STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Roscoe Gatewood Jr,

Appellant,

v. Case No. 08-REM-05-0215

Department of Mental Health Summit Behavioral Healthcare,

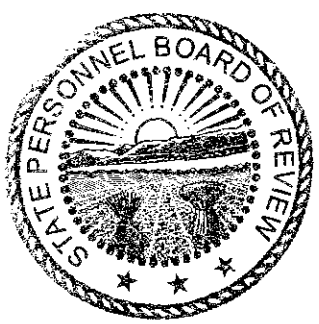
Appellee.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's removal be **MODIFIED** to a thirty-day suspension and that Appellant be **REINSTATED** to his position as Commissary Manager, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

J. Richard Lumpe, *Chairman*

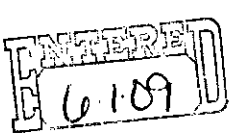
CERTIFICATION

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, June 1, 2009.

Michelle Hussey
Clerk

NOTE: *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*



STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Roscoe Gatewood, Jr.,	Case No. 08-REM-05-0215
Appellant	
v.	February 20, 2009
Department of Mental Health, Summit Behavioral Healthcare,	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of his May 6, 2008, removal from employment with Appellee. A record hearing was held in the instant matter on October 6, 2008. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Business Manager Stan Temple, and was represented by Joseph N. Rosenthal, Assistant Attorney 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 his removal:

> Mr. Gatewood left food cooking on the grill unattended while he left the grounds of the hospital. Your actions exhibited a neglect of duty-carelessness that could produce an unsafe environment for staff and patients. This is a violation according to the standards of Ohio Revised Code 124.34.

STATEMENT OF THE CASE

Appellant testified that he began working for Appellee in November 2002 and was the Commissary Manager. He indicated that he worked with one other staff employee, Ms. Wanda Walker, and several part-time client workers. Appellant confirmed that his supervisor was Business Manager Stan Temple.

Appellant stated that Appellee is a state-operated psychiatric hospital that houses patients referred to them by the justice system and by mental health agencies. He explained that the Commissary is located in the "treatment mall" area of the hospital, which is a central hub between the administrative areas and the patient wards, along with a barber shop, a game room and a clinic; the Commissary is an informal, counter service snack bar where staff and clients can purchase beverages and light meals in the morning and afternoon.

Appellant recalled that on the morning of February 25, 2008, he was cooking sausage on the flat-top griddle behind the service counter in preparation for breakfast service when he received a telephone call from his wife, who told him that he had mistakenly taken her keys. He testified that he called his supervisor Mr. Temple to tell him that he needed to leave work to return his wife's keys; Appellant indicated that Mr. Temple gave him permission to leave, as long as he clocked out. Appellant noted that Ms. Walker, who was working with him to prepare for breakfast service, left the Commissary to take money to the Business Office during the time he was on the telephone with Mr. Temple.

He indicated that before leaving the Commissary he removed the items that he had been cooking on the griddle, then put eleven frozen sausage patties on the griddle at 300 degrees, and left the facility. Appellant stated that he put the frozen sausage on the grill because he knew that Ms. Walker would be returning to the Commissary in just a few minutes, and could take it off the grill for him. He acknowledged that he had not informed either Mr. Temple or Ms. Walker that he was leaving food cooking on the grill when he left.

Appellant confirmed that he is aware that the Commissary should be run in a safe and efficient manner and acknowledged that leaving sausage cooking unattended on the griddle created a potential safety hazard. He noted that Ms. Walker returned to the Commissary promptly, as he had anticipated, and took the sausage off the grill, but was instructed by Mr. Temple to prepare an incident report even though no problems had occurred.

Appellant confirmed that he had the opportunity to participate in a pre-disciplinary hearing prior to his removal. He noted that he had received previous discipline in 2006 for failure of good behavior and being disrespectful.

Stan Temple testified that he is presently employed by Appellee and has held the position of Business Manager for approximately seven and one-half years. He noted that one of his responsibilities as Business Manager is to supervise the Commissary staff and operations.

Mr. Temple recalled the incident of February 25, 2008, and confirmed that he told Appellant it was okay to leave the facility, as long as he clocked out. He confirmed that while he was talking with Appellant on the telephone, he saw Ms. Walker come into the Business Office to drop off the money from the Commissary. The witness explained that immediately after he spoke with Appellant he received another telephone call asking him to come to the patient bank. Mr. Temple stated that he left the Business Office and cut through the Commissary to get to the patient bank. He noted that he entered the Commissary, which was only a short distance from the Business Office, immediately after Ms. Walker and saw the sausage patties on the griddle; the witness observed that Appellant had already left the area.

Mr. Temple recalled that when Appellant returned to the facility, he spoke with him about leaving the sausage unattended on the griddle. The witness confirmed that he wrote an incident report about the occurrence and asked Ms. Walker to do the same; both incident reports were forwarded to Campus Police for investigation, as is the normal practice.

Mr. Temple testified that it is very important that employees adhere to safety rules. He noted that a fire in the Commissary had the potential to cause serious injury to Appellee's clients, as the wards are locked and clients would have to be evacuated into the yard if there were a fire. The witness indicated that he had spoken to Appellant about security issues in July 2007, when two knives were inadvertently left unsecured in the Commissary. He explained that because client employees sometimes work in the Commissary, all knives must be kept in the safe when they are not in use.

Elizabeth Banks testified that she is presently employed by Appellee as Chief Executive Officer and has held that position for nearly eleven years. She confirmed that she knows Appellant and that he was formerly employed by Appellee in the Commissary. The witness recalled that Appellant was removed as the result of the February 25, 2008, incident involving his leaving of sausage cooking unattended on the Commissary griddle.

Ms. Banks noted that she reviews all incident reports and acknowledged that she had reviewed the reports relating to the incident for which Appellant was removed. She stated that she recommended removal as an appropriate disciplinary response to the incident because of the seriousness of the safety risk. She stated that Appellant's actions had put the employees and clients of the facility in danger and that she could not risk the violation occurring again.

Ms. Banks confirmed that Appellant had received training during orientation on Appellee's operational and disciplinary policies. She explained that the disciplinary responses contained in Appellee's disciplinary grid are discretionary, not mandatory. The witness confirmed that the Director of the Department of Mental Health signed off on her recommendation to remove Appellant from employment.

FINDINGS OF FACT

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

Appellee is a state-operated psychiatric hospital that houses patients referred to them by the justice system and by mental health agencies. Appellant was employed by Appellee as Commissary Manager at the time of his removal. The Commissary is located in the "treatment mall" area of the hospital, which is a central hub between the administrative areas and the patient wards, along with a barber shop, a game room and a clinic; it is an informal, counter service snack bar where staff and clients can purchase beverages and light meals in the morning and afternoon. The Commissary is only a short distance from the Business Office.

Appellant worked with one other staff employee, Ms. Wanda Walker, and several part-time client workers. His supervisor was Business Manager Stan Temple. On the morning of February 25, 2008, Appellant and Ms. Walker were preparing for breakfast service. Upon receiving a telephone call from his wife, Appellant called his supervisor to tell him that he needed to leave work; Mr. Temple gave Appellant permission to leave, as long as he clocked out. While Appellant was talking to Mr. Temple on the telephone, Ms. Walker was in the Business Office dropping off money.

Before Appellant left the Commissary, he put some frozen sausage patties on the griddle, anticipating that Ms. Walker would return in a few moments from the

Business Office and that she would take them off the griddle. Appellant did not inform either Mr. Temple or Ms. Walker that he was leaving food cooking on the grill before he left the facility. Ms. Walker returned to the Commissary promptly and took the sausage off the grill.

Mr. Temple entered the Commissary immediately after Ms. Walker and instructed her to write an incident report about the matter. Mr. Temple also prepared an incident report.

Appellant participated in a pre-disciplinary hearing prior to his removal. He had received prior discipline in 2006 for failure of good behavior and being disrespectful. Appellant received training during orientation on Appellee's operational and disciplinary policies.

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 him and an opportunity to respond to those charges. Accordingly, 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.

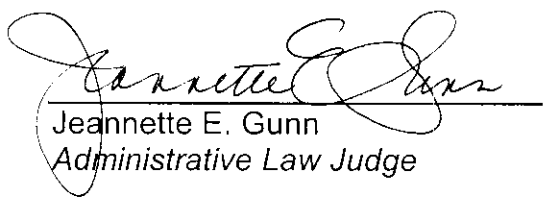
This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's removal was based upon a neglect of duty – carelessness, in that he left frozen sausage patties cooking on the grill unattended, thereby creating a potentially unsafe environment for staff and patients. Appellee's policies prohibit "carelessness with or failure to control ... equipment which could result in loss, damage, or an unsafe act." Appellant had received training on Appellee's policies. Accordingly, I find that Appellee has demonstrated that it had an established standard of conduct and that the standard was communicated to Appellant.

Appellant did not dispute the facts in this matter, however, he argued that removal was too harsh a discipline for the conduct in which he engaged. Appellant noted that he and his co-worker, Ms. Walker, had a routine that they followed in preparing the commissary for breakfast service and that, as part of that routine, he anticipated that she would return promptly from the Business Office and remove the frozen sausage from the grill. Ms. Walker did, in fact, return to the commissary in time to remove the sausage from the grill and no loss or damage resulted from the incident. At the same time, it cannot be disputed that the potential for damage existed. Appellant did not inform Ms. Walker that he was leaving food cooking unattended on the grill. Had she varied from her morning routine, she might not have returned to the commissary in time to remove the sausage.

Appellant's disciplinary history demonstrated that he had received prior discipline in 2006 and early 2007 (a two day suspension and a five day suspension) for failure of good behavior and being disrespectful. Appellant's disciplinary history does not reflect any prior discipline based upon a neglect of duty. Although Appellant did engage in conduct that had the potential to create an unsafe environment, I find that he was reasonable in his belief that Ms. Walker would return to the commissary within a short period of time. Balancing these two circumstances

and taking into account Appellant's past disciplinary history, I find that removal was too harsh a disciplinary response in this instance.

Therefore, I respectfully **RECOMMEND** that Appellant's removal be **MODIFIED** to reflect a thirty-day suspension and that Appellant be **REINSTATED** to his position as Commissary Manager.



Jeannette E. Gunn
Administrative Law Judge

JEG: