

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

Phillip D. Love,

Appellant.

v.

Case No. 09-REM-08-0389

Ohio State University,

Appellee.

ORDER

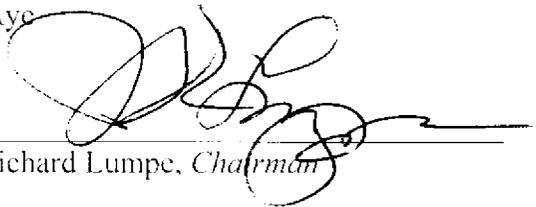
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant order of removal issued to Appellant, effective August 22, 2009, be **AFFIRMED**, pursuant to O.R.C. § 124.34

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



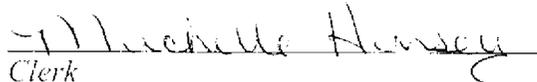


J. Richard Lumpe, *Chairman*

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, July 15, 2010.



Michelle Humsey
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**

Phillip D. Love,

Case No. 09-REM-08-0389

Appellant

v.

June 2, 2010

Ohio State University,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On August 21, 2009, The Ohio State University (herein after OSU) served an Order of Removal, in accordance with Ohio Revised Code (O.R.C.) § 124.34, upon the Appellant, Phillip D. Love, an Office Associate at OSU's School of Physical Activity and Educational Services in the Office of Student and Alumni Services. The order alleged the following:

This will notify you that you are removed from your position of Office Associate effective Saturday, August 22, 2009.

The reason for this action is that you have been guilty of inefficiency and/or insubordination and/or neglect of duty: You received a major suspension in November 2008 for excessive tardiness, neglect of duty and insubordination. Since that time, you have exhibited inefficiency, insubordination, and neglect of duty by not following your supervisor's attendance guidelines, not completing timesheets accurately, not turning in documentation for absences as required by letter of scrutiny and not following your supervisor's directives.

Thereafter, on August 28, 2009, Appellant filed a timely appeal from this order, alleging "disparate treatment" and a violation of his due process rights due to OSU's failure to provide him with two weeks notice of his removal. The record hearing in this case was held on February 9, 2010. The Appellant, Phillip D. Love,

appeared at the record hearing and was represented by Carolyn E. Gutowski, Attorney at Law. The Appellee, OSU, was present through its designee Amy Lahmers, Director of Student Services at OSU, and was represented by Mahjabeen F. Qadir, and Drew C. Piersall, Assistant Attorneys General.

This hearing was conducted by the State Personnel Board of Review in accordance with O.R.C. § 124.34, which specifically provides that an employee may file an appeal of any order filed under O.R.C. § 124.34, within ten (10) days after having received the order with the State Personnel Board of Review. The parties agreed and stipulated to the jurisdiction of this Board, as well as to the timely filing of the appeal.

STATEMENT OF THE FACTS

The Appellee's first witness to testify was the Appellant, Phillip Love, as called on cross examination. Mr. Love testified that he was last employed by The Ohio State University (OSU) in the School of Physical Activity and Educational Services (PAES) specifically within the office of Student and Alumni Services (OSAS). On February 10, 2004, Mr. Love began working at OSAS as an Office Associate. OSAS's office work hours were from 8:00 a.m. to 5:00 p.m. during the school year and 7:30 a.m. to 4:30 p.m. during the summer. Mr. Love worked out a flex time arrangement with his supervisors so that his regular work hours were from 8:30 a.m. to 5:30 p.m. with a one hour lunch break from 12:00 p.m. to 1:00 p.m. In this case at issue, during the school year Mr. Love had a thirty minute period at the end of the day when the office was closed so he could work on unresolved administrative matters without interruption. However, during the summer months, Mr. Love had one hour after the scheduled office hours for said matters.

Mr. Love's OSAS job duties included sitting at OSAS's front desk and handling requests of the undergraduate students at PAES for information or appointments, assisting in answering phones, providing clerical support to the director of OSAS, and updating OSAS's electronic office calendar with regards to internal office meetings. (See Appellee's Exhibit 15, Mr. Love's position description.)

The testimony revealed that Mr. Love first went to work with OSAS in August 2003. During his time with OSAS, Mr. Love was supervised first by Ms. Jennifer Collis and then, beginning in July 2008, by Ms. Amy Lahmers. Although, Ms.

Lahmers currently serves as the director of OSAS, she took leave from mid February 2009 to late April 2009, during which time Ms. Jae Westfall supervised Mr. Love.

Mr. Love, when questioned, answered in the affirmative, that from 2004 to 2009, he had received many forms of formal disciplines and informal counseling concerning his performance of his job duties. Under Ms. Collis' supervision, the testimony revealed that Mr. Love received one official written reprimand, one 3-day suspension, and on each of his two performance evaluations it was noted that he had an "ineffective" rating. On June 8, 2007, Ms. Collis issued Mr. Love a letter of reprimand. (See Appellee's Exhibit 6.) This letter identified issues of continuing unsatisfactory performance regarding deadlines and specific tasks that were not completed. More specifically, the letter addressed Mr. Love's failure to be logged onto his computer and ready to work by 8:30am, complete Leave Forms and turn in Time Sheets in a timely manner, and maintain office calendars properly. Further, on August 13, 2007, Mr. Love received an Employee Performance Review from Ms. Collis for the work period of March 2006 to May 2007, wherein Mr. Love received a rating of "ineffective." (See Appellee's Exhibit 14.) It was noted that Ms. Collis expressed concern for Mr. Love's issues with punctuality, timeliness, task completion, and supervision of student workers. Additionally, on November 19, 2007, the witness stated he received a three day work suspension due to his tardiness on "at least eighteen (18) occasions," consistent failure to take lunch at the time specified by his supervisor, and continued difficulty in following through with assignments. (See Appellee's Exhibit 7.) Moreover, when questioned, Mr. Love agreed that on June 23, 2008, he received another Employee Performance Review from Ms. Collis for the period of May 2007 to May 2008. (See Appellee's Exhibit 13.) Again, Mr. Love received an "ineffective" rating. In the review, Ms. Collis expressed concern for Mr. Love's failure to turn in Leave Forms in a timely manner, keep track of time, maintain appropriate coverage at the front desk, send 'sign in' emails upon arrival to work in the morning, return from lunch within a reasonable time period, and manage the office calendar. Mr. Love testified that he was aware of these concerns prior to his receipt of the performance evaluation, however, in Ms. Collis' words, no "progress was made regarding punctual attendance and coverage of the front desk, accurate and timely completion of tasks (such as turning in accurate Leave Forms in advance or getting Time Sheets signed and turned in on time), or calendar management."

Along this line of questioning Mr. Love testified that he felt that Ms. Collis unfairly scrutinized him.

In July 2008 Ms. Lahmers took over for Ms. Collis as Mr. Love's supervisor. While under Ms. Lahmers' supervision, Mr. Love received one written reprimand, one letter of scrutiny, one performance review rating of "ineffective," one four day suspension, and ultimately his order of removal.

On August 5, 2008, Ms. Lahmers sent Mr. Love an e-mail directing him to e-mail her when he arrived to and departed from work, beginning with his departure for lunch that day. (See Appellee's Exhibit 21.) Mr. Love testified that while he received and read the email, he did not comply. Thereafter, on August 7, 2009, Ms. Lahmers sent Mr. Love another e-mail requesting Mr. Love to e-mail her when he arrived to and departed from the office both in the morning and evening and during his lunch period. (See Appellee's Exhibit 21.) This e-mail explicitly stated Ms. Lahmers expectations as per Mr. Love's work hours, 8:30am – 5:30pm with a one hour lunch from 12:00pm – 1:00pm. Mr. Love again testified that while he received and read the e-mail, he knowingly and intentionally failed to comply with the directive to e-mail her.

On August 8, 2008, Mr. Love received a written reprimand from Ms. Lahmers for his late arrival at the office on August 5, 2008. (See Appellee's Exhibit 8.) Ms. Lahmers again expressed her wish for Mr. Love to e-mail her when he arrived and departed from the office beginning that day, including his lunch. Ms. Lahmers' reprimand acknowledged Mr. Love's disagreement with Ms. Lahmers' e-mail timekeeping policy, but nonetheless expected Mr. Love to comply. Mr. Love expressly testified that he still did not e-mail Ms. Lahmers.

On October 22, 2008, Ms. Lahmers met with Dr. Zurkle, a member of PAES's faculty. Dr. Zurkle reported to Ms. Lahmers that he and one other faculty member received poor customer service from Mr. Love. (See Appellee's Exhibit 29.) As such, Ms. Lahmers met with Mr. Love to discuss this concern on October 24, 2008. Thereafter the testimony revealed that on October 30, 2008, Mr. Love received an O.R.C. § 124.34 Order of Suspension for four days for excessive tardiness, neglect of duty, and insubordination. (See Appellee's Exhibit 9.)

Moreover, on November 21, 2008, Ms. Lahmers issued Mr. Love a "letter of scrutiny" explaining to Mr. Love that he would be under closer scrutiny regarding his

use of sick leave. Ms. Lahmers was concerned that Mr. Love was using more sick leave than he had accrued. The letter also expressed Ms. Lahmers continued wish for Mr. Love to e-mail her when he arrived and departed from the office. (See Appellee's Exhibit 10.) Mr. Love testified that after his receipt of this letter, he continued to neglect the order to e-mail Ms. Lahmers. Mr. Love's failure to e-mail Ms. Lahmers of his arrival and departure from work led to discrepancies between when Ms. Lahmers believed Mr. Love arrived at the office. These discrepancies were frequently brought to the attention of David Hamann, the Human Resources Administrator.

Appellee's next witness to testify was Mr. David Hamann who explained that he has been employed by OSU in PAES since 1996 and acts as a Human Resources Administrator. In his role, he oversees, among other things, the entry of employee Time Sheets and Leave Forms for payroll, and implementation of progressive discipline for employees. With regards to timekeeping, both Ms. Lahmers and Mr. Hamann testified that Mr. Love's failure to complete Time Sheets and Leave Forms accurately and on time created more work for both of their offices. Mr. Love contacted Mr. Hamann, believing Ms. Lahmers notations on his Time Sheets to be incorrect regarding his arrival at work. Mr. Hamann suggested that to cure these discrepancies, Mr. Love should comply with Ms. Lahmers order to e-mail her when he arrived and departed from the office. Mr. Hamann testified that Mr. Love expressed concerns with the e-mail system, namely that his computer's clock was not accurate, thus risking an inaccurate timestamp and also that he could be busy with students when required to e-mail Ms. Lahmers. Mr. Love and Ms. Lahmers testified however, that Mr. Love proposed no other alternatives to the system, nor did he attempt to e-mail Ms. Lahmers even once to test whether his fears were legitimate.

Following the November 21, 2008, letter of scrutiny, Mr. Hamann specifically apprised Mr. Love of the acceptable forms of documentation required to receive approval for medical leave. Even after this explicit directive, Mr. Love testified that he was confused regarding the requirement, because some of his leave requests were approved without said documentation during the period when Ms. Lahmers was on leave. Ms. Lahmers' and Mr. Hamann's demand for these documents did not change however.

Ms. Lahmers testified that Mr. Love violated her directives to not use his personal computer at work and also to wear his name badge while at the front desk.

Mr. Love testified that while he was directed not to use his personal computer at the office, he did so. Mr. Love testified that his work computer's processing speed was slow; therefore, his personal computer would help him in his duties. Ms. Lahmers testified that Mr. Love's work computer did have some technical issues. Mr. Love spoke with Ms. Lahmers regarding this issue, and she submitted a request for more RAM on June 15, 2009, which was not updated until August 20, 2009. (See Appellant's Exhibit F.) Similarly, as part of Mr. Love's duties, he testified that he was required to use SIS software. That software required a secure log in, which for a time, Mr. Love did not have. Mr. Love brought this to the attention of Ms. Lahmers and IT staff in April 2009, but Mr. Love did not gain access until June 16, 2009. (See Appellant's Exhibit H.) However, the testimony revealed that Mr. Love's access to the SIS software had no bearing on his ability to update the office calendar, submit his Time Sheets and Leave Forms, or email Ms. Lahmers.

Further, the evidence revealed that on June 15, 2009, Ms. Lahmers e-mailed Mr. Love regarding his failure to wear his name badge as directed. (See Appellee's Exhibit 26.) This e-mail expressed her understanding that some employees were concerned with their last names appearing on the name badges, and gave Mr. Love permission to white out his last name. However, on June 19, 2009, Ms. Lahmers noted in handwriting that Mr. Love still failed to wear his name badge. Mr. Love testified that he knew the directive, but chose to place his name badge on his computer instead.

On June 30, 2009, Ms. Lahmers testified that she gave Mr. Love an Employee Performance Review for the work period of June 2008 – May 2009. (See Appellee's Exhibit 11.) The review expressed continued concern for Mr. Love's failure to file Time Sheets accurately and on time, fill out Leave Forms for days when he arrived late to work, update calendars on time, arrive to work on time, and follow her order to email her as per his arrival and departure from the office. Mr. Love responded to the performance review with written comments expressing his concerns for the statements in this review and their potential impact on his employment. Ms. Lahmers testified that she responded to these comments on July 2, 2009, acknowledging his concerns and requesting that Mr. Love submit new employment goals to her. He did so and Ms. Lahmers and Mr. Love met to discuss these goals. Ms. Lahmers subsequently requested via e-mail that Mr. Love revise his goals and submit them to her by July 10, 2009 for review. (See Appellee's Exhibit 12.) While Mr. Love testified that he believed that he did provide these revised goals by this date, as evidenced by a written note atop the July 2, 2009

letter and Ms. Lahmers' own testimony, as of July 23, 2009 she had not yet received these goals. Id.

Mr. Love testified that he expressed to Ms. Lahmers that his work load was too great to fulfill her requests in a timely manner and that he requested to be assigned student assistants. Ms. Lahmers testified that Mr. Love did in fact make this request, but that she did not provide Mr. Love with the student workers, as she knew that his supervision of student workers had previously been removed by Ms. Collis. Moreover, the testimony revealed that Ms. Colleen Weaver replaced Mr. Love as an Office Associate who also assisted Mr. Love during his time with OSAS. Ms. Weaver testified that when she requested student workers, her requests were granted. On July 3, 2009, after meeting with Ms. Lahmers regarding Mr. Love's work performance and impact on the OSAS office, Mr. Hamann submitted a request that Mr. Love's employment be terminated in lieu of another major suspension due to his continued failure to correct his performance deficiencies such as neglect of duty, inefficiency, and insubordination. (See Appellee's Exhibit 16.)

On July 8, 2009, Ms. Lahmers e-mailed Mr. Love regarding his continued failure to follow call off procedures and provide proper medical documentation for sick leave as required by the letter of scrutiny. (See Appellee's Exhibit 25.) Further, the testimony indicated that on July 16, 2009, Mr. Love had a physical therapy appointment at 8:30am. (See Appellee's Exhibit 23.) According to an e-mail from Ms. Lahmers to Mr. Love and her own testimony, Mr. Love informed Ms. Lahmers that he would arrive at work immediately after the appointment "in the am." Id. Ms. Lahmers e-mail states that he did not arrive at work until 1:20pm. Id. Mr. Love testified that he arrived at 1:08pm and that the end of his appointment was close in proximity to his lunch break, therefore he believed that he could wait until the end of his lunch hour to arrive back at work. However, Mr. Love testified that he did not inform Ms. Lahmers of this plan.

Moreover, on July 16, 2009, Mr. Love received a letter indicating that his department requested corrective action due to "inefficiency and/or insubordination and/or neglect of duty." (See Appellee's Exhibit 3.) Mr. Love testified that he attended a pre-disciplinary hearing on August 5, 2009, regarding these allegations and had an opportunity to address the grounds for his removal.

On August 21, 2009, OSU hand delivered Mr. Love an O.R.C. § 124.34 Order of Removal that removed Mr. Love from his position, effective August 22,

2009. The O.R.C. § 124.34 Order cited “inefficiency, insubordination, and neglect of duty by not following [his] supervisor’s attendance guidelines, not completing timesheets accurately, not turning in documentation for absences as required by letter of scrutiny and not following [his] supervisor’s directives.” (See Appellee’s Exhibit 1.)

FINDINGS OF FACT

1. The jurisdiction of this Board to conduct this hearing was established by O.R.C. § 124.34.
2. Mr. Love served OSU as an Office Associate for PAES and OSAS from February 10, 2004 through August 22, 2008.
3. The Appellant, Phillip D. Love, as an Office Associate, was removed from his position with OSU for violating the O.R.C. § 124.34 for inefficiency, insubordination, and neglect of duty.
4. On August 21, 2009, OSU hand delivered Mr. Love an O.R.C. § 124.34 Order of Removal which removed Mr. Love from his position effective August 22, 2009.
5. Appellee stipulates to the fact that Appellant’s appeal was timely filed.
6. The Appellant, Mr. Love, in his five plus years of service in PAES and OSAS, had two letters of reprimand, one three day suspension, one four day suspension and one letter of scrutiny, prior to his removal. Mr. Love’s last three performance evaluations for 2006 – 2007, 2007 – 2008, and 2008 – 2009 each rated Mr. Love as “ineffective”, and did not submit any evidence of disparate treatment.
7. The Appellee did prove by a preponderance of the evidence that Mr. Love received his procedural due process through a pre-disciplinary hearing.

8. The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Mr. Love regarding (a.) attendance, (b.) timesheet completion, (c.) documentation for absences, and (d.) following his supervisor's directives. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant:
 - a. regularly showed up late to work or in his return from lunch as observed by Ms. Collis, Ms. Westfall, and Ms. Lahmers;
 - b. regularly failed to complete his Time Sheets and Leave Forms on time and accurately;
 - c. regularly failed to provide the proper documentation for his absences;
 - d. failed to follow Ms. Lahmer's directive to email her when Mr. Love arrived to and departed from the office, and revising his employment goals by her set deadline, and by not wearing his name badge, as directed

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, and 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 or more of the enumerated infractions listed in O.R.C. § 124.34 and 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 O.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 an opportunity to participate in a pre-disciplinary hearing. The Appellant also had notice of the charges against him and an opportunity to respond to those charges. Accordingly, the undersigned Administrative Law Judge finds 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. Appellee established by a preponderance of the evidence that it had established standards of conduct and that such standards had been communicated to Appellant. According to the O.R.C. § 124.34 Order, Appellant's removal was based upon his inefficiency, insubordination, and neglect of duty.

Inefficiency

Appellee proved by a preponderance of the evidence that Mr. Love was guilty of inefficiency. Ohio Revised Code Chapter 124 does not define "Inefficiency." However, Black's Law Dictionary does define "efficient" to mean:

. . . Adequate in performance or producing properly a desired effect.

Black's Law Dictionary 515 (Deluxe 6th Ed. 1990).

Inefficient means the exact opposite, thus inadequate in performance or producing properly an undesired effect. As was revealed by the testimony and documentary evidence presented, Mr. Love failed to update the office calendar, provide office personnel with important information, and produce his Time Sheets

and Leave Forms in an accurate and a timely manner. As noted in his June 8, 2007, Letter of Reprimand, Mr. Love had an “on-going problem with routine task completion with Leave Forms and Time Sheets” and continued to be late and Calendars were not managed appropriately. Similar remarks are found on Mr. Love’s 2006 – 2007, 2007 – 2008, and 2008 – 2009 Employee Performance Reviews. (See Appellee’s Exhibits 11, 13, 14.) While Mr. Love presented mitigating testimony that his computer was slow and that he lacked access to the SIS system, this did not excuse failure to complete the above listed problems. Access to the SIS system was not required to make changes to the office calendar or provide accurate Time Sheets and Leave Forms in a timely manner. Moreover, Mr. Love’s issues with his slow computer must be examined in the context of his having flex time afforded him at the end of the day when the offices were closed and he was without interruption. Ultimately, these excuses were unconvincing.

Mr. Love’s allegation of disparate treatment is also unconvincing. Mr. Love alleges that Ms. Lahmers failed to provide him with student workers to help him with his work load; however, Ms. Lahmers did provide Ms. Weaver with said workers when she requested them. For a time, while under Ms. Collis’ supervision, Mr. Love did supervise students assisting him in his duties. Ms. Collis reported in the 2007 Letter of Reprimand that Mr. Love’s “Supervision of student workers was particularly problematic this year.” Similarly in her 2006 – 2007 performance evaluation, Ms. Collis expressed concern that Mr. Love struggled with his supervision of student workers. Ms. Collis subsequently removed Mr. Love’s supervisory duties. Based on Mr. Love’s history of supervision and his flex time at the end of the day, Ms. Lahmers’ choice to provide student workers to Ms. Weaver, but not Mr. Love is not actionable, nor is it considered disparate treatment.

Insubordination

Appellee proved by a preponderance of the evidence that Mr. Love was guilty of insubordination. Ohio Revised Code Chapter 124 does not define “insubordination.” However, Black’s Law Dictionary does define “Insubordination” to mean:

Refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a willful

or intentional disregard of the lawful and reasonable instructions of the employer.
Black's Law Dictionary 801 (Deluxe 6th Ed. 1990).

After being tardy to work on August 5, 2008, and with a history of punctuality issues already on record, Ms. Lahmers issued Mr. Love a written reprimand for tardiness that directed him to e-mail her upon Mr. Love's arrival and departure from the office. After several e-mails between Mr. Love and Ms. Lahmers regarding Mr. Love's failure to provide said e-mails, Mr. Love received a four day suspension on October 30, 2008. Ms. Lahmers issued Mr. Love a Letter of Scrutiny in November 2008, in which she once again directed Mr. Love to e-mail her upon his comings and goings from the office. After Mr. Love complained to Mr. Hamann regarding discrepancies in Time Sheet entries, Mr. Hamann suggested Mr. Love follow Ms. Lahmers e-mail directive. Mr. Love testified that not once did he e-mail Ms. Lahmers regarding his arrival or departure from the office. Mr. Love's mitigating testimony regarding slowness of his computer and fear of a faulty timestamp are unconvincing due to his lack of even one attempt to follow Ms. Lahmers directive.

Appellant was also insubordinate in his failure to submit the proper documentation for Leave Forms. After using more sick leave than he had accrued, Ms. Lahmers directed Mr. Love in the November 2008 Letter of Scrutiny to provide "a signed note from a licensed medical practitioner on his or her office stationary, together with [Mr. Love's] completed Application for Leave form, *after* each sick leave absence." (emphasis added). After Mr. Hamann provided Mr. Love with clarification as per this directive, Mr. Love still occasionally failed to provide the proper documentation, even when requested by Ms. Lahmers.

Neglect of Duty

Appellee proved by a preponderance of the evidence that Mr. Love was guilty of neglect of duty. Ohio Revised Code Chapter 124 does not define "neglect of duty." However, Black's Law Dictionary does define "neglect" to mean:

. . . to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in doing or omission of a given act. And it may mean a designed refusal, indifference or unwillingness to perform one's

duty. Black's Law Dictionary 1031 (Deluxe 6th Ed. 1990).

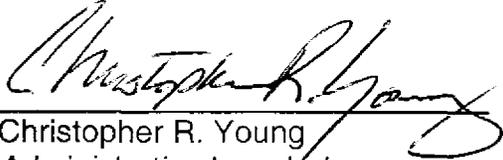
For the Appellee to establish that an employee committed neglect of duty, the Appellee must demonstrate that a duty upon the part of the employee existed, the employee knew of that duty, and that knowing of that duty, the employee breached that duty.

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant was neglectful of his duties. The documentary and testimonial evidence revealed that the Appellant knew of the established standard of conduct with regards to his scheduled work and lunch hours, submission of Time Sheets and Leave Forms, and following his supervisor's directives. Each of the steps of Mr. Love's progressive discipline at OSAS mentioned at least one of these issues, and at times, all of them. As shown above, Mr. Love continually arrived late to work and at times arrived back from lunch late. Similarly, Mr. Love had consistent issues completing his Time Sheets and Leave Forms accurately, thus creating more work for Ms. Lahmers and Mr. Hamann. Mr. Love also failed to complete his duty of updating the office calendar in a timely fashion. Mr. Love was aware of his duties regarding his attendance, Time Sheet and Leave Form submissions, and calendar updates; however, he knowingly breached them.

The question remains of whether the discipline imposed should be sustained. The undersigned Administrative Law Judge recommends that the evidence presented at the record hearing, taking the totality of the circumstances into account, is sufficient to support the removal of the Appellant. In this case the evidence revealed that the Appellant, Phillip D. Love, between 2006 – 2009, received three performance evaluations with an "ineffective" rating, two letters of reprimand, one letter of scrutiny, one three day suspension, and one four day suspension all for similar issues of tardiness, failure to follow supervisor's directives, failure to turn in Time Sheets accurately and on time, and failure to follow Leave Form procedures. It appears to the undersigned Administrative Law Judge that the Appellant was not taking any meaningful steps to comply with his supervisor's directives or better fulfill his duties as Office and Information Manager as expressed to him by his supervisors. Therefore, the undersigned Administrative Law Judge concurs with the Appellee's decision to remove the Appellant.

RECOMMENDATION

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that the instant order of removal issued to Appellant, effective August 22, 2009, removing the Appellant from the position of Office Associate be **AFFIRMED**, and the Appellant's appeal be **DENIED**.


Christopher R. Young
Administrative Law Judge

CRY: