supervisor, Mr. Von Alt, and asked him to check her payroll information to determine whether or not she was entitled to leave restoration. She indicated that she had not accessed her payroll records when she spoke with Mr. Von Alt and asked him to do so on her behalf. Appellant recalled that shortly after she spoke with Mr. Von Alt he handed her a brief memorandum stating that she had been approved to receive leave restoration for eight hours in 2004 and eight hours in 2005. She testified that the document was a simple interoffice memorandum dated July 31, 2007, addressed to the Payroll Department and signed at the bottom by Mr. Von Alt. Appellant noted that she did not discuss the grievance settlement with Mr. Von Alt after July 31, 2007.

Appellant indicated that she returned to her office briefly after Mr. Von Alt gave her the memorandum and spoke with several individuals before she took the memorandum to Mr. Wimbley, who was the only Timekeeper working that day, and asked him to make a computer entry reflecting Mr. Von Alt's determination. She noted that she briefly showed the memorandum to Sharon Thompson-Primes at that time, as they had previously discussed the grievance settlement issue. Appellant acknowledged that she did not make a copy of the memorandum for herself prior to giving it to Mr. Wimbley and stated that she believed Mr. Wimbley filed the memorandum after making the computer entry.

Appellant confirmed that she and the Timekeepers implemented the award pursuant to Ms. Ivory's instructions. She confirmed that the awards contained in the spreadsheet provided by Ms. Ivory were for December 2004, and noted that no

award was made for time in January 2005. Appellant acknowledged that no employees other than herself were awarded time credit for the January 2005 weather emergency. She recalled that when she learned that she should not have received the leave balance restoration for either December 2004 or January 2005, she asked if the time could simply be deducted from her leave balances, as that is the normal procedure for correcting payroll errors.

Appellant recalled that she spoke briefly with Chief Wuliger on December 13, 2007; she confirmed that she gave a statement to Chief Wuliger (Appellee's Exhibit F), but noted that their entire conversation was not documented in that statement. Appellant explained that the Chief gave her an overview of the focus of the investigation and asked her some questions about her time reporting, specifically about her July 31, 2007, restoration of leave balances and about compensatory time. She testified that she took some notes and told Chief Wuliger that she did not believe anything inappropriate had taken place.

Appellant indicated that Chief Wuliger asked her to provide him with supporting paperwork for the charges they had discussed. She testified that she did not recall whether or not she specifically referenced Mr. Von Alt's memorandum during her conversation with Chief Wuliger on December 13, 2007, but that she did tell him that she had been given permission to have her leave balances restored. Appellant stated that she did recall talking with the Chief about the memorandum on December 19, 2007, when she had a follow-up conversation with him. Appellant stated that she did not tell Chief Wuliger on either December 13 or 19, 2007, that Sharon Thompson-Primes had seen Mr. Von Alt's memorandum because she did not recall it at that time.

Appellant confirmed that she spoke with Chief Wuliger on January 17 and February 28, 2008, and provided him additional information, as well as supporting documentation related to the charges that had been made against her regarding allegedly improper accrual of compensatory time; she noted that those charges were ultimately dropped. Appellant stated that although she checked her email, and her files at work and at home for relevant information, she was not able to provide Chief Wuliger with documentation regarding the July 31, 2007, restoration of her leave balances. She noted that she had seen the memorandum in her personnel file subsequent to July 31, 2007 and recalled that she checked her personal payroll file on a regular basis during the summer of 2007 because she was working significant amounts of overtime and accruing compensatory time during that time period.

Appellant recalled that she discovered that her payroll file was missing on November 6, 2007, when she and Mr. Perry were looking through the files for the file of another employee named Williams. She noted that Mr. Perry told her Mr. Von Alt had taken a file out of the filing cabinet and she thought that he might have pulled her file instead of the other employee's. Appellant stated that she asked Mr. Perry to create another payroll file for her because there were papers that needed to be filed in her file, and to note the date created on it as a record. She testified that Mr. Von Alt confirmed by email on December 13, 2007, that he had pulled her payroll file and had it secured in his office (Appellant's Exhibit 22).

Appellant confirmed that she received notice of and participated in a pre-disciplinary hearing prior to receiving the R.C. 124.34 Order removing her from employment. She noted that her first pre-disciplinary hearing was continued at her request. Appellant stated that although she attempted to introduce several documents during her second pre-disciplinary hearing, held on March 17, 2008, the hearing officer refused to accept them because they had not been provided by the date required (Appellant's Exhibit 15), March 5, 2008. She indicated that she did not receive notice of the second pre-disciplinary hearing until March 6, 2008.

Appellant noted that the effective date of her termination was April 7, 2008, and that she understood that her removal was based on a violation of policy related to theft, ethics policy, and time and attendance policy. She confirmed that she was familiar with Appellee's policies and procedures; Appellant recalled that she received updates and policy revisions and had access to them on Appellee's intranet. She acknowledged that she had seen the policies contained in Appellee's Exhibits R, S and T.

Appellant testified that she filed an EEO claim, an administrative grievance, a civil rights claim and a police report against Mr. Von Alt during the time period August 29, 2007, to January 8, 2008.

Wendy Ivory testified that she has been employed by Appellee for approximately four and one-half years and holds the position of Human Resource Specialist. She noted that she serves as Appellee's Labor Relations Manager and conducts disciplinary hearings, grievance meetings, and generally deals with anything having to do with unions and employees. The witness indicated that she reports to Director of Human Resources Candace Young, who reports to Mr. Von Alt, and directly supervises no employees or departments.

Ms. Ivory stated that when the grievance settlement was issued Labor Relations Manager Georgia Brokaw gave her a list of potentially affected employees and instructed her to go through the list to determine who did or did not work on the affected dates in December 2004 to ascertain who should be reimbursed for leave taken. The witness noted that employees who did not work because they had pre-scheduled leave on those dates were not entitled to reimbursement. Ms. Ivory testified that she pulled the Kronos timekeeping records showing who punched in on the pertinent dates and who did not. She indicated that after reconciling the time records with the employee list, she sent a final list back to Ms. Brokaw indicating which employees should be reimbursed and for how much time. The witness observed that it took her several days to complete her reconciliation, as the initial list contained approximately five hundred employee names, and that not all of the employees initially listed were entitled to the award.

Ms. Ivory testified that Ms. Brokaw forwarded a final list of employees to be reimbursed to her (Appellee's Exhibit L). She indicated that after she received the final list, she typed a cover letter (Appellee's Exhibit K) and gave the list to Appellant for processing, which was standard office procedure.

Ms. Ivory recalled that although dates in both December 2004 and January 2005 were initially included in the grievance settlement, the actual award was only for the December 2004 dates. She stated that she told Appellant when she gave her the employee list (Appellee's Exhibit L) that the January 2005 dates were not part of the award, but could not recall when the January 2005 dates had actually been withdrawn from the settlement.

Ms. Ivory recalled that employees who had questions regarding the grievance settlement were referred to the union, because the union had filed the grievance. She confirmed that when Appellant asked why her name had been omitted from the list, she referred her to the union. The witness noted that she was aware that Appellant did contact a union representative, but testified that she did not know what information was provided to Appellant by the union representative.

Ms. Ivory recalled that she learned about the investigation into Appellant's time records in December 2007 when she was called by a co-worker with a procedural question. She stated that the allegations made against Appellant were that Appellant had falsified information regarding time to which she was not entitled, and that she had misused her position for personal gain by having her subordinate

enter that time in the payroll system. Ms. Ivory noted that once the investigation had been concluded, Appellee's CEO determined that a pre-disciplinary hearing was necessary. The witness explained that she was responsible for scheduling the pre-disciplinary hearing, selecting a hearing officer, preparing and distributing any necessary paperwork, and ensuring that the appropriate procedures were followed.

Ms. Ivory confirmed that she was present at and involved in both of Appellant's pre-disciplinary meetings. She recalled that Appellant produced documents at the first pre-disciplinary meeting that resulted in that meeting being postponed to allow for additional investigation; after that investigation had been completed a second pre-disciplinary meeting was scheduled and held. The witness testified that both Sharon Thompson-Primes and Earnest Wimbley stated at Appellant's first pre-disciplinary hearing that they had seen the memorandum allegedly provided by Mr. Von Alt. She noted that testimony at the pre-disciplinary hearing also established that Mr. Von Alt had taken Appellant's personnel file, although the personnel file was never made a part of the investigation.

The witness acknowledged that employees are permitted to bring documents to a pre-disciplinary hearing and recalled that she sent Appellant an email before her second pre-disciplinary hearing date to inform her that she was required to provide any additional documents prior to the second date of hearing date, to avoid the need for another continuance. Ms. Ivory noted that her supervisor, Ms. Young, made the decision to require submission of documents prior to the second hearing date, and that Appellant had less than five hours in which to produce the documents. She testified that the hearing officer who presided over the second pre-disciplinary hearing did not accept the documents Appellant attempted to provide after the specified time period.

Ms. Ivory recalled that the hearing officer ultimately determined that there was just cause for discipline and the Chief Executive Officer recommended Appellant's removal.

Mr. William Von Alt testified that he is employed by Appellee as Chief Fiscal Officer and has held that position for approximately four and one-half years. He indicated that at the time of Appellant's termination he held the position of Business Manager and supervised four employees in the Payroll Department, who processed approved paperwork and monitored the Kronos timekeeping system. The witness confirmed that he supervised Appellant in her position as a payroll supervisor.

Mr. Von Alt testified that he was responsible for approving Appellant's requests for leave and stated that she submitted leave requests and requests to use compensatory time on a specific RFL form, rather than through a memorandum. The witness noted that Appellant was also required to get authorization for overtime work. He confirmed that when Appellant was under his direct supervision she worked a lot of overtime hours and earned and used a lot of compensatory time as a result.

Mr. Von Alt recalled that Appellant made a passing comment in early fall 2007 that she was running out of compensatory time and that she had one of the clerks put time on the system for her. He stated that when he checked Appellant's payroll records for that cycle, he saw that Mr. Wimbley had processed an addition to Appellant's records for approximately twenty-five hours of compensatory time. The witness indicated that because he knew he had not approved that amount of compensatory time for Appellant, he went to his supervisor, CEO Paul Guggenheim to seek advice on how to proceed.

Mr. Von Alt testified that Mr. Guggenheim instructed him to investigate the matter further and stated that he began his investigation by pulling payroll files for Appellant, Mr. Wimbley and Mr. Perry into his office. He noted that he reviewed the approved paperwork contained in the files for the approximately two-year period preceding his investigation and reconciled it with the leave time that appeared in the Kronos system and the OAKS payroll system. The witness indicated that he did not remove any documents from the payroll files he reviewed. Mr. Von Alt stated that he did not speak to Appellant, Mr. Wimbley or Mr. Perry about his investigation, which took approximately three weeks to conclude.

Mr. Von Alt acknowledged that during the course of his investigation he determined that Appellant had actually worked and was entitled to the approximately twenty-five hours of compensatory time that appeared in her payroll record. He noted, however, that Mr. Wimbley had entered Appellant's compensatory time into the computer without an approved form authorizing it, and recalled that Mr. Wimbley received a written warning for processing paperwork that had not been properly authorized.

Mr. Von Alt indicated that he also became aware in the course of his investigation that Appellant had eight hours of vacation leave restored for the weather emergency date in December 2004, and eight hours of compensatory time

restored for the weather emergency date in January 2005, pursuant to the grievance settlement.

Mr. Von Alt confirmed that he was familiar with the grievance settlement and indicated that Appellee Department of Mental Health's Central Office provided his office with a listing of employee names and the type of time that was to be restored to those employees pursuant to the settlement award. He explained that Appellant's name did not appear on the list because Appellant had taken preapproved leave on the date(s) in question and she was, therefore, ineligible to receive the award.

Mr. Von Alt testified that he never had any discussions with Appellant regarding her eligibility to receive the settlement award. He stated that Appellant never asked him to check payroll records to see if she was eligible for the award. The witness further stated that he never wrote a memorandum stating that Appellant was entitled to have her leave balances restored pursuant to the award; Appellant never asked him to do so and he has never seen a document purporting to be a memorandum that he wrote.

The witness stated that after completing his review, he turned the payroll files over to Chief Wuliger on or about December 20, 2007, and has had no access to them since that time. He confirmed that Chief Wuliger interviewed him in December 2007 as part of the investigative report and noted that he also provided Chief Wuliger with additional information at a later date.

Mr. Von Alt confirmed that Appellant had filed complaints against him at the time he began his investigation.

James Wuliger testified that he is presently employed by Appellee as Police Chief and has held that position for approximately four and one-half years. He noted that he has been at Northcoast Behavioral Healthcare for approximately seven years and has been a police officer for more than twenty-four years. Chief Wuliger stated that he provides oversight for the safety and security of both patients and employees and is responsible for overseeing the activities of the police department, developing policies and guidelines, overseeing and conducting investigations, and attending meetings.

The witness explained that it is typical for the police department to be involved in investigating a potential violation of agency policy or law. He recalled

that Mr. Von Alt began the investigation, and observed that supervisors and department heads often conduct fact-finding investigations within their departments, turning them over to the police department once they have determined there is a possible violation.

Chief Wuliger confirmed that he personally conducted Appellant's investigation. He explained that when he conducts an investigation, he typically interviews individuals identified by the claimant and often interviews individuals identified by the subject as having knowledge about the subject of the investigation. The witness recalled that the first step he took was to meet with Mr. Von Alt to gather information about the potential violations.

Chief Wuliger testified that he interviewed Mr. Von Alt, Appellant, Mr. Wimbley and Mr. Perry prior to Appellant's first pre-disciplinary hearing, and interviewed Sharon Thompson-Primes subsequent to that date. He identified Appellee's Exhibits E, F and G as the written statements of Mr. Von Alt, Appellant and Mr. Wimbley, respectively.

The witness recalled that Appellant told him during their interview that she did not believe she had done anything wrong. He noted that she alluded to a number of documents during their conversation, including a memorandum authored by Mr. Von Alt that approved the grievance settlement award, and requested additional time to produce those documents. Chief Wuliger observed that Appellant was never able to produce the memorandum she had referred to, although she claimed that she had seen it in her payroll file, which she told him had been missing since November 2007. The witness noted that he had obtained Appellant's payroll file from Mr. Von Alt and testified that when he examined the file there was no such memorandum present. He testified that he did not recall when Mr. Von Alt provided him with the payroll files.

Chief Wuliger confirmed that he spoke with Appellant several times during the course of the investigation and that she acknowledged that she had instructed Mr. Wimbley to put her time into the computer because she had a memorandum from Mr. Von Alt approving the time. He noted that when he interviewed Mr. Wimbley, he also acknowledged that he made the computer entries and stated that there was some type of accompanying paperwork authorizing the time, but could not immediately recall what sort of paperwork it was.

Chief Wuliger acknowledged that witnesses sometimes ask to change their statements because they have remembered additional information or want to correct something they said earlier and noted that it is standard practice to take a second statement in that situation. He stated that when he interviews witnesses he tells them to follow up with him if they think of additional information.

The witness recalled that he spoke with Mr. Wimbley a second time (Appellant's Exhibit 30) when he discovered that Mr. Wimbley had provided Appellant with a letter stating that he had seen a memorandum from Mr. Von Alt approving the time adjustment. He stated that he understood Appellant had contacted Mr. Wimbley after he first talked to him. Chief Wuliger noted that it was somewhat unusual for Appellant to be conducting her own investigation of the matter and observed that when he determines that the subject of an investigation is talking to potential witnesses and getting statements, he tries to get them to stop as he believes it interferes with the investigation. He testified that neither Mr. Wimbley nor Mr. Perry contacted him after their initial interview.

Chief Wuliger stated that after he learned that Appellant had furnished her first pre-disciplinary hearing officer with statements containing information he had not been made aware of, he felt that he needed to conduct additional interviews. He recalled that the investigation was reopened to allow him to speak with Sharon Thompson-Primes and noted that Ms. Thompson-Primes had called the initial pre-disciplinary hearing officer and provided Appellant with a statement (Appellant's Exhibit 28) about what she had seen. The witness testified that Ms. Thompson-Primes told him that she had observed a meeting in the hallway between Appellant and Mr. Von Alt and recalled that she overheard Mr. Von Alt verbally approve the addition of weather emergency days to Appellant's account. Chief Wuliger noted that Mr. Von Alt had never mentioned having such a conversation with Appellant and denied having one when the witness asked him about it.

Chief Wuliger testified that he was not aware of Appellant having filed any complaints against Mr. Von Alt when he began his investigation, but became aware of them during the course of the investigation. He recalled that Appellant complained bitterly about Mr. Von Alt to him, and in January she filed a hostile workplace environment complaint.

Sharon Thompson-Primes testified that she has been employed by Appellee for approximately thirty-one years and presently holds the position of Purchasing

Coordinator in Appellee's Business Office. She confirmed that she knows Appellant and has worked with her for more than ten years.

The witness recalled that she was aware of the grievance settlement for the weather emergency dates in 2004-2005 and indicated that she was a union member during that time period. She stated that a union representative handed out forms in late July 2007 to potentially affected employees, who had to fill them out and return them to the union representative in order to be part of the award.

Ms. Thompson-Primes stated that on July 31, 2007, she heard Appellant ask Mr. Von Alt about her eligibility for the award, and Mr. Von Alt responded that he would check on the matter and get back to her. She observed that her cubicle was located right next to Mr. Von Alt's and she could hear him very clearly. The witness recalled that when Appellant told Mr. Von Alt that she was closing the pay period that day and did not have time to research whether or not she was entitled to the award, he indicated that he would do the research for her. Ms. Thompson-Primes further stated that later the same day she observed Mr. Von Alt leaving Appellant's desk area; she testified that when she asked Appellant what Mr. Von Alt was doing there, Appellant indicated that he had brought her an approval letter for the weather emergency days. The witness noted that she was curious as to how the matter was going to be handled, so she asked to see the document. She recalled that the letter was a typed document, signed by Mr. Von Alt, and authorized two dates for reimbursement

Ms. Thompson-Primes recalled that when Appellant told her that an investigation of Appellant's payroll records was taking place, she was upset because she believed Mr. Von Alt was not being truthful. She stated that she called the hearing officer assigned to Appellant's case, Terry Smith, who told her to write out a statement regarding what she had observed and give it to Appellant. The witness testified that she did so (Appellant's Exhibit 28) and also provided a written statement to Chief Wuliger (Appellant's Exhibit 3), who asked her why she had not come forward earlier and asked if Appellant had told her what to say in her statement.

The witness noted that Appellant did not know that she had overheard the conversation between Appellant and Mr. Von Alt, and did not recall showing her the memo later that same day. She stated that Appellant did not tell her to call Terry Smith and did not tell her to call Chief Wuliger.

Earnest Wimbley testified that he has been employed by Appellee for approximately twenty-eight years and is currently employed in the Payroll Office as an Account Clerk 2. He stated that he is responsible for inputting data into payroll through either the Kronos systems or the OAKS system. The witness confirmed that he has known Appellant for approximately twenty years. Mr. Wimbley noted that Appellant was his immediate supervisor prior to her termination, and that his current immediate supervisor is Mr. Von Alt.

Mr. Wimbley confirmed that he was familiar with the grievance settlement and noted that he is a member of the union's arbitration committee. He recalled that union members had to file forms to be part of the initial grievance of the weather emergency dates, but did not have to complete forms once the arbitration award had been finalized. The witness testified that there was a lot of confusion surrounding the grievance settlement and noted that employees were wondering when the settlement would appear on their paychecks (Appellant's Exhibit 43). Mr. Wimbley further testified that several individuals questioned why their names were omitted from the award list compiled by Ms. Ivory. He stated that when Appellant asked him why her name was not on the list he told her he would ask Patty Rich; Patty Rich indicated that Appellant would have to talk to Mr. Von Alt about the matter.

Mr. Wimbley recalled that the grievance settlement was awarded in May 2007, but was not put into the payroll system until July 2007. He noted that the union had put pressure on Appellee to implement the award and they were hurrying to get the information put into the system before the end of the pay period. The witness recalled that on July 31, 2007, Appellant gave him the list of individuals who were eligible for the award and then handed him Mr. Von Alt's memorandum authorizing her inclusion in the grievance settlement approximately five minutes later.

Mr. Wimbley indicated that he entered the grievance settlement information into the OAKS system, rather than Kronos, and explained that individual employees do not have the ability to make that type of adjustment to their own payroll information on OAKS. He testified that all of the information was entered that same day and he did not input any additional payroll credits at a later date. The witness noted that after he made the payroll entries to Appellant's account he put the memorandum in Mr. Perry's basket to be filed, and observed that Appellant's payroll information was usually entered by Mr. Perry.

Mr. Wimbley testified that the only time he has ever entered information not on a specific form was when he entered Appellant's leave restoration based on Mr. Von Alt's interoffice memorandum, and when he entered information from the award spreadsheet provided by Ms. Ivory. The witness noted that he was still being trained at that time and was learning what types of paper were and were not acceptable.

Mr. Wimbley recalled that he first learned that Appellant was being investigated for possible timekeeping violations when Chief Wuliger interviewed him in December 2007. He noted that after the Chief spoke with him there was a lot of talk around the office about an investigation in Payroll and everyone was asking questions. The witness confirmed that he discussed the situation with Appellant when she was trying to locate supporting paperwork for her case.

Mr. Wimbley testified that he told Chief Wuliger that he put Appellant's grievance award into the system, and noted that when he first spoke with Chief Wuliger he could not recall exactly the type of paperwork he had to authorize the time. The witness recalled that he asked Mr. Perry for Appellant's personnel file when he went back to the office after speaking with Chief Wuliger, but that Mr. Perry was not able to locate Appellant's file. He noted that after he thought about the document, he recalled that it was an interoffice memorandum from Mr. Von Alt. Mr. Wimbley acknowledged that Appellant emailed him some questions in early February 2008, but stated that he had remembered seeing the interoffice memorandum prior to that time.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant held the position of Account Clerk Supervisor in the Payroll Department at the time of her termination, and had been employed by Appellee for approximately twenty-six years. Appellant's immediate supervisor was Business Manager William Von Alt. Appellant directed most of the functions of payroll processing and supervised three Timekeeper positions. Two of those positions were encumbered by Mr. Earnest Wimbley and Mr. Akhenaton Perry.

In 2004, Appellant occupied an Account Clerk 2 position that was included in the collective bargaining unit. Pursuant to a grievance settlement entered into in May 2007, union members were awarded a restoration of leave balances for the weather emergency dates of December 23 and 24, 2004. Although weather emergency dates in January 2005 were initially included in the grievance action, no award was made for those dates. Employees who were scheduled to work on those dates but were unable to report due to the weather emergency were eligible to have their leave balances restored.

Per instructions from union representatives, Appellant completed the necessary paperwork to be included in the class of grievants, checking both "came to work" and "didn't go to work" on the grievance forms. Appellant did not personally check her leave records for 2004 to determine whether or not she had worked on the pertinent dates; in fact, because she had used pre-approved vacation leave on December 23, 2004, and the office was closed on December 24, 2004, she was ineligible for the grievance settlement award.

When Appellant received the memorandum and attached spreadsheet prepared by Wendy Ivory that outlined which employees were to have their leave balances restored pursuant to the grievance settlement, she believed her name had been mistakenly left off the award list. Appellant requested clarification from a number of individuals, eventually approaching her supervisor, Mr. Von Alt.

Appellant asked Mr. Von Alt to check her payroll information to determine whether or not she was entitled to leave restoration. Shortly thereafter, Mr. Von Alt gave Appellant a written document authorizing the restoration of her leave balances. Appellant instructed Mr. Wimbley to make a computer payroll entry adjusting her leave balances.

In fall 2007, Mr. Von Alt conducted an investigation into Appellant's payroll records. He pulled Appellant's payroll file from the main files to review the approved paperwork contained therein for the approximately two-year period preceding his investigation and reconciled it with the leave time that appeared in the Kronos system and the OAKS payroll system for Appellant. Mr. Von Alt kept Appellant's payroll file in his office until the time he turned it over to Chief Wuliger for use in the police department's investigation of the charges made against Appellant.

Mr. Von Alt eventually concluded that Appellant had improperly received 8 hours of vacation time and 8 hours of compensatory time for the weather

emergency dates in December 2004 and January 2005; improperly received 11 hours of compensatory time in May 2007; and improperly received 25.6 hours of compensatory time in August 2007.

Appellant provided documentary evidence to demonstrate that she was entitled to the compensatory time she was credited with in May and August 2007, and those charges were ultimately dropped. Appellant was unable to provide documentary evidence to demonstrate that she was entitled to the vacation time and compensatory time she was credited with pursuant to the grievance settlement, and alleged that Mr. Von Alt had removed the authorizing document from her payroll file.

Appellant received notice of and participated in a pre-disciplinary hearing prior to receiving the R.C. 124.34 Order removing her from employment. Her first pre-disciplinary hearing was continued and a second pre-disciplinary hearing was later held. Appellant was subsequently removed, effective April 7, 2008, based on a violation of policy related to theft, ethics policy, and time and attendance policy, specifically that she had falsified information regarding time to which she was not entitled, and that she had misused her position for personal gain by having her subordinate enter that time in the payroll system.

During the time period August 29, 2007, to January 8, 2008, Appellant filed an EEO claim, an administrative grievance, a civil rights claim and a police report against Mr. Von Alt.

CONCLUSIONS OF LAW

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and

that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that Appellant was notified of and had the opportunity to participate in a pre-disciplinary hearing. Appellant had notice of the charges against her and an opportunity to respond to those charges. Although Appellant alleged that Appellee improperly refused to allow her to submit documents at her pre-disciplinary hearing, such procedural deficiencies are not sufficient to violate Appellant's due process rights, therefore, I find that Appellant's due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's removal was based upon dishonesty, falsification of an official document or record, theft, and misuse of her position for personal gain. The charges stem from Appellant's improper receipt of eight hours of vacation time and eight hours of compensatory time, which resulted from her inclusion in a grievance settlement award. Neither party disputes the fact that Appellant was not eligible to receive the award. The primary matter in dispute is whether or not Appellant's supervisor, Mr. Von Alt, authorized her to receive the time.

Appellant testified that Mr. Von Alt provided her with written authorization for the grievance settlement award. She further testified that she provided that authorization to Mr. Wimbley when she instructed him to make the appropriate computer entry to her payroll records. Appellant noted that she saw the authorization in her payroll file subsequent to that date. Mr. Wimbley corroborated this information when he told Chief Wuliger during his first interview that he had been given some sort of accompanying paperwork by Appellant when she

instructed him to credit her leave balances. Although Mr. Wimbley could not at that time remember what the documentation looked like, he did recall that there was some type of authorization provided to him. Similarly, Ms. Thompson-Primes offered an unsolicited statement to Appellant's first pre-disciplinary hearing officer indicating that she had not only seen a document provided by Mr. Von Alt, she had also overheard a conversation between him and Appellant regarding Appellant's eligibility for the grievance settlement. Mr. Von Alt denied having a conversation with Appellant about the matter and further denied having provided her with any type of authorization regarding the settlement award.

Given the totality of the circumstances, I find the testimony of Appellant, Mr. Wimbley and Ms. Thompson-Primes to be more credible than that of Mr. Von Alt. Because Appellant's restoration of leave balances was awarded pursuant to her supervisor's authorization, I find that she did not falsify official documents or records, or misuse her position for personal gain by instructing Mr. Wimbley to enter the award into the computer system. Accordingly, Appellee has failed to prove by a preponderance of the evidence that Appellant violated an established standard of conduct.

As previously noted, neither party disputes that Appellant was ineligible for the restoration of leave balances awarded by the grievance settlement. Appellant noted that the usual way to correct a payroll mistake of this nature is to simply have the employee "pay back" the improperly credited time; in this instance, such restitution must be made if Appellant has not yet done so.

Therefore, because Appellee has failed to prove by a preponderance of the evidence the charges contained in the R.C. 124.34 Order of Removal issued to Appellant, I respectfully **RECOMMEND** that Appellant's removal be **DISAFFIRMED** and that Appellant be **REINSTATED** to her position as Account Clerk Supervisor. In the event that the eight hours of vacation time and eight hours of compensatory time mistakenly awarded to Appellant have not yet been deducted from Appellant's leave balances, I **RECOMMEND** that they immediately be so deducted.



Jeannette E. Gunn
Administrative Law Judge