

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Robin Jones,

Appellant,

v.

Case No. 10-REM-04-0106

Franklin County Clerk of Courts,

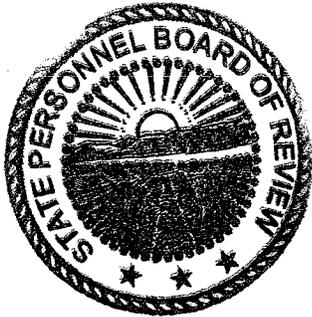
Appellee.

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. § 124.34.



Lumpe - 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, December 28, 2010.


Clerk

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

12-28-10

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

ROBIN JONES,

Case No. 10-REM-04-0106

Appellant,

v.

September 30, 2010

FRANKLIN COUNTY CLERK OF COURTS,

BETH A. JEWELL

Appellee.

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 her April 12, 2010, removal from employment with Appellee. A record hearing was held on August 9, 2010. Appellant was present at the record hearing and was represented by Eric M. Seabrook, attorney at law. Appellee was present at record hearing through its designee, Lisa Greene, and was represented by Scott J. Gaughler, assistant prosecuting attorney.

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

Your conduct constitutes neglect of duty and failure of good behavior in violation of R.C. 124.34 and you are also in violation of the following Employee Standards of Conduct: Shall avoid impropriety and the appearance of impropriety in all activities; Failure to perform job or work assignments satisfactorily, safely and efficiently; Excessive absences and/or tardiness; and Refusing to obey the direction of a supervisor (insubordination).

STATEMENT OF THE CASE

Appellee called three witnesses in its case in chief: Lisa Greene, Director of Human Resources; Mary McGovern, Supervisor/Records Division; and Wayne Crabtree, Manager/Records Division. Appellant did not testify or call any witnesses; however, Appellant cross-examined each of Appellee's witnesses. References to

witness testimony are indicated parenthetically below. The parties stipulated to the admission of Appellee's Exhibits 1 through 15 into the record. References to Appellee's Exhibits in the record are indicated parenthetically below by "Exh.," followed by the exhibit number(s).

FINDINGS OF FACT

A. Background and History of Progressive Discipline

Lisa Greene has served as Appellee's Director of Human Resources since March 2001. In this position, she oversees the hiring and disciplinary processes, represents Appellee in disciplinary matters; and maintains Appellee's employee handbook and human resources policies and procedures. Ms. Greene was involved in Appellant's removal. On April 7, 2010, Appellee notified Appellant of the predisciplinary hearing. Appellant was present at the April 9, 2010 predisciplinary hearing. The alleged infractions were read at the hearing, and Appellant had the opportunity to ask questions and present information. (Greene; Exhs. 1, 2)

Appellee provided Appellant with Appellee's Employee Manual, which included the Ohio Ethics Law and Related Statutes. Appellant signed an acknowledgment of receipt of these documents on September 8, 2004. Appellant signed Appellee's Network Security Policy on November 6, 2006. Appellant signed an acknowledgment of receipt of the Employee Handbook, Ohio Ethics Laws and Related Statutes, and Internet, E-Mail and On-Line Service Policy on March 18, 2009. Appellant's signature acknowledged that "[t]he above policies have been reviewed with me [sic] I understand that it is my responsibility to familiarize myself with the contents" of the policies. (Greene; Exhs. 4, 5, 6, 7)

Appellant was a Data Entry Clerk 1 in Appellee's Domestic Relations Division when she began receiving progressive discipline beginning in 2006. Exhibit 15 is a January 26, 2006 Warning Record that Appellant received from Craig Pearce, her supervisor during the time in which she worked as a Data Entry Clerk 1. The Warning Record indicates that after receiving previous verbal warnings, Appellant was continuing to use sick time in excess of the time available to her in her leave bank. Appellant was warned not to use sick time in excess of her available time off. Appellant was placed on a 90-day probation for her usage of sick time. Attached to her Warning Record are the Appellee's Guidelines for Tardiness and Absenteeism, which provide for a six-minute grace period for late arrival at the start of the work

day, except in instances of "repeated abuse." "Repeated abuse" is defined in the guidelines as three (3) instances of late arrival within a four (4)-month period.

On April 28, 2006, two days after the 90-day probation ended, Appellant called off sick. For the pay period ending April 28, 2006, Appellant used 4.55 more hours of sick time than available in her leave bank. Supervisor Pearce issued Appellant a second written warning for excessive use of sick time on May 11, 2006, warning Appellant that suspension was the next step in the disciplinary process. (Exh. 14)

On October 5, 2006, Appellant received a written warning for excessive use of sick time. (Exh. 11) On March 31, 2008, Appellant received a written warning for excessive tardiness. (Exh. 12) The March 31, 2008 written warning reflects that Appellant had been verbally counseled about her repeated tardiness to work at the start of the day. Appellant had been tardy to work seven (7) times during the month of November 2007, and continued to be tardy. Appellant also was counseled to avoid tardiness when returning from lunch.

On May 28, 2008, Appellant was suspended for two days without pay. (Exh. 13) On November 12, 2009, Appellant received a written warning for tardiness and for docketing errors in her work, giving her a two-week opportunity to improve her work and attendance. On December 7, 2009, Supervisor Pearce recommended suspending Appellant for one day for tardiness and substandard work. Deputy Chief Clerk Mary Austin-Palmer denied the suspension, instead ordering that Appellant receive additional training. Following the additional training, Appellant was transferred to a position as a Records Management Clerk in the Juvenile Records section of the Records Division on February 8, 2010. Appellee viewed the transfer as a "last chance [for Appellant] to improve on [her] attendance/tardiness issues and to perform at a higher level of efficiency at a position best fitting to [her] abilities." (Exh. 1)

B. Appellant's Removal

In the April 12, 2010, R.C. 124.34 Order, Appellee wrote as follows:

Since your transfer, you have failed to meet the required expectations for attendance and tardiness, work performance, and being a team player. You

continued to have a problem with authority by refusing to obey or follow instructions given by your new supervisor and new manager. A final warning was given to you on April 7, 2010 recommending termination. (Exh. 1)

Wayne Crabtree is the Manager of Appellee's Records Division, which is separated into Juvenile, Domestic, and Civil/Criminal. Mary McGovern is the Supervisor of Juvenile Records. Ms. McGovern became Appellant's supervisor after Appellant was transferred in February 2010. The testimony of Manager Crabtree and Supervisor McGovern, and the documents contained in Appellee's Exhibit 8, establish the facts set forth in the following four paragraphs:

The duties of the RMCs included filing microfiche records of cases, sorting the microfiche records to file, and working at the front counter. Typically, the RMCs rotate duties each week, spending 80 percent of their time filing in the file room, and 20 percent of their time at the front counter. When Appellant came to Juvenile Records, however, she informed Manager Crabtree and Supervisor McGovern that medical reasons precluded her from working in the file room. Manager Crabtree told Appellant to bring in a doctor's note documenting her inability to work in the file room; Appellant never did so. Nonetheless, Manager Crabtree and Supervisor McGovern did not require Appellant to work in the file room. Without providing a reason, Appellant stated that she did not want to interact with Supervisor McGovern and preferred to speak with Manager Crabtree. Manager Crabtree asked Supervisor McGovern to document the situation and bring issues to him.

On February 16, 2010, Appellant was specifically asked by Supervisor McGovern to sit next to the front counter person all day and work on learning the front counter duties. Appellant stayed at the front counter for 15 minutes. Appellant took an extended break; when she returned she spent 30 minutes checking her email at the computer area instead of returning to the front counter. Supervisor McGovern then gave Appellant microfiche to sort. After her hour lunch break, Appellant proceeded to check her email and talk on the phone. Manager Crabtree came into the area, and Supervisor McGovern told him about the situation. Manager Crabtree told Appellant to work at the front counter and that it was important for her to be trained, as another staff member would be taking maternity leave soon. On February 17, 2010, Appellant called in sick. On February 18, 2010, Appellant arrived late to work. Upon her arrival, Appellant asked Supervisor

McGovern if she, Appellant, could go speak with Manager Crabtree. Supervisor McGovern said yes. Thirty minutes later, Supervisor McGovern called Manager Crabtree to ask if Appellant was still in his office. He responded that Appellant had left twenty minutes earlier. Appellant returned to Juvenile Records after having been away for forty-five minutes.

On March 1, 2010, Supervisor McGovern spoke with Appellant about leaving the office to get breakfast when she was not on her scheduled break time. Appellant responded that she had to eat with her medicine and that she would talk with Manager Crabtree about it. Supervisor McGovern also spoke with Appellant about checking her email and surfing the internet while not on break, and reminded Appellant about the need for a doctor's excuse documenting her inability to file.

On March 2, 2010, Appellant left the front counter unattended, leaving the office phones without anyone to answer them. Supervisor McGovern told Appellant that Appellant should not leave the counter unattended. Appellant responded that she "did not know how to answer the phone anyway." On March 8, 2010, Appellant called in sick. On March 9, 2010, Appellant left her work station to use the phone while not on break.

The work of the RMCs does not require internet access. Because the file room does not have a computer, Supervisor McGovern set up an internet usage schedule for all staff, allowing each staff member to sign up for a 10-minute period each day to use the computer to check their personal email and surf the internet. On March 16, 2010, Supervisor McGovern observed Appellant using the internet when it was not her scheduled time, although she had warned Appellant several times not to do so. Supervisor McGovern required all Juvenile Records RMCs to sign a log when they were tardy. Appellant was tardy on February 19, March 15, and March 24, 2010. The three instances of tardiness constituted repeated abuse under Appellee's attendance policy.

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 the standard of conduct, and that the discipline imposed by Appellee was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of the 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.

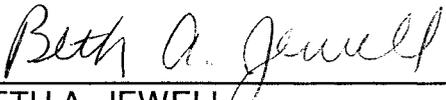
Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him or her, an explanation of the employer's evidence, and an opportunity to be heard before the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. Seltzer v. Cuyahoga Cty. Dep't of Human Services (1987), 38 Ohio App.3d 121. Information contained in the record demonstrates 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. Therefore, Appellant's due process rights were observed. Appellee substantially complied with the procedural requirements established in 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 neglect of duty and failure of good behavior, stemming from Appellant's attitude, conduct, attendance, and substandard work.

Appellant did not testify and did not dispute that she engaged in the conduct described in the R.C. 124.34 Order and in Appellee's exhibits. Rather, Appellant's primary argument is that the level of discipline imposed on Appellant, removal, is excessive. Appellee counters that Appellant's record of progressive discipline shows that Appellee explained the nature of the violations to Appellant and provided instructions on how to correct them. Through progressive discipline, Appellee asserts that Appellant was given numerous opportunities to correct her behavior.

Appellee's position is supported by the evidence in the record. The infractions committed by Appellant in February and March 2010 are markedly similar to those for which Appellant received discipline in the past. Appellant's disciplinary history contains a pattern of attendance and tardiness violations dating back to 2006. Appellant argues that she satisfied the terms of the 90-day probation period for sick leave abuse in 2006, and that this should be viewed as a mitigating circumstance. Yet her disciplinary history reveals that only two days after the probationary period ended, Appellant once again used sick leave in excess of the amount available to her. Appellee also demonstrated that Appellant was given ample notice of the attendance/tardiness policy; specifically, that three instances of tardiness constituted "repeated abuse" under the policy. Yet, Appellant continued to arrive late to work. Appellant was also insubordinate on more than one occasion, including leaving her work station during non-break times and questioning her supervisor when her supervisor told her she needed to remain at her work station. The history of progressive discipline demonstrates that Appellee gave Appellant ample opportunity to improve her attendance and job performance

Therefore, because Appellant's actions constituted neglect of duty and failure of good behavior, and because Appellant failed to correct her tardiness despite several attempts at progressive discipline, I respectfully **RECOMMEND** that Appellee's removal of Appellant be **AFFIRMED**.



BETH A. JEWELL
Administrative Law Judge

BAJ: