

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Shirley A. Crosby,

Appellant.

v.

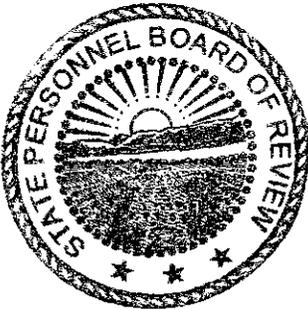
Case No. 09-SUS-04-0199

Department of Rehabilitation and Correction,
Ohio Reformatory for Women,

Appellee.

ORDER

This matter came on for consideration on the motion of Appellee that the Rescission attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached rescission, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**, and that Appellant's appeal be **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 constitutes (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, September 18, 2009.



Clerk

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

9-18-09 *mlt*

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

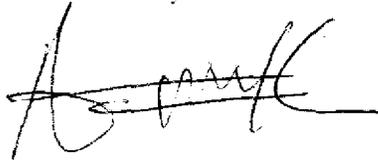
SHIRLEY A. CROSBY, : 2009 JUN 16 PM 2:48
Appellant, : CASE NO. 09-SUS-04-0199
v. :
OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION, :
OHIO REFORMATORY FOR WOMEN, :
Appellee. :

**APPELLEE OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION'S
MOTION TO DISMISS**

Pursuant to Ohio Administrative Code §124-11-07, Appellee, Ohio Department of Rehabilitation and Correction ("DRC"), respectfully moves the State Personnel Board of Review ("Board") for an order dismissing Appellant Shirley A. Crosby's ("Crosby") appeal. The reasons for this Motion are fully explained in the attached Memorandum in Support.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



KOMLAVI ATSOU (0084235)
JAMES A. HOGAN (0071064)
Assistant Attorney General
Employment Law Section
30 East Broad Street, 23rd Floor
Columbus, Ohio 43215
(614) 644-6819 – Telephone
(614) 752-4677 – Facsimile



MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

Appellant Shirley A. Crosby (“Crosby”) is currently an employee of DRC. *See attached affidavit of David Lundberg*, at ¶ 3. On May 10, 2009, DRC suspended Crosby for 80 hours—from May 10, 2009 to May 23, 2009—for violating DRC policy. *Id.* at ¶ 4. The violations consisted of:

Making obscene gestures or statements, or false, abusive or inappropriate statements in violation of Standards of Employee Conduct, Rule 12. Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment in violation of Rule 8.

See R.C. § 124.34 Order, attached as Exhibit A.

On April 10, 2009, Crosby appealed her suspension to this Board. Thereafter, on April 15, 2009, DRC rescinded Crosby’s suspension. *See affidavit of David Lundberg*, at ¶ 5. On April 19, 2009, DRC delivered a letter to Crosby informing her of DRC’s decision to rescind her suspension. *Id.* at ¶ 6. Crosby suffered no detriments in the nature of salary loss, benefits loss and otherwise. *Id.* at ¶ 7. Thus, this Board should dismiss the above-captioned appeal.

II. LAW AND ARGUMENT

This Board Lacks Jurisdiction to Determine Crosby’s Appeal

Because DRC rescinded Crosby’s suspension, this Board is without jurisdiction to entertain Crosby’s appeal. As a creature of statute, this Board “possesses only such powers and duties as conferred on it by the provisions of the enabling statute,” R.C. Chapter 124. *Ketron v. Ohio Dept. of Transp.*, 61 Ohio App. 3d 657, 659 (1991) (citing *Hansen v. State Personnel Bd. of Review*, 51 Ohio App.2d 7 (1977)). Per R.C. § 124.03(A) this Board has jurisdiction to:

Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations.

Under R.C. § 124.34 (B), the Board's jurisdiction over "suspension" appeals filed by employees non-exempt from the payment of overtime compensation is expressly limited to instances where the suspension exceeds twenty-four hours. *See* R.C. § 124.34(B).

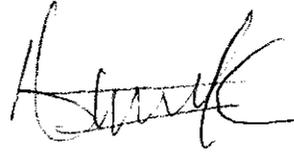
In the case at bar, while it is true that DRC initially suspended Crosby for more than twenty-four hours, DRC later rescinded Crosby's suspension. *See affidavit of David Lundberg*, at ¶ 5. Therefore, this case is moot. Furthermore, Crosby suffered no detriments in the nature of salary loss, benefits loss and otherwise. *Id.* at ¶ 7. Thus, the underlying facts of this case present no justiciable controversy requiring relief. Crosby already has the relief she seeks. Accordingly, this Board should dismiss Crosby's appeal for lack of subject matter jurisdiction.

III. CONCLUSION

For the foregoing reasons, DRC respectfully requests that this Board dismiss Crosby's appeal.

Respectfully submitted,

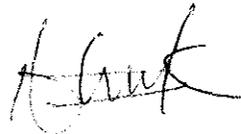
RICHARD CORDRAY
Ohio Attorney General



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Appellee Ohio Department of Rehabilitation and Correction's Motion to Dismiss* was served upon Shirley A. Crosby, 303 Willowbend Circle, Plain City, Ohio 43064 by ordinary U.S. Mail, postage prepaid, this 16th day of June, 2009.



KOMLAVI ATSOU (0084235)
Assistant Attorney General

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

SHIRLEY A. CROSBY)

Appellant,)

v.)

OHIO DEPT. OF REHAB. & CORRECTION,)
OHIO REFORMATORY FOR WOMEN)

Appellee.)

Case No. 09-SUS-04-0199

AFFIDAVIT OF DAVID LUNDBERG

STATE OF OHIO)

SS)

COUNTY OF UNION)

I, David Lundberg, being duly cautioned and sworn, depose and state that I am competent to testify to the facts contained herein, that I have personal knowledge of the facts contained herein, and that the facts contained herein are true and accurate to the best of my belief.

1. I am currently employed by the Ohio Department of Rehabilitation and Correction ("DRC"), where I have held the position of Labor Relations Officer since 09/2006.
2. In the scope and course of my job duties, I am familiar with the procedures and organizational structure at DRC/Ohio Reformatory for Women regarding the employment, removal, and classification of employees. Generally, I am responsible for Labor Relations and Personnel
3. Shirley A. Crosby ("Crosby") is employed by DRC/Ohio Reformatory.
4. On May 10, 2009, DRC suspended Crosby for 80 hours—from May 10, 2009 to May 23, 2009—for violating DRC policy. The violations consisted of: Making obscene gestures or statements, or false, abusive or inappropriate statements in violation of Standards of Employee Conduct, Rule 12. Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment in violation of Rule 8. Attached as Exhibit "A" is a true and accurate copy of R.C. § 124.34 Order issued to Crosby.
5. On April 15, 2009, DRC rescinded Crosby's suspension.
6. On April 19, 2009, DRC delivered a letter to Crosby informing her of DRC's decision to rescind her suspension. Attached as Exhibit "B" is a true and accurate copy of the Suspension Rescission Letter and Proof of Delivery.

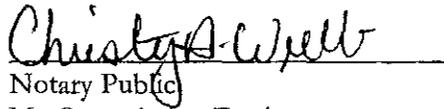
7. Crosby suffered no detriments in the nature of salary loss, benefits loss and otherwise.

Further Affiant Sayeth Naught.



David Lundberg

Sworn to before me and subscribed in my presence this 16 day of June 2008.



Notary Public

My Commission Expires:

CHRISTY A. WEBB, NOTARY PUBLIC
Union County, State of Ohio
My Commission Expires 5-17-2011

Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

Ms. Shirley Crosby

This will notify you that you are; removed; suspended; ^{20-hour} ~~to-day~~ suspended (working); fined;

involuntary disability separated; reduced in pay, from your position of

_____ and/or reduced to new position of _____ (if applicable)

effective 05/10/2009
(date)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).
(Section not applicable for involuntary disability separation.)

Specifically:

Standards of Employee Conduct, Rule 12: Making obscene gestures or statements, or false, abusive or inappropriate statements. On 7/24/08 you made an inappropriate comment regarding an officer to another officer and other staff members were present. Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment. On 10/22/08 the LRO received an incomplete investigatory interview packet that was started on 5/16/08 but never finished. On 10/31/08 the LRO received an incomplete investigatory packet that was given to you on 8/11/08 to be completed by 8/25/08. On 12/3/08 the LRO received an incomplete investigatory packet that was to be completed by you from a 7/19/08 incident.

Notice of pre-disciplinary/separation hearing given to employee: 01/20/2009
(date)

Pre-disciplinary/separation hearing held or waived: 01/30/2009
(date)

Employee allowed to meet with employer: Yes No

Order hand-delivered to employee: _____
(date, if hand-delivered)

If employee is suspended, list dates of suspension: 5/10/2009 - 5/23/2009 (^{20-hour} ~~to-day~~ working suspension)

Signed at Marysville Ohio, 04/07/2009
(city) (date)

Counter signature, if applicable

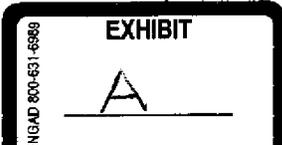
Counter signature, if applicable

Counter signature, if applicable

Signature of Appointing Authority


Type Name and Title of Appointing Authority
Sheri S. Duffey, Warden

Type Department, Agency, or Institution
Ohio Reformatory for Women



Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

Ms. Shirley Crosby

This will notify you that you are; removed; suspended; ^{10 Day} suspended (working); fined;
 involuntary disability separated; reduced in pay, from your position of _____
and/or reduced to new position of _____ (if applicable)

effective 05/10/2009
(date)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).
(Section not applicable for involuntary disability separation.)

Specifically:

Standards of Employee Conduct, Rule 12: Making obscene gestures or statements, or false, abusive or inappropriate statements. On 7/24/08 you made an inappropriate comment regarding an officer to another officer and other staff members were present. Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment. On 10/22/08 the LRO received an incomplete investigatory interview packet that was started on 5/16/08 but never finished. On 10/31/08 the LRO received an incomplete investigatory packet that was given to you on 8/11/08 to be completed by 8/25/08. On 12/3/08 the LRO received an incomplete investigatory packet that was to be completed by you from a 7/19/08 incident.

2009 APR 16 PM 3:55
STATE PERSONNEL
BOARD OF REVIEW

Notice of pre-disciplinary/separation hearing given to employee: 01/20/2009
(date)

Pre-disciplinary/separation hearing held or waived: 01/30/2009
(date)

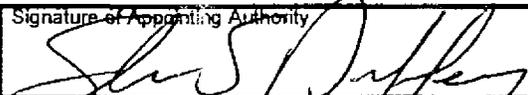
Employee allowed to meet with employer: Yes No

Order hand-delivered to employee: _____
(date, if hand-delivered)

If employee is suspended, list dates of suspension: 5/10/2009 - 5/23/2009 (10-day working suspension) (80 hours)

Signed at Marysville Ohio, 04/07/2009
(city) (date)

Counter signature, if applicable

Signature of Appointing Authority


Counter signature, if applicable

Type Name and Title of Appointing Authority
Sheri S. Duffey, Warden

Counter signature, if applicable

Type Department, Agency, or Institution
Ohio Reformatory for Women



Ohio Department of Rehabilitation and Correction

Ohio Reformatory for Women
1479 Collins Avenue
Marysville, OH 43040

Ted Strickland, Governor

www.drc.state.oh.us

Terry Collins, Director

April 15, 2009

Ms. Shirley Crosby
303 Willowbend Circle
Plain City, Ohio 43064

Re: Discipline Rescission

On or about April 9, 2009 you received a notice of discipline pursuant to the authority granted in section 124.34 of the Ohio Revised Code. The disciplinary sanction was an 80-hour working suspension to be served on May 10 – 23, 2009.

This letter is notice that the discipline will be rescinded until further notice so as to not interfere with your disability payments.

Sincerely,

David Lundberg
Labor Relations Officer

EXHIBIT

B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Affix this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:
 Ms. Shirley Crosby
 303 Willowbend Circle
 Plain City, OH
 43064

2. Article Number
 (Transfer from service label)

7002 0860 0003 3835 1332

PS Form 3817, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Shirley Crosby 4/18/02

D. Is delivery address different from return? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7002 0860 0003 3835 1332

**U.S. Postal Service
 CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

OFFICIAL USE

Postage	\$	L.R.C. Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To Ms. Shirley Crosby
 Street, Apt. No. or PO Box No. 303 Willowbend Circle
 City, State, ZIP+4 Plain City, OH 43064