

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tracy Allen,

Appellant,

v.

Case No. 10-REM-02-0028

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 Appellee's removal of Appellant be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

Richard Lumpe - Vice Chairman
for *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, December 13, 2010.

Michelle Hunsay
Clerk

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

12-13-10 MH

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

Tracy Allen,

Case No. 10-REM-02-0028

Appellant

v.

October 26, 2010

Ohio State University

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on June 15, 2010. Present at the hearing were the Appellant, Tracy Allen, appearing *pro se*, and Appellee Ohio State University designee Crystal Wertz, Lead Security Officer, represented by Joseph N. Rosenthal, Assistant Attorney General.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

Appellant Allen was removed from her position of Unit Clerical Associate on the effective date of January 23, 2010. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of Dishonesty. You received a minor suspension on February 9, 2009. Since then you stole a digital camera from the Labor and Delivery waiting area.

Appellant Allen filed a timely appeal of her removal.

Appellant Allen raised the issue of proper service of her removal order, as she stated she did not receive the order of removal until after its effective date. Appellee's witness, Kristie Henneman, an Employee Relations Consultant for approximately two and one-half years, testified that she sent the order of removal, identified as Appellee's Exhibit 1, to the address for Appellant Allen that was in the PeopleSoft database. She explained that the database houses all of the personnel information for the Appellee and that it is the responsibility of the employee to

ensure that the information contained in the database is accurate. She explained that each employee can update the information themselves on the system and it updates the information automatically or the employee can update their information in writing to their manager or the human resources office.

Appellant Allen asked why she wasn't asked at the pre-disciplinary hearing what her address was and Ms. Henneman explained that is not a question that is typically asked at the pre-disciplinary conference.

Administrative rule 124-3-02(C) of the Ohio Administrative Code provides as follows:

(C) Employees shall notify the appointing authority, in writing, of any changes of address throughout their employment. A "section 124.34 order" or an order of involuntary disability separation will not be disaffirmed based upon an appointing authority's failure to serve the employee with a copy of the order where the employee has failed to notify the appointing authority of a change of address and the appointing authority has attempted to serve a copy of the order to the employee's last known address. The burden is on the employee to prove the appointing authority was notified of a change in the employee's address.

The evidence has established that Appellant Allen did not notify the Appellee of her new address and therefore she has not met her burden of proof on this issue. Appellee sent the order of removal to the last known address on file for Appellant Allen and they cannot be expected to do any more. Therefore, the order of removal will not be disaffirmed on the basis that Appellant Allen received it after the effective date since Appellant Allen did not notify Appellee of her change of address.

STATEMENT OF THE CASE

Appellee called Appellant Allen as if on cross examination. Appellant Allen testified she was employed by Appellee as a Unit Clerical Associate in the Neonatal Intensive Care Unit, or NICU. She explained it is one of four departments in the Women and Infants section which includes Labor and Delivery. Both of the units are on the same floor next to each other. Appellant Allen testified she worked all shifts and did not have a regular third shift, as she normally worked a twelve or

sixteen hour shift. It was her responsibility to conduct admissions, transfers, discharges, and to complete forms regarding patients. She stated she worked with the patients' families and doctors, nurses and other staff members but not with the babies.

Appellant Allen identified Appellee's Exhibit 7 as her position description, which she stated described the majority of her duties. She stated she has been employed by the Appellee for approximately nine years. Her immediate supervisor is Shelly Biggs, the supervisor of the NICU unit.

On December 28, 2009, Appellant Allen testified she was working third shift and arrived between 11:00 and 11:45 p.m. She walked into the labor and delivery waiting area and picked up a silver digital camera that was laying on a table. She put it in her pocket and went back to her work area. Appellant Allen testified the camera was not hers nor Appellee's and she meant to turn it into security, but forgot. Appellant Allen identified herself in the video of the surveillance camera which shows her picking up the camera and putting it in her pocket. She explained that the partitioned area to the rear of the picture is the admissions section for labor and delivery and a person can be seen in that area. Appellant Allen testified it was not her intention to turn the camera into that person, as she was going to turn it into security. When asked if it would have been logical to give it to the person at the admissions area, she replied that it would have been but that it was also logical to give it to security.

Appellant Allen maintained that she simply forgot about the camera being in her pocket and it went with her to her non-public work area.

Appellant Allen testified she was scheduled to work from 7:00 a.m to 7:00 p.m. on New Year's Day and on December 31, 2009, she received a phone message from Ms. Biggs saying it was urgent to return the call. Appellant Allen testified she had been out of town and did not check her messages everyday. When she received the message, it was at night and Appellant Allen stated Ms. Biggs did not work at night. She testified she talked with a Gloria Cox, who told her that if she showed up at work, she was going to be arrested. Appellant Allen had her daughter return the camera.

Appellee's Exhibits 1 and 3 were identified by Appellant Allen as the order of removal and the notice of her pre-disciplinary conference, respectively. She stated when she went to work on January 1, 2010, she was immediately placed on administrative leave. She identified Appellee's Exhibit 4 as a written reprimand she received on June 13, 2008 due to a customer service complaint and Appellee's Exhibit 5 as a notice of a two (2) day suspension she received on February 9, 2009 due to two patient complaints. Administrative notice was taken of Appellee's Exhibit 6, a certified copy of a complaint filed against Appellant Allen in Franklin County Municipal court on January 7, 2010. Appellant Allen testified she never received a summons and has never seen the complaint.

Appellee's next witness was Sergeant Crystal Wertz, Lead Security Officer at Appellee's Medical Center for approximately three years. She is responsible for the safety and security of the patients, visitors and staff. Sergeant Wertz testified she completes theft and accident reports, handles the lost and found, monitors alarms and cameras in most of the public areas, comprising approximately fifteen buildings. She stated she works hand-in-hand with Appellee's police, as they handle the theft reports and pursue criminal actions. Her shift is from 7:00 a.m. to 3:30 p.m.

Sergeant Wertz identified Appellee's Exhibit 9 as her incident report she completed regarding the theft of a camera. She testified that on December 30, 2009, dispatch received a call at 9:45 a.m. regarding a missing camera from visiting room 748 in Rhodes Hall. Sergeant Wertz met with the patient, who delivered a baby on the evening of December 28, 2009. A visitor of the patient's gave a camera to others who were in the waiting area. The people laid the camera down on a table to go check on the patient, at approximately 11:00 p.m., and when they returned at approximately 11:45 p.m., the camera was gone. Sergeant Wertz stated the patient told her they were hoping that it had been turned into the lost and found and that is why they did not report the camera missing earlier. Since it had not been turned into the lost and found, they believed the camera to be stolen.

Sergeant Wertz asked the patient if she wanted to file a police report and she indicated she did. The police were called and they took information in order to file a charge since that is what the patient wanted to do. Sergeant Wertz and Officer Cooper then went to the security office to review the surveillance tape and that is when they saw Appellant Allen take the camera. Sergeant Wertz testified she took still pictures of Appellant Allen from the video and went to the labor and delivery area and spoke with the charge nurse, Gayla Kenny. She could not identify the

person in the photo so she asked another nurse and it was that nurse that identified Appellant Allen as being the person in the photo. Sergeant Wertz was told Appellant Allen worked in NICU, so she went to that area and met with Ms. Briggs. Ms. Briggs looked at the photo and identified Appellant Allen. She was then directed to Ms. Briggs' office, who assisted Sergeant Wertz and Officer Cooper in obtaining Appellant Allen's phone number and address. Ms. Briggs asked to look at the film and Sergeant Wertz complied. She then wrote her report.

On January 1, 2010, Sergeant Wertz testified she was in the dispatch center where lost and found is located and she happened to notice a silver camera with lots of scratches on it that fit the description of the missing camera. She checked the log-in sheet and found out that the camera had been turned in that day. She reviewed the camera footage of the lost and found area and saw a person who was later identified as Appellant Allen's daughter returning the camera. Sergeant Wertz then contacted Appellee's police and told them the camera had been turned in. Later the family came and retrieved the camera. Sergeant Wertz then identified Appellee's Exhibit 6 as the criminal complaint that was filed regarding the camera.

Appellee's next witness was Shelly Biggs, the Nurse Manager of the NICU unit for approximately thirty years. She has been with Appellee for approximately thirty-six years. Ms. Biggs is responsible for a staff of approximately 120 and manages the personnel, supervises, hires, counsels and coaches the employees. She testified she has known Appellant Allen for approximately eight and one-half years and was her direct supervisor.

Ms. Biggs testified she was working in the unit on December 30, 2009 when someone told her security was looking for her. She found Sergeant Wertz and identified Appellant Allen from the photo and the security video. Ms. Biggs stated she tried to call Appellant Allen at the phone number listed for her and she was not able to reach her. She left a message for her to not come into work until she spoke with her. Ms. Biggs testified she also spoke with Ms. Miracle, the supply coordinator to tell her Appellant Allen was scheduled to come into work that night. Ms. Miracle told Ms. Biggs she would tell Appellant Allen not to come in. Ms. Biggs testified it is not unusual for her to work from 7:00 a.m. to 8 or 9:00 p.m. sometimes and Appellant Allen never contacted her. She stated that all staff have her home phone and office phone. Ms. Biggs testified Appellant Allen was placed on administrative leave when she did come in to work.

Appellant Allen testified she was pulled over for a ticket and was told she had an outstanding warrant. She went to the court house and the warrant was lifted. Appellant Allen stated everything happened when she was off work and everyone made assumptions that she was not going to return the camera. She stated she does not steal and she feels she was railroaded.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents entered in evidence, I find the following facts:

1. Appellant Allen had been employed by Appellee for approximately nine years at the time of her removal, effective January 23, 2010.
2. At the time of her removal, she was employed as an Unit Clerical Associate in the NICU, working third shift. Her previous discipline consists of a written reprimand in June 2008 due to a customer service complaint and a two day suspension in February 2009 due to two patient complaints.
3. Appellant Allen was working third shift on December 28, 2009. During her shift, she admitted to, and can be seen on the surveillance camera, taking a camera from a table in the waiting area of the Labor and Delivery area. She took the camera and placed it in her pocket and walked away.
4. Appellant Allen did not turn the camera into anyone or to the lost and found department during or after her shift on December 28, 2009. There was an employee working in the admissions area adjacent to where the camera was taken by Appellant Allen, but she did not turn it into that employee either.
5. The person whose camera was taken filed a report with security and with Appellee's police department that the camera had been stolen.
6. Appellant Allen's supervisor, Ms. Biggs, after identifying Appellant Allen as the person taking the camera as seen on the surveillance camera, called and left a message with Appellant Allen to not report to work until she talked with her. Appellant Allen did not return her call.

An officer from Appellee's police force had also called Appellant Allen's phone number on file and left a message for her to return his call. She did not return the phone call.

7. Ms. Biggs' phone number at home and at work has been given to all staff.
8. On January 1, 2010, the camera was turned into the lost and found office. Appellant Allen stated her daughter returned the camera for her.
9. Appellant Allen maintains she forgot the camera was in her pocket and that she was going to return the camera when she returned to work on January 1, 2010.

CONCLUSIONS OF LAW

In order for Appellant Allen's removal to be affirmed, Appellee had the burden of proving by a preponderance of the evidence, the allegations contained in the removal order. Appellee has met its burden.

Appellant Allen was removed for dishonesty in taking a camera from the waiting room of the labor and delivery area and not returning it. Appellant Allen admitted she took the camera, but testified she forgot about the camera in her pocket and was going to return the camera when she returned to work on her next scheduled day.

A surveillance camera in the area of labor and delivery filmed Appellant Allen taking the camera. From looking at the film footage, Appellant Allen's actions portray a person who was taking the camera as quickly as she could without being noticed. The film footage shows her walking very fast directly to the table that the camera was on and putting the camera into her pocket very quickly. As Appellant Allen is walking out of the area, she quickly looks over toward the admissions office, where another employee was working, as if she was looking to see if she had been seen. She was moving very quickly and made absolutely no attempt to talk to the person in the admissions office to ask if that person knew whose camera it was.

Appellant Allen did not have a good answer as to why, if she was going to turn the camera into the lost and found, she didn't just give it to the admissions person who was right there and could have possibly known whose camera it was. If Appellant Allen truly had an intention of returning the camera, the admissions employee would have been the logical choice.

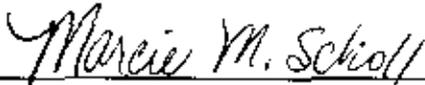
Appellant Allen testified she forgot about the camera in her pocket, but after returning home, she made no attempt to call anyone from her work to tell them she had forgotten about the camera and would be returning it during her next work shift. It is certainly logical to think that the person who lost the camera would be asking employees on the floor if they had seen the camera. Even after Appellant Allen received several messages, one from her supervisor and one from the police officer, she still did not return anyone's call to let them know she had the camera. She did not even return the camera herself, but instead, had her daughter return the camera. If the security officer that took the report regarding the missing camera had not happened to notice a camera sitting in the lost and found safe, it may have gone unnoticed for an indefinite period of time.

None of Appellant Allen's actions lend credence to her testimony that she forgot about the camera and was going to return it on her next shift. In fact, in viewing her actions on the film footage, it very clearly appears that she was stealing the camera and was doing so in a manner not to be seen by anyone else. Her actions after she took the camera do not indicate she was trying to return the camera. Appellant Allen was not a credible witness.

Appellee has met its burden of proof in proving that Appellant Allen was dishonest in taking a camera that she testified she knew did not belong to her or to the Appellee. She has been dishonest in maintaining that she forgot about the camera and was going to return it, as none of her actions support this claim. Appellee did not abuse its discretion in removing Appellant Allen, as her previous discipline history consists of a written reprimand and a two day suspension. As part of her job duties, Appellant Allen had daily contact with patients and their families and this incident has shown that she could no longer be trusted to be around the personal items of those patients and their families.

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Therefore, since Appellee has met its burden of proof, it is my **RECOMMENDATION** that Appellee's removal of Appellant Allen be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge

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