

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

AMANDA KROUSKOP,

Appellant,

v.

Case No. 11-SUS-11-0370

SUMMIT COUNTY PUBLIC HEALTH,

Appellee.

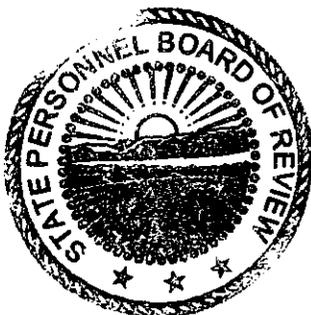
ORDER

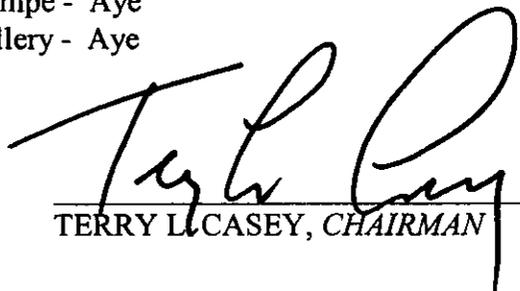
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the seven-day suspension issued to Appellant by Appellee be **AFFIRMED**, pursuant to Ohio Revised Code § 124.34.

Casey - Aye
Lumpe - Aye
Tillery - Aye

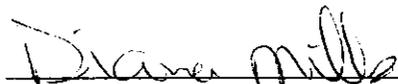



TERRY L. CASEY, CHAIRMAN

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, October 11, 2012.


Diane Mills

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights. 10/11/12

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

Amanda Krouskop,

Case No. 11-SUS-11-0370

Appellant

v.

September 4, 2012

Summit County Public Health,

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 a seven-day suspension. A record hearing was held in the instant matter on March 20, 2012. Appellant was present at record hearing and was represented by Kevin J. Breen, Attorney at Law. Appellee was present at record hearing through its designee, Personnel Officer Kiesha Butler, and was represented by Assistant Prosecuting Attorney Corina S. Gaffney.

The Notice of Disciplinary Action issued to Appellant stated as grounds for her suspension:

... violation of the following Summit County Health District Policies and Procedures:

- Clients Rights Policy #701
- Disciplinary Action Policy #403
- WIC Value Enhanced Nutrition Assessment (VENA) Policies

Whether taken separately or as a whole, the incidents which form the basis for the discipline action, merit the discipline imposed.

The reason for this action is your discourteous treatment of a client and your failure to correct unacceptable behavior despite three (3) prior disciplinary actions for similar infractions.

The parties stipulated to the jurisdiction of the Board to hear the instant appeal, pursuant to R.C. 124.03(A) and 124.34. The parties further agreed that Appellant's suspension was to be for a period of seven working days, although the R.C. 124.34 Order reflected an eight-day suspension; Appellant should subsequently be reimbursed at a minimum for one working day.

STATEMENT OF THE CASE

Barbara Sipe testified that she is presently employed by Appellee as a WIC Supervisor; at the time of Appellant's suspension, her title was WIC Director. She explained that WIC is a federal program that provides funds to the State of Ohio for supplemental food and nutrition programs.

Ms. Sipe confirmed that she was Appellant's immediate supervisor from 2006 until her transfer to the Barberton office in 2011. The witness indicated that Appellant held the position of Public Health Aide 2 (PHA 2), and was responsible for determining applicants' eligibility for participation in the program. She noted that employees are required to be familiar with federal, state and local WIC eligibility guidelines and receive frequent training on those materials through yearly reviews and monthly staff meetings. Ms. Sipe observed that the State of Ohio also has customer service standards (Appellee's Exhibit 1) that are reviewed at staff and projects meetings (VENA standards); annual training is provided on these standards and employees receive an evaluation twice each year. She stated that employees also have access to the Summit County Policy and Procedure manual in both written and computerized form.

Ms. Sipe noted that Appellee has a progressive discipline policy and observed that Appellant received a three-day suspension in May 2011 for rudeness and unfriendly attitude toward WIC participants, as well as a written reprimand in March 2011. The witness confirmed that all discipline taken against Appellant had been for Group 1 offenses. She indicated that Appellant asked questions at those times to clarify which policies she had violated and observed that concerns regarding Appellant's failure to comply with VENA standards had been addressed in her past performance reviews.

Ms. Sipe recalled that in September 2011 she received a complaint from a WIC participant's mother; she observed that it is not unusual for participants to call

with complaints about someone or something. She noted that in this instance, the participant's mother called to report that Appellant had treated her daughter (the participant) rudely at the front desk earlier that same day. The witness indicated that the caller stated that the participant was embarrassed by Appellant's use of a speakerphone to verify Welfare benefits, and was denied services by Appellant. She stated that the caller later documented the incident in an email at her request (Appellee's Exhibit 4), with the participant also providing a written statement (Appellee's Exhibit 5).

Ms. Sipe confirmed that proof of income is required to establish eligibility for WIC services and that the participant did not have proof of income when she came to her original WIC appointment on Friday, September 23, 2011. She noted that since the participant did not have the necessary information, Appellant attempted to establish eligibility by determining whether the participant was receiving medical services benefits through Welfare. The witness agreed that it was permissible for Appellant to use the front desk telephone to verify this information, so long as she did not use the participant's name and did so discreetly. Ms. Sipe recalled that she spoke with Appellant by telephone about the incident on the same day it occurred and Appellant acknowledged that she had used the front desk speakerphone to verify the participant's medical services benefits. She testified that it was improper for Appellant to use the speakerphone to obtain this information and noted that Appellant had been trained in proper procedures.

The witness explained that Appellant could also have attempted to verify income by telephone, or could have given the participant WIC vouchers for one month of food and called at a later time to verify income. She noted that Appellant had also been trained in these policies and procedures. Ms. Sipe acknowledged that she was later informed that Appellant had offered to proceed with the appointment that day, as she did not have another available appointment for nearly a month, but told the participant that she would have to come back with proof of income.

The witness stated that when the participant returned to the clinic on Monday, September 26, 2011, she met with her personally to determine her eligibility for services. She confirmed that the participant had proof of income with her at that time and received the full package of WIC services.

The witness stated that she believed, with regard to the September 2011 incident for which Appellant was disciplined, that Appellant violated VENA standards by not maintaining a positive attitude, by failing to treat the participant with respect and by failing to treat the participant as she would like to be treated. Ms. Sipe observed that she believed that Appellant's conduct also violated Appellee's Clients Rights Policy (Appellee's Exhibit 3) by failing to provide the participant with considerate and respectful care; privacy; confidentiality; and equal consideration.

The witness confirmed that a pre-disciplinary meeting was held on October 7, 2011, and that Appellant attended and participated in that meeting.

Barbara Wright testified that she is employed by Appellee as a WIC Supervisor and has been Appellant's immediate supervisor since her transfer to the Barberton office. She noted that Appellant was initially reassigned to the Barberton office on a temporary basis, but that the transfer was made permanent several weeks prior to the record hearing. The witness stated that Appellant is good at her job as a PHA 2 and is efficient and communicative with clients. She indicated that her office is located fairly close to Appellant's desk and that she has not observed her being rude to clients or received any complaints of rudeness during the time she has supervised Appellant.

Ms. Wright confirmed that she was asked to investigate and respond to a client complaint that was registered with the State WIC office in February 2012. She recalled that the client complained that a staff person was rude and that the client did not like the employee's tone of voice. The witness testified that it is not unusual to be asked to follow up on a complaint.

The witness recalled that she talked to the client and to the State office and determined that the employee the client had dealt with was Appellant. She stated that she spoke with Appellant to let her know that she had received a complaint related to her tone of voice. Ms. Wright indicated that when she spoke with the State office she informed them that Appellant was very good at her job, but was very businesslike. She noted that, in her experience, clients tend to make subjective assessments and she does not always presume that the client's perception is correct, as they often do not like the answers and/or decisions they get regarding eligibility and benefits. The witness confirmed that she did not

recommend discipline for Appellant or write her up as a result of the client complaint.

Mary Smith testified that she is presently employed by Appellee as a PHA 2 in the Stow office. She confirmed that she worked with Appellant for five or six years in the Stow office and had the opportunity to observe her as she performed her duties. The witness noted that she has made verbal complaint about Appellant's rude treatment of clients in the past but had never made a written complaint.

Roseanna Chiurazzi testified that she is employed by Appellee as a Dietitian and has had the opportunity to observe Appellant as she performed her duties. She stated that Appellant was competent, efficient and organized, but that she sometimes was abrupt with clients and could be perceived as rude. The witness noted that she had on occasion explained to clients that Appellant did not intend to be rude, but was just busy. Ms. Chiurazzi acknowledged that she had spoken with Appellant about her interaction with clients, but had never made a written complaint about her behavior.

Appellant testified that she has been employed by Appellee as a PHA 2 since 2006. She confirmed that her immediate supervisor at the time of her suspension was Barbara Sipe, and that her immediate supervisor is now Barbara Wright.

Appellant noted that her job responsibilities require her to ask participants for information that is considered "sensitive" by most people. She explained that she did not mean to be rude or discourteous by asking for this information, or to cause an emotional response, but observed that clients become upset or angry every day. She noted that participants routinely come in without necessary information and often get answers from staff that they do not like.

Appellant recalled that the participant involved in the incident upon which her suspension was based listed "babysitting" as her source of income, but had nothing with her to substantiate that income. She testified that the participant did have an outdated Medicaid card, and Appellant attempted to alternatively verify eligibility for benefits by calling Job & Family Services' automated telephone line. Appellant confirmed that she used the front desk speakerphone to do so and noted that the automated system does not reference individuals by name, but uses only account numbers. She acknowledged that the information relayed over the speakerphone

could have been overheard by other individuals in the office, however, and that the client might perceive that others in the waiting area had heard it.

Appellant explained that because the participant was not eligible for medical benefits through Welfare, she told her that she would need to provide information regarding her babysitting income. She stated that the participant responded that it was "pointless" and started to leave; she called the participant back and told her that if she returned with proof of income on Monday they could do everything else that day, as her next available appointment was not until three weeks from that day. Appellant noted that the participant left the office instead of continuing with the appointment.

Appellant testified that her supervisor, Ms. Sipe did not discuss the incident with Appellant and she did not know there was a problem until she received notice that a pre-disciplinary conference had been scheduled. She noted that she was not at work on the Monday following the incident, when the participant and her mother returned and met with Ms. Sipe. Appellant indicated that Ms. Sipe did not discuss the incident with Appellant prior to the pre-disciplinary conference.

Appellant confirmed that she is familiar with VENA policies, has participated in online training modules and conflict resolution class, and has discussed with co-workers how to handle similar situations. She testified that she understood the discipline and counseling she has received in the past to be related to her tone of voice, or perceived rudeness, but observed that she has never seen the problem addressed in training scenarios and has not been given any specific information about how to change her behavior. Appellant indicated that she is a Navy veteran and believes that she conducts herself in a professional manner. She explained that she expects clients to do their "job" so that she can do hers.

FINDINGS OF FACT

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

Appellant has been employed by Appellee as a PHA 2 since 2006. In September 2011 she was assigned to Appellee's office in Stow, Ohio. As a PHA 2,

Appellant was responsible for determining applicants' eligibility for participation in the WIC program, which requires establishing compliance with income guidelines.

In September 2011, Appellant's immediate supervisor, Barbara Sipe, was contacted by the mother of a WIC participant who complained that her daughter had been treated rudely by Appellant and embarrassed by Appellant's use of a speakerphone to verify medical benefits. The participant claimed that she had been denied services by Appellant.

Because the participant did not have proof of income to establish her ability for WIC services at her appointment on September 23, 2011, Appellant attempted to establish eligibility in an alternative manner by determining whether or not the participant was eligible for Welfare medical benefits. Appellant used the front desk speakerphone to access the JFS automated system to obtain this information; although the information relayed over the speakerphone did not identify the participant by name, it was able to be overheard by others in the office and waiting area.

Upon determining that the participant was not eligible for medical benefits through Welfare, Appellant informed her that she would need to return to the office with proof of income and offered to go ahead with the rest of the appointment that day. The participant elected not to continue at that time.

Appellant was familiar with and had received training on VENA customer service standards, as well as the Summit County client rights policy. She had received prior discipline and counseling, including a three-day suspension in May 2011 for rudeness and unfriendly attitude toward WIC participants, and understood that her discipline was related to her tone of voice, or perceived rudeness.

A pre-disciplinary meeting was held on October 7, 2011. Appellant attended and participated in that meeting.

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 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. Appellant had notice of the charges against her and an opportunity to respond to those charges. Accordingly, I find that Appellant's pre-disciplinary due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in suspending Appellant.

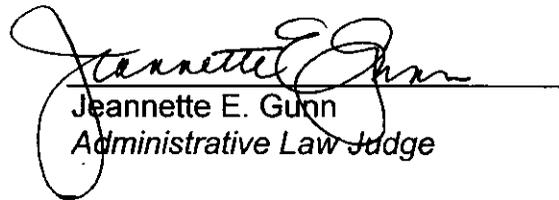
This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's suspension was based upon her alleged violation of Appellee's policies and procedures -- Clients Rights Policy #701; Disciplinary Action Policy #403; and WIC Value Enhanced Nutrition Assessment (VENA) Policies. Specifically, Appellant was alleged to have engaged in discourteous treatment of a client and failure to correct unacceptable behavior despite three (3) prior disciplinary actions for similar infractions.

Testimony established that Appellee had established standards of conduct in place with regard to client treatment and rights and that those standards had been

communicated to Appellant. Ms. Sipes testified that it was preferable to obtain and check participant information in private, but acknowledged that it could be done at the front desk if handled discreetly. In this instance, Appellant used the front desk speakerphone to check the participant's eligibility for medical benefits through Welfare, and the information relayed through the automated system was capable of being overheard not only by other office staff, but also by individuals in the waiting area. While it was not necessarily improper for Appellant to check the information by telephone from the front desk, I find that her use of the speakerphone resulted in a loss of privacy for the participant, thereby violating Appellee's Client Rights policy, which entitles clients to respectfulness and privacy, as do the WIC VENA standards. Violation of an appointing authority's policy or work rule is an infraction contained within R.C. 124.34 for which an employee may be properly disciplined.

Witnesses at record hearing observed that Appellant is efficient and organized and generally performs her job duties well. Appellant noted that she has received good feedback from participants regarding her efficient customer service. Several witnesses also testified at record hearing that it is not uncommon for clients to become upset with staff responses and that complaints are somewhat routine. Appellant's current supervisor, Ms. Wright, noted that she does not always presume that a client's perception of a given situation is accurate, as their assessment is usually subjective. The evidence presented and testimony offered do not indicate that Appellant was intentionally rude to the participant, or that she purposefully attempted to cause her discomfort. In light of Appellant's history of prior discipline for similar offenses, however, I find that a seven-day suspension is an appropriate disciplinary response by Appellee.

Therefore, I respectfully **RECOMMEND** that the seven-day suspension issued to Appellant by Appellee be **AFFIRMED**.


Jeannette E. Gunn
Administrative Law Judge

JEG:

