

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tawn M. Adkins,

Appellant,

v.

Case No. 10-REM-11-0302

Ohio State University,

Appellee.

ORDER

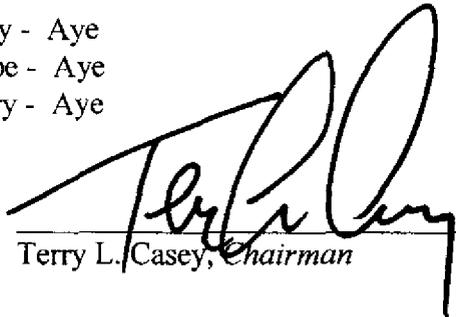
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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



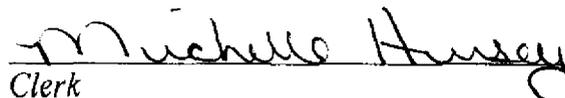
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

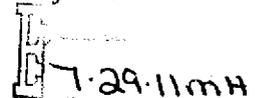
CERTIFICATION

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 29, 2011.


Michelle Hunsay
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**

Tawn M. Adkins,

Case No. 10-REM-11-0302

Appellant

v.

June 9, 2011

Ohio State University,

Jeannette E. Gunn

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 removal from employment with Appellee. A record hearing was held in the instant matter on April 14, 2011. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Nurse Manager Sharon Thompson, and was represented by Rema A. Ina and Timothy A. Lecklider, Assistant Attorneys General.

The R.C. 124.34 Order of Removal provided to Appellant listed as ground for her discipline:

Neglect of Duty: You received a major suspension on July 7, 2009. Since then, you missed all or part of multiple work days in excess of the Medical Center Attendance Policy threshold. In addition, you were late clocking back in from a break and failed to let the charge nurse know when you were leaving the building for a break or lunch.

STATEMENT OF THE CASE

Appellant testified that prior to her removal in October 2010 she was employed by Appellee as an Office Associate at the Martha Morehouse Medical Plaza ("Martha Morehouse"), in the Ambulatory Clinic; her position was classified as Clerical Specialist. She noted that Martha Morehouse is part of the Ohio State University's James Cancer Center and stated that she was responsible for assisting oncology patients by scheduling testing and appointments, and checking them in

and out of the office at the reception desk. Appellant confirmed that she was removed from employment with Appellee on October 19, 2010, and identified the letter (Appellee's Exhibit 4) and order of removal (Appellee's Exhibit 5) that she received.

Appellant recalled that she attended a pre-disciplinary hearing on October 4, 2010, prior to her removal from employment and stated that the topic of discussion during that hearing was her tardiness. She identified the notification letter she received for the pre-disciplinary hearing (Appellee's Exhibit 3) and confirmed that the letter stated that corrective action had been requested by her department as a result of her alleged neglect of duty. Appellant testified that she had an opportunity to speak at the October 4, 2010, hearing and stated the reasons that she felt discipline should not be imposed.

Appellant acknowledged that she had received a four-day suspension in July 2009 for neglect of duty related to cell phone usage (Appellee's Exhibit 12), and a two-day suspension in April 2009 for neglect of duty related to a violation of Appellee's attendance policy (Appellee's Exhibit 13). She confirmed that she had received a written reprimand in October 2008 for excessive tardiness (Appellee's Exhibit 15). Appellant agreed that she had many counseling discussions with her supervisors regarding her repeated tardiness and noted that they had attempted to adjust her schedule so that she could deal with the personal circumstances that were causing her to be late.

Appellant testified that she did occasionally go to McDonald's on her break and recalled that her supervisor, Shannon Thompson, had instructed her to clock in and out if she intended to leave the building on her break. She stated that she did not believe Ms. Thompson had also told her to let the charge nurse know if she was leaving or not, but after the incident referenced in her Order of Removal, she became aware that she needed to do so.

Appellant confirmed that she is familiar with Appellee's attendance policy (Appellee's Exhibit 1). She acknowledged that she was tardy on nine occasions during a six-month period in 2010 and agreed that those incidents constituted a violation of Appellee's attendance policy.

Reginald Pryear testified that he is presently employed by Appellee as Director of Ambulatory Services at Martha Morehouse, and has held that position since July 2010. He noted that the position he held immediately prior to his current

position was that of Nurse Manager at Martha Morehouse, and confirmed that he was Appellant's supervisor at that time.

The witness recalled that there were four employees, including Appellant, who checked oncology patients in and out at the reception desk, scheduled tests, and completed physicians' orders. Mr. Pryear observed that Appellant's tardiness affected the staff and operations in that area, as it could delay patient service and was unfair to the other staff who were following Appellee's policies.

Mr. Pryear confirmed that he had counseled Appellant regarding her tardiness and attempted to find scheduling and other solutions that would help her address the personal situations that were causing her to be late to work. He recalled that he and a representative from Human Resources discussed Appellant's eligibility for FMLA with her in November 2009 (Appellee's Exhibit 11). The witness noted that he tries to work with all of his employees to help them be successful and hoped to find a way to accommodate Appellant.

Mr. Pryear recalled that he disciplined Appellant for her tardiness by issuing a written reprimand in 2008 and a two-day suspension in April 2009. The witness noted that Appellant received a four-day suspension in July 2009 that was related to cell phone usage. He indicated that he was aware that Ms. Thompson had requested corrective action in 2010 and confirmed that he was present when the letter and order of removal were given to Appellant in October 2010.

Shannon Thompson testified that she is presently employed by Appellee as Nurse Manager on the tenth floor of Martha Morehouse. She indicated that she has held that position since July 2010 and confirmed that she was Appellant's immediate supervisor prior to Appellant's removal in October 2010. The witness confirmed that she requested corrective action for Appellant (Appellee's Exhibit 6) as a result of her violation of Appellee's attendance policy. Ms. Thompson noted that Appellee's attendance policy states that employees may not have more than seven tardies in a six month period.

The witness stated that during the time she supervised Appellant, she had problems with being tardy for work. Ms. Thompson observed that she discussed the issue with Appellant on several occasions (Exhibits 8 and 9) and attempted to find a scheduling solution to help Appellant but was not able to do so. She noted that she explained to Appellant that she would do whatever she could to help, but that the needs of the unit and patient care were her ultimate responsibilities.

Ms. Thompson recalled that in August 2010 she became aware that Appellant had nine tardies in a six-month period. She explained that she runs a regular managers report each month and addressed the matter with Appellant in the same way she would for any of the employees she supervises. The witness identified Appellee's Exhibit 7 as an attendance report she ran for Appellant showing the nine tardies upon which Appellant's discipline was based.

The witness recalled that she submitted an addendum to her request for corrective action (Appellee's Exhibit 10), documenting an instance when Appellant was late returning from McDonald's on her break and failed to let the charge nurse know that she was leaving the unit. Ms. Thompson stated that she and Appellant had talked specifically about both these issues prior to the incidents referenced in her addendum.

Ms. Thompson testified that she was present at Appellant's pre-disciplinary hearing, along with Human Resources representative Colleen Rupp, Appellant, and the Hearing Officer. She recalled that the focus of the hearing was to discuss the part of the attendance policy specific to tardies and noted that Appellant had an opportunity to talk about the issue at the pre-disciplinary hearing.

The witness indicated that she understood Appellant's removal to be based upon her violation of Appellee's attendance policy, rather than on any type of job performance or patient care issues.

FINDINGS OF FACT

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

Appellant was employed by Appellee as an Office Associate in the Ambulatory Clinic of the Martha Morehouse Medical Plaza, which is part of the Ohio State University's James Cancer Center. She was removed from employment with Appellee on October 19, 2010.

Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing on October 4, 2010, prior to her removal from employment. The topic of discussion at that pre-disciplinary hearing was Appellant's violation of

Appellee's attendance policy with regard to tardiness. Appellant was tardy on nine occasions from March 25, 2010, through August 30, 2010; Appellee's attendance policy provides that employees may not exceed seven tardies in a six-month period. In addition to those nine tardies, Appellant was also late returning from break on one occasion and failed to notify the charge nurse when she left the unit on one occasion.

Prior to her October 2010 removal, Appellant had received a four-day suspension in July 2009 for neglect of duty related to cell phone usage, a two-day suspension in April 2009 for neglect of duty related to tardiness, and a written reprimand in October 2008 for excessive tardiness. Appellant had been counseled by her supervisors on several occasions regarding her repeated tardiness.

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. Testimony elicited at record hearing established that although the notice letter indicated generally that corrective action had been requested based upon a neglect of duty, the specific topic discussed at the pre-disciplinary hearing was Appellant's tardiness. I find, therefore, that Appellant had notice of the charges against her with regard to the nine instances on which she was tardy within the six-month period of March 25, 2010, through August 30, 2010. I further find that Appellant had an opportunity to respond to those charges. Accordingly, I find that Appellant's due process rights were observed with regard to the charges of tardiness.

Because insufficient testimony was presented at record hearing to establish whether Appellant's late return from break or her failure to notify the charge nurse that she had left the building was also discussed at Appellant's pre-disciplinary hearing, I find that Appellee failed to meet its burden of proof to demonstrate that Appellant had notice of those specific charges and an opportunity to respond at her pre-disciplinary hearing. Evidence does not support a conclusion that Appellant's due process rights were observed with regard to these charges, therefore, I find that Appellant's removal may not be properly based upon them.

Testimony and evidence contained in the record is sufficient to establish that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant. The R.C. 124.34 Order of Removal filed in this matter indicates that Appellant's removal was based on neglect of duty, specifically that Appellant missed all or part of multiple work days in excess of the Medical Center Attendance Policy threshold.

Appellant testified that she was familiar with Appellee's attendance policy and evidence established that she had received discipline in the past based upon her repeated tardiness. Appellee's attendance policy specifically provides that employees may be subject to corrective action if, within a rolling six-month period, an employee has eight or more occurrences of tardiness. Appellant did not dispute that she was tardy nine times within a period of six consecutive months. I find, therefore, that sufficient evidence exists in the record to support a conclusion that Appellee had an established standard of conduct with regard to tardiness, that the standard was communicated to Appellant, that Appellant's conduct violated that standard of conduct.

Accordingly, the Board may proceed to consider whether or not removal from employment was an appropriate discipline to be imposed upon Appellant. Appellee presented testimony and evidence at record hearing regarding Appellant's prior discipline related to tardiness. Appellant's employment history demonstrated that she had been counseled and disciplined multiple times for being tardy. In light of Appellant's failure to correct her attendance problem, despite clear and continuing notice that such behavior was not acceptable, I find that removal was an appropriate discipline in this matter.

Appellant argues that because the language contained in the R.C. 124.34 Order of Removal does not specifically reference the term "tardy," the Order is deficient and must be disallowed. The Order states that Appellant's discipline is based upon missing "all or part of multiple work days in excess of the Medical Center Attendance Policy threshold." I find that Appellant's tardiness is sufficiently described by the language contained in the R.C. 124.34 Order; an employee who is tardy has missed part of his or her work day. As previously noted, Appellant's tardies were undisputedly over the permissible number allowed by Appellee's attendance policy.

Therefore, because Appellee has met its burden of proof with regard to its observance of Appellant's due process rights, as related to the charge that Appellant violated Appellee's attendance policy by being tardy nine times within a six-month period; its procedural compliance with the Ohio Revised Code and Ohio Administrative Code; and the infractions set forth in the R.C. 124.34 Order of Removal provided to Appellant, and because Appellee has further demonstrated that removal was an appropriate discipline to be imposed, I respectfully **RECOMMEND** that Appellant's removal from employment with Appellee be **AFFIRMED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: