

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

TRACEE POLLARD-ANDERSON,

*Appellant,*

v.

Case No. 11-REM-07-0238

ASHLAND COUNTY DEPARTMENT OF JOB & FAMILY SERVICES,

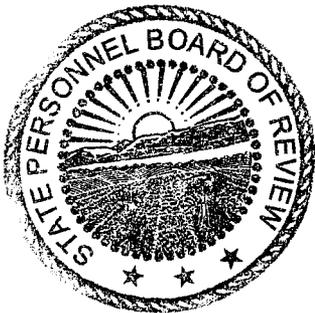
*Appellee*

**ORDER**

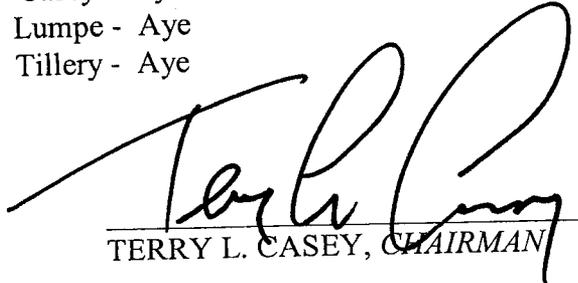
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Ohio Revised Code § 124.34.



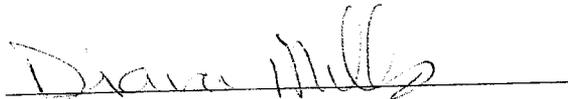
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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 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, December 20, 2012.

  
Clerk

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

12/20/12

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

Tracee Pollard-Anderson,

Case No. 11-REM-07-0238

*Appellant*

v.

October 29, 2012

Ashland County Department of  
Job & Family Services,

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 June 2, 2011, removal from employment with Appellee. A record hearing was held in the instant matter on August 6, 2012. Appellant was present at record hearing and was represented by Brian J. Halligan, attorney at law. Appellee was present at record hearing through its designee, Commissioner Michael Welch, and was represented by John T. McLandrich and Tami Z. Hannon, attorneys at law.

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

Dishonesty, Insubordination, Neglect of Duty, Failure of Good Behavior, Conduct Unbecoming a Public Employee, Dissemination of False Information, Malfeasance, and/or Misfeasance; On May 5, 2011, you made statements to Ashland County Commissioners regarding confidential health issues of the Director & their severity; made false or misleading statements concerning the Director's management of agency finances; made false statements to the Director regarding meeting with the commissioners and your actual whereabouts; and other issues. Also, you've attempted to undermine the authority of the Director over the past 2 years by directing staff to do things other than instructed by the Director & otherwise demonstrated disrespect for him & referred to him in a disrespectful manner. Further, inappropriate and/or improper behavior towards employees & other agencies, including intimidation, coercion, &

harassment; as well as actions & behavior described as caustic, divisive, & vicious. In addition, you failed to complete assignments, including failure to complete annual performance evaluations for agency supervisors the past two years.

### **STATEMENT OF THE CASE**

Gary Hannan testified that he retired from employment with Appellee on July 31, 2011. He indicated that immediately prior to his retirement he held the position of Director of the Ashland County Department of Job & Family Services (Ashland County JFS or JFS).

The witness stated that Appellant was employed by Appellee as Assistant Director of the Ashland County JFS from September 2003 until her termination in June 2011. He noted that he and Appellant initially had a very good working relationship and that Appellant performed her job well and was a very capable employee. Mr. Hannan testified that their working relationship began to change in 2009 and that Appellant began questioning his decisions and disagreeing with him on most management issues. The witness indicated that although his decision normally prevailed, there was a great deal of friction between the two of them.

Mr. Hannan recalled that he and Appellant had many arguments regarding business matters, although they normally did not disagree in front of staff, and that the disagreements between the two of them made it increasingly difficult for him to perform his job duties. He testified that after he and Appellant had a heated discussion in February 2011 he informed her that he was going to retire, with his primary reason being their unpleasant working relationship. The witness noted also that he had thirty years of service and was concerned about potential legislative changes to the retirement system.

Mr. Hannan stated that he spoke to Commissioners Barbara Queer and Michael Welch on April 18, 2011, about his intent to retire and confirmed that he told them the primary reason for his retirement was his inability to work with Appellant. The witness indicated that he told them only that he and Appellant had a difference in management style and that he was tired of the conflict, but did not make any representations about Appellant's ability to run the agency. He recalled that Commissioner Welch expressed surprise that he and Appellant had

disagreements and stated that he had received complaints about Appellant in the past. The witness testified that when he informed Appellant about his conversation with the Commissioners she became very upset and stated that Mr. Hannan had "ruined her in Ashland County."

Mr. Hannan noted that he announced his retirement to agency supervisors on April 20, 2011, but did not make a formal announcement until the Commissioners' May 5, 2011, meeting. The witness indicated that Appellant arrived at the Commissioners' May 5, 2011, meeting as it was concluding. He recalled that she told him later that day that she had only spoken to the Commissioners briefly.

Mr. Hannan testified that the Commissioners asked him to meet with them in executive session on May 12, 2011. He recalled that the Commissioners told him at that time that Appellant informed them that he had uncontrolled diabetes, as well as a brain tumor that was growing and affecting his ability to make decisions, and that he had mismanaged agency funds by not using available TANF funds to purchase document imaging equipment. Mr. Hannan indicated that he provided the Commissioners with accurate information regarding his health and explained to them that it was improper to use the funds identified by Appellant to make the purchases that she had proposed. The witness recalled that the Commissioners indicated to him that they intended to consider disciplinary action for Appellant.

Mr. Hannan testified that he does have a tumor on his pituitary gland that was diagnosed in 2001. He indicated that he had told Appellant and perhaps two other employees in the agency about the tumor, but made it clear at that time that the information was private. Mr. Hannan acknowledged that he most likely used the term "brain tumor" to describe his condition at first, but noted that as he learned more about the condition he corrected his terminology. He stated that the tumor is not growing and has begun to shrink as it responds to treatment. Mr. Hannan also confirmed that he is diabetic and characterized his diabetes as well-controlled. He testified that his health did not affect his ability to perform his job duties.

The witness confirmed that he met again with the Commissioners and with Appellant in an executive session on May 19, 2011. He recalled that the Commissioners asked Appellant why she had disclosed Appellant's medical condition to them and Appellant indicated that she was required to do so as a result of FMLA; the witness noted that he has never requested FMLA leave. Mr. Hannan

stated that when Appellant was asked why she had accused him of mismanaging agency funds, she indicated that JFS' financial officer, Lori Burcaw, had approached her with concerns about mismanagement and she felt compelled to bring the issue to their attention. The witness indicated that the Commissioners asked Appellant to resign, but she refused to do so. He testified that Appellant was subsequently placed on paid administrative leave and a pre-disciplinary meeting was scheduled.

Mr. Hannan stated that he assisted in preparing the notice of pre-disciplinary hearing that was provided to Appellant, as well as the R.C. 124.34 Order of Removal, based on information that was provided to him by the Commissioners. He confirmed that he was present at the pre-disciplinary hearing, which was held on May 26, 2011.

Patty Sheppard testified that she has been employed by Appellee at the Ashland County JFS for approximately twenty-three years and presently holds the position of Eligibility Referral Supervisor. Ms. Sheppard stated that she reported to Appellant in 2011.

The witness confirmed that she interacted regularly with Appellant in the course of business. She indicated that Appellant tracked leave requests and on some occasions she would have to check with Appellant before approving leave for the employees she supervised. Ms. Sheppard stated that Appellant also administered employee discipline; she recalled that Appellant disciplined two of the employees she supervised and although she did not agree with the discipline imposed she said nothing because she was afraid to disagree with Appellant. Ms. Sheppard testified that she was aware that Appellant and Mr. Hannan frequently disagreed on management decisions.

The witness recalled that on or about April 18, 2011, Appellant came to her office and told her that Mr. Hannan had informed the Commissioners that none of the supervisors cared about their jobs and would have to be watched carefully; she testified that Appellant also made the general statement that Mr. Hannan had mismanaged agency money. Ms. Sheppard noted that Appellant said she was telling her just in case Mr. Hannan said something about it at the supervisors meeting and stated that he had ruined Appellant's reputation in Ashland County.

The witness confirmed that when the Commissioners asked her to talk to them a few weeks later she told them about her conversation with Appellant. She

stated that she also told them that many employees had left the agency because they were treated badly by Appellant. Ms. Sheppard indicated that the working environment at the agency was bad and employees were fearful that Appellant would be the next director. She noted that the Commissioners told her that Mr. Hannan had never said anything negative about the supervisors. Ms. Sheppard testified that she did not make Appellant aware of her meeting with the Commissioners because she feared retaliation for any negative comments she might make, and confirmed that when Appellant found out that she had spoken to them she appeared worried and upset and wanted to know if she should "pack her bags."

The witness testified that the present working atmosphere is much more comfortable and relaxed under the new Director. She stated that she believes the change is the result of the absence of both Appellant and Mr. Hannan and noted that Mr. Hannan should not have permitted Appellant to act in the manner she did. Ms. Sheppard acknowledged that each of the Directors she has worked for has had a different way of doing things and observed that on some occasions, yelling was part of Mr. Hannan's management style.

Lorraine Burcaw testified that she has been employed by Appellee at the Ashland County JFS since 1988 and holds the position of Fiscal Supervisor. She stated that she was supervised by both Mr. Hannan and Appellant and interacted with both of them on a daily basis in 2011.

Ms. Burcaw confirmed that although Mr. Hannan had told her about his medical condition many years ago, he had not spoken to her about it in recent years. She testified that it was not common knowledge within the agency, and recalled that he had asked her to keep the information confidential. The witness stated that she believed Mr. Hannan had described his condition as a brain tumor but did not recall any more specific description. Ms. Burcaw indicated that she never saw evidence that Mr. Hannan's health issues affected his ability to perform his job duties.

The witness described the agency workplace at the time of Appellant's removal as "toxic." She noted that she did not generally have a problem working with Appellant but recognized that some days were good and some were bad. Ms. Burcaw also characterized Appellant's relationship with Mr. Hannan, as well as other employees, as "toxic" and stated that she often heard Appellant "ranting and

raving” and slamming doors. She observed that Appellant and Mr. Hannan did not agree on anything and their relationship affected the entire agency.

Ms. Burcaw recalled that after Mr. Hannan went to the Commissioners to discuss retirement, Appellant told her that he had informed the Commissioners that no one cared what they were doing and the agency would need to be watched after his retirement. She testified that Appellant also told her that Mr. Hannan had told the Commissioners that Ms. Burcaw made too many mistakes and that Appellant was not the right person to fill the Director’s position after his retirement. Ms. Burcaw confirmed that she was sensitive about making mistakes and took criticism personally; she stated that she believed what Appellant told her at that time, but was later informed by the Commissioners that Mr. Hannan had not made any such statements.

Ms. Burcaw testified that the Commissioners asked her to talk to them about the agency environment and the fiscal management of the agency. She recalled that when the Commissioners informed her that Appellant told them Ms. Burcaw brought supposed fiscal mismanagement to Appellant’s attention she indicated that she had never suggested that Mr. Hannan had mismanaged agency funds. The witness confirmed that Appellant had requested reports from her showing the amount of unspent TANF funds that were returned to the State. Ms. Burcaw observed that the use of TANF funds is restricted and it would have been improper to use them to purchase document imaging equipment for the agency.

Barbara Queer testified that she presently serves as an Ashland County Commissioner and held that position in 2011. She recalled that Gary Hannan told her and Commissioner Mike Welch on April 18, 2011, that he planned to retire within a few months. Ms. Queer stated that both she and Mr. Welch were surprised by Mr. Hannan’s decision and asked him why he was retiring; she indicated that Appellant said he was unable to continue working with Appellant due to their constant disagreement and the stress it caused. The witness observed that Mr. Hannan said that he and Appellant had different management styles and speculated that that might be causing the conflict, but otherwise did not elaborate on their working relationship.

Ms. Queer recalled that Mr. Hannan officially announced his retirement at the Commissioners’ May 5, 2011, meeting. She stated that Appellant came to the meeting after Mr. Hannan left and the meeting was in the process of adjourning.

The witness indicated that Appellant remained in the audience area until everyone other than the Commissioners had left the room

Ms. Queer testified that one of the Commissioners asked Appellant why she was there and Appellant responded that she thought there were some things the Commissioners needed to know; Appellant proceeded to tell the Commissioners that Mr. Hannan had serious health issues, including a brain tumor that affected his ability to make decisions and caused him to be very emotional, and a severe diabetic condition. The witness stated that Appellant told the Commissioners that Mr. Hannan's inability to make decisions had resulted in his sending money back to the State that could have been used to purchase document imaging equipment. Ms. Queer confirmed that Appellant did not reference any other issues or examples of fiscal mismanagement at that time, but suggested that the Commissioners talk to Patty Sheppard and Lori Burcaw. She estimated that Appellant spoke with the Commissioners for approximately fifty minutes that day.

The witness noted that she was familiar with Appellant through the course of her employment and had no problem with her supervision and management of the JFS. She stated that she believed the statements Appellant made and was both concerned and shocked, since she had no idea that Mr. Hannan had any such health conditions. Ms. Queer recalled that she called Mr. Hannan a few days later and in conversation asked him how he was doing, as she understood he had some serious health issues. The witness observed that Mr. Hannan refuted the information Appellant had provided to the Commissioners and gave her accurate information about his medical conditions. She indicated that Mr. Hannan told her he found it interesting that Appellant had talked with the Commissioners at length on May 5, 2011, when she had told him otherwise.

Ms. Queer testified that she spoke with the other two Commissioners about her conversation with Mr. Hannan. She recalled that they were surprised to learn that the information provided by Appellant about Mr. Hannan was not accurate and agreed that they needed to find out why there was such disparity in the information they had received. The witness indicated that the Commissioners met with Mr. Hannan in executive session on May 12, 2011, to discuss the specifics of his medical conditions and to question him about Appellant's allegations regarding fiscal matters. Ms. Queer recalled that Mr. Hannan provided information about his health issues and explained that TANF funds could not be appropriately used for the purpose suggested by Appellant; she noted that Mr. Hannan told them that

although other counties had used TANF funds in that manner, he believed it was wrong and did not want to put Ashland County “on the hook” for the funds if the purpose was determined to be improper. The witness observed that fiscal matters are one of Mr. Hannan’s areas of expertise and she trusted his judgment on financial issues.

Ms. Queer stated that the Commissioners also talked to Ms. Sheppard and Ms. Burcaw following their discussion with Mr. Hannan. She recalled that Ms. Sheppard told the Commissioners that Appellant had told her that the Commissioners were not happy with Ms. Sheppard and the way certain parts of the agency were run. The witness noted that the Commissioners assured Ms. Sheppard that they had never said anything derogatory about the JFS employees. She confirmed that the Commissioners also spoke with Ms. Burcaw, but could not recall whether or not they specifically discussed the TANF issue.

The witness stated that the Commissioners met with both Appellant and Mr. Hannan in executive session on May 19, 2011, at which time they questioned Appellant about the information she had relayed to them earlier. She recalled that Appellant backtracked and claimed that she had only said he had a tumor, not a brain tumor. Ms. Queer also recalled that Appellant claimed that Mr. Hannan was very open about his health issues, while Mr. Hannan stated that he was not, and that they argued back and forth about how the TANF funds could be spent.

Ms. Queer confirmed that because the Commissioners no longer trusted Appellant as the result of what they believed to be false statements, she was given an opportunity to resign her position rather than face possible discipline. She noted that Appellant declined their offer and was subsequently placed on paid administrative leave, pending a pre-disciplinary meeting.

The witness recalled that she attended Appellant’s pre-disciplinary meeting and recalled that Appellant offered testimony before a neutral hearing officer. She noted that Appellant claimed at the pre-disciplinary meeting that she attended the May 5, 2011, Commissioners meeting to discuss an issue regarding a Memorandum of Understanding (MOU). Ms. Queer testified that Appellant never mentioned an MOU during the fifty minutes she spoke with the Commissioners on May 5, 2011. The witness stated that in addition to Ms. Sheppard and Ms. Burcaw, approximately thirty other JFS employees and former JFS employees came forward with negative information regarding Appellant’s interactions with employees and the

work environment at JFS. She noted that although the hearing officer did not recommend Appellant's removal, the Commissioners determined that it was merited.

Appellant testified that she began her employment with Appellee in 2001 and was appointed to the position of Assistant Director of the Ashland County JFS in September 2003.

Appellant stated that she had interacted with Mr. Hannan through her employment prior to 2001 and recalled that he had talked with her about his health issues before she became a County employee. She noted that Mr. Hannan used the terms "brain tumor" and "pituitary tumor" interchangeably to describe his medical condition, and while he did not reference his diabetic condition as "controlled" or "uncontrolled," he would comment that his "sugar" was high or low.

Appellant confirmed that Mr. Hannan told her in February 2011 that he was going to retire and said that it was because he had sufficient service time, wanted to avoid any problems caused by pending PERS legislation, was tired of the State placing additional responsibility on the counties and was tired of hearing Appellant push the issues. She recalled that during a discussion shortly before that, Mr. Hannan had told her that he was tired of hearing what Appellant thought they needed to do in the agency, but that she did not interpret his comments to mean that he had a personal conflict with her. Appellant acknowledged that she and Mr. Hannan often viewed things differently but that the level of interpersonal conflict between the two of them did not rise to the level described by Ms. Sheppard and Ms. Burcaw. She testified that although she and Mr. Hannan were typically cordial to each other there were occasionally disagreements that might end up being discussed in loud tones, but that they were rarely confrontational or angry with each other. Appellant stated that she believed the term "toxic," which was used by Ms. Burcaw to describe Appellant's relationship with Mr. Hannan, was an overstatement and extreme characterization.

She recalled that Mr. Hannan told her on April 18, 2011, that he had spoken with the Commissioners about his intent to retire, and that one of the reasons he gave them was that he was tired of the conflict in management style between the two of them. Appellant indicated that Mr. Hannan notified staff of his impending retirement a few days later. She observed that she was not interested in applying for the Director's position, as she did not wish to serve in an unclassified position.

Appellant stated that on April 20, 2011, although she did not sense that there was a problem with her management style, she emailed Commissioner Mike Welch with an offer to provide information regarding the differences between Mr. Hannan and herself. She noted that her reference in that email to releasing dollars back to the State was to all JFS funds, not just TANF funds, although she was unable to specifically identify any other funds that Mr. Hannan had returned.

Appellant testified that she did not seek Ms. Sheppard out for conversation after Mr. Hannan's initial discussion with the Commissioners. She confirmed that she did speak to Ms. Burcaw about things Ms. Burcaw needed to do to improve her job performance, but did not tell Ms. Burcaw that Mr. Hannan had "ruined her," or that he had told the Commissioners that the employees of JFS did not care about their jobs and would have to be watched after his retirement.

She recalled that she had informed Mr. Hannan in November 2010 that she wanted to speak with the Commissioners about some matters but, as of April 2011, had not yet done so. Appellant acknowledged that Mr. Hannan never prohibited her from talking to the Commissioners. She confirmed that she spoke with the Commissioners after their meeting on May 5, 2011, and stated that her intent was to discuss areas in which the agency needed to improve.

Appellant observed that she believed the Commissioners needed to be made aware of certain matters prior to Mr. Hannan's retirement so they could take action while he was still there and because she believed that employees had not been able to accomplish some things because of what Mr. Hannan had directed them to do. She indicated that she spoke to the Commissioners on May 5, 2011, specifically about projects such as getting a new time clock, acting on the MOU issue and obtaining document imaging equipment. Appellant recalled that when the Commissioners asked her why the agency wasn't acting on those things she stated that Mr. Hannan had refused to pursue certain projects because he served at the pleasure of the Commissioners and those projects caused him too much stress.

Appellant testified that the Commissioners asked her why Mr. Hannan would be worried about stress and when she generally alluded to his health issues, the Commissioners pressed her for further details. She confirmed that she told the Commissioners that Mr. Hannan had a brain tumor, but denied that she told them it was growing. Appellant indicated that she also told the Commissioners that Mr. Hannan was diabetic and took medication throughout the day.

Appellant confirmed that she saw Mr. Hannan later in the day on May 5, 2011, and told him in passing that she had spoken with the Commissioners. She testified that she did not speak with the Commissioners again until May 19, 2011. Appellant stated that the Commissioners asked for her resignation within one minute of the commencement of that meeting and recalled that when she refused to resign, the Commissioners had her escorted from the building and placed her on paid administrative leave. She estimated that the entire process took approximately fifteen minutes.

Appellant confirmed that she participated in a pre-disciplinary conference on May 26, 2011. She testified that she has extensive work experience and professional certifications and stated that she has always considered herself an excellent and loyal employee. Appellant noted that she has lived and worked in Ashland County for many years and has worked successfully with community groups and won a number performance awards for the agency.

Kimberly Edwards testified that she is presently serves as an Ashland County Commissioner, and held that office in 2011. Commissioner Edwards confirmed that she and the other Commissioners met in executive session with Mr. Hannan on May 12, 2011, to discuss comments that were made by Appellant when she spoke with the Commissioners on May 5, 2011. She testified that Appellant volunteered information about Appellant's health during their May 5, 2011, discussion, rather than being asked for specifics by the Commissioners.

She stated that at the May 12, 2011, meeting they specifically discussed Appellant's representations that Mr. Hannan had a brain tumor and that his diabetes was "out of control;" that his health issues were causing him emotional problems; and that Mr. Hannan had failed to use available funds to purchase digital imaging equipment. The witness indicated that during their discussion with Mr. Hannan, he refuted the claims made by Appellant regarding his health and explained why the TANF funds identified by Appellant could not be used for the purpose she proposed.

Ms. Edwards stated that after speaking with Mr. Hannan on May 12, 2011, she was concerned about the disparity between the information they had received from Appellant and that provided by Mr. Hannan. She noted that Appellant's use of the term "brain tumor" versus "pituitary tumor" had connoted a much more serious condition, as did her assertion that Mr. Hannan's medical condition was causing him

emotional problems. The witness observed that the Commissioners' concern was that Appellant has misrepresented facts and had not given them honest answers.

Ms. Edwards testified that a lack of trust developed between May 5 and May 19, 2011, when the Commissioners spoke again with Appellant and observed that their lack of trust in Appellant led the Commissioners to consider discipline. Ms. Edwards confirmed that during their May 19, 2011, meeting with Appellant, the Commissioners gave Appellant the option of submitting her resignation in lieu of moving forward with a pre-disciplinary hearing. The witness recalled that Appellant stated at her May 26, 2011, pre-disciplinary hearing that her reason for speaking to the Commissioners on May 5, 2011, was the MOU issue, but testified that she never heard Appellant mention the MOU issue until the pre-disciplinary hearing.

Ms. Edwards noted that final decision to terminate Appellant was made on June 2, 2011, when the Commissioners passed a resolution to removal Appellant from employment

Commissioner Michael Welch recalled that he spoke to Mr. Hannan on April 18, 2011, about his intent to retire and received an email from Appellant on April 20, 2011. He stated that he considered the email an attempt by Appellant at "damage control," based on what Mr. Hannan had told him about the conflict between them. The witness recalled that former employees had spoken to him prior to that time with concerns about Appellant's management within the agency.

Mr. Welch stated that during the Commissioners' conversation with Appellant on May 5, 2011, he recalled Appellant talking about jobs not being completed and specifically stated that he remembered her referencing digital imaging. The witness indicated that Appellant did not reference any funds other than TANF funds that could be used for the digital imaging equipment. He testified that Appellant did not specifically use the term "fiscal mismanagement," but stated that Mr. Hannan was costing the county hundreds of thousands of dollars by not spending available TANF money on imaging and, instead, returning it to the State.

Mr. Welch testified that he did not recall Appellant saying that Mr. Hannan was stressed because he worked at the pleasure of the Commissioners. He indicated that the Commissioners did not ask Appellant for information about Mr. Hannan's health conditions.

Commissioner Mike Welch testified that his lack of trust in Appellant arose not so much from the difference in terminology used to describe Mr. Hannan's tumor, but from her lack of truthfulness about both the health conditions themselves and her representation that they were causing Mr. Hannan difficulty at work by impairing his ability to make decisions. He stated that he initially believed her statements, but that the facts continued to become more and more divergent over time, as though Appellant were attempting to rationalize the comments she had made on May 5, 2011.

Barbara Arnold testified that she was employed as a Social Services Administrator for the Salvation Army in Ashland County prior to her retirement in October 2011. She noted that she worked with Appellant on community projects in 2010 and 2011 and had also worked with Mr. Hannan in the past,

Ms. Arnold recalled that in April or May 2011 she talked with Mr. Hannan about a project she and Appellant had worked on together and told him that it had been a privilege to work with her.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, as well as stipulations entered into during the course of testimony, I make the following findings of fact:

Appellant began her employment with Appellee in 2001 and was appointed to the position of Assistant Director of the Ashland County JFS in September 2003. She held the position of Assistant Director at the time of her removal from employment in June 2011. Appellant's immediate supervisor was Gary Hannan, who held the position of Director of the Ashland County Department of Job & Family Services (Ashland County JFS or JFS). Mr. Hannan retired on July 31, 2011.

Mr. Hannan informed Appellant in February 2011 that he intended to retire, with his primary reason being their unpleasant working relationship. Mr. Hannan subsequently spoke to Commissioners Barbara Queer and Michael Welch on April 18, 2011, about his intent to retire and indicated that the primary reason for his retirement was his inability to work with Appellant and the stress caused by their differences in management style. Mr. Hannan announced his retirement to agency

supervisors on April 20, 2011, but did not make a formal announcement until the Commissioners' May 5, 2011, meeting.

On April 20, 2011, Appellant emailed Commissioner Welch offering to explain the management style differences between her and Mr. Hannan, to answer questions regarding agency operations and encouraging him to contact Ms. Burcaw and Ms. Sheppard with any management concerns he might have. Appellant also referenced in her email Mr. Hannan's release of "hundreds of thousands of dollars back to the state."

Immediately following the May 5, 2011, meeting at which Mr. Hannan announced his retirement, Appellant spoke to the Commissioners. The parties stipulated that the conversation between Appellant and the Commissioners on May 5, 2011, did not take place in an executive session. During the fifty-minute conversation, Appellant informed the Commissioners that Mr. Hannan had health-related issues which negatively affected his ability to perform his job duties and had mismanaged agency funds by sending money back to the State that could have been used to purchase document imaging equipment. Appellant referenced no other issues or examples of fiscal mismanagement at that time.

The Commissioners had no prior knowledge of any medical conditions affecting Mr. Hannan. Appellant volunteered this information; although Mr. Hannan had privately discussed his health with Appellant and one or two other individuals within the agency on occasion, the information was not public knowledge.

Commissioner Queer generally inquired about Mr. Hannan's health several days later during another conversation. After Commissioner Queer related Appellant's May 5, 2011, comments to him, Mr. Hannan told her that Appellant had misrepresented his health-related issues and provided her with accurate information. Following her conversation with Mr. Hannan, Commissioner Queer spoke to the other Commissioners, who were concerned with the disparity between the information they had received from Appellant and from Mr. Hannan, and agreed that they needed to further investigate the matter.

The Commissioners met with Mr. Hannan in executive session on May 12, 2011, to discuss the representations made by Appellant. After they talked with Mr. Hannan they also spoke to Ms. Sheppard and Ms. Burcaw, who indicated that Appellant told them Mr. Hannan had made disparaging remarks to the

Commissioners about the supervisors and about their individual job performance, as well as general statements that Mr. Hannan had mismanaged agency money and that he had ruined Appellant's reputation in Ashland County.

On May 19, 2011, the Commissioners met with both Appellant and Mr. Hannan in executive session, at which time they questioned Appellant about the information she had relayed to them earlier. Because the Commissioners no longer trusted Appellant as the result of what they believed to be false statements made by her, Appellant was given an opportunity to resign her position rather than face possible discipline. Appellant declined the opportunity to resign and was placed on paid administrative leave.

Following a pre-disciplinary meeting, the Commissioners passed a resolution on June 2, 2011, to remove Appellant from employment.

### **CONCLUSIONS OF LAW**

In any disciplinary appeal before this Board, Appellee bears the burden of establishing certain facts by a preponderance of the evidence. 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. Appellee must further demonstrate that any discipline imposed upon Appellant was appropriate. 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 her, 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; she

had notice of the charges against her and an opportunity to respond to those charges. Accordingly, I find that Appellant's due process rights were observed; Appellant did not dispute and a review of the evidence contained in the record demonstrates that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in effectuating Appellant's discipline.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellee removed Appellant for dishonesty, insubordination, neglect of duty, failure of good behavior, conduct unbecoming a public employee, dissemination of false information, malfeasance, and/or misfeasance. The alleged conduct upon which these violations are premised includes making false or misleading statements to the Commissioners regarding Mr. Hannan's confidential health issues and the severity of those health issues; making false or misleading statements concerning Mr. Hannan's management of agency finances; making false statements to Mr. Hannan about meeting with the Commissioners; over a two-year period, attempting to undermine Mr. Hannan's authority by directing staff to do things other than instructed by the Director; demonstrating disrespect for Mr. Hannan and referring to him in a disrespectful manner; inappropriate and/or improper behavior towards employees and other agencies, including intimidation, coercion, & harassment; actions and behavior described as caustic, divisive, & vicious; and failing to complete assignments, including failure to complete annual performance evaluations for agency supervisors the past two years.

A great deal of testimony was presented at record hearing to establish that a difficult working relationship existed between Mr. Hannan and Appellant, and that the overall atmosphere in the agency was unpleasant. Ms. Sheppard testified that she was afraid to disagree with Appellant and that she and other employees feared retaliation from her. While it does not appear that all of the blame for creating a tension-filled workplace can be attributed to Appellant, I find that sufficient evidence was offered to support a conclusion that Appellant engaged in conduct as a manager that was inappropriate and/or improper, and rose to the level of intimidation of employees.

Testimony established that although Appellant's professional interaction with her supervisor, Mr. Hannan, may have frequently been contentious and disrespectful, Mr. Hannan allowed the behavior to occur and did not seek to

discipline Appellant, thereby tacitly condoning such behavior. Testimony and evidence presented with regard to the charges that Appellant directed staff to do things other than instructed by the Director and failed to complete assignments was not sufficient to establish by a preponderance of the evidence that such conduct occurred.

The majority of the testimony at record hearing centered on the statements made by Appellant to the Commissioners during their conversation following the May 5, 2011, board meeting. Ample credible testimony was presented to support a finding that Appellant made false and/or misleading statements to the Commissioners, exaggerating the severity of Mr. Hannan's health issues and suggesting that those issues had negatively impacted his job performance. Although Mr. Hannan had spoken about his health to a few members of the agency, testimony indicated that he did so confidentially and the information was not common knowledge. Appellant claimed that Mr. Hannan had mismanaged agency funds by refusing to use TANF funds to purchase document imaging equipment; both Mr. Hannan and Ms. Burcaw presented credible testimony that TANF funds are restricted to specific uses and that they were not available for the purpose proposed by Appellant. Ms. Burcaw further noted that she had not, as Appellant claimed, approached Appellant with concerns about Mr. Hannan's mismanagement of funds.

Finally, testimony was presented on the issue of whether or not Appellant accurately reported to Mr. Hannan her May 5, 2011, conversation with the Commissioners. The information presented at hearing was sufficient to demonstrate that Appellant did inform Mr. Hannan that she had spoken to the Commissioners, but was somewhat inconclusive as to whether she clearly communicated the issues they spoke about or the length of time they talked.

Accordingly, I find that Appellee demonstrated by a preponderance of the evidence that Appellant engaged in inappropriate and/or improper conduct that rose to the level of intimidation of employees; made false and/or misleading statements to the Commissioners regarding Mr. Hannan's confidential health issues; made false and/or misleading statements to the Commissioners regarding the alleged negative impact of Mr. Hannan's health issues on his ability to perform his job duties; and made false and/or misleading statements to the Commissioners regarding Mr. Hannan's alleged mismanagement of agency funds.

Appellee charged Appellant with dishonesty, insubordination, neglect of duty, failure of good behavior, conduct unbecoming a public employee, dissemination of false information, malfeasance, and/or misfeasance, all of which are appropriate grounds for employee discipline, pursuant to R.C. 124.34. I find that the conduct proven by Appellee is sufficient to constitute dishonesty and failure of good behavior by Appellant.

Black's Law Dictionary defines "failure of good behavior" as behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. *State ex rel. Ashbaugh v. Bahr*, 68 Ohio App. 308, 40 N.E.2d 677, 680, 682. Black's Law Dictionary, Deluxe 6<sup>th</sup> Ed. p. 594. "Dishonesty" is defined as disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. Lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Black's Law Dictionary, Deluxe 6<sup>th</sup> Ed. p. 468. Appellant's intimidation of employees and making false and/or misleading statements to the Commissioners clearly falls within these definitions.

Therefore, I respectfully **RECOMMEND** that Appellant's removal from employment be **AFFIRMED**.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: