

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Margaret E. Lafferty,

Appellant,

v.

Case No. 2012-REM-06-0149

Franklin County Auditor,

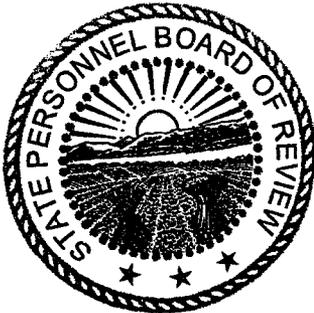
Appellee.

ORDER

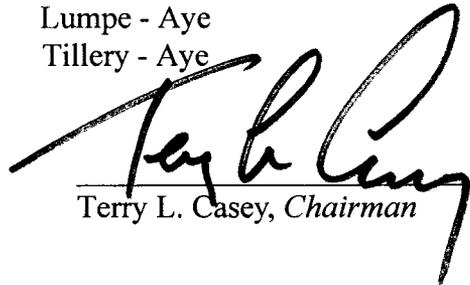
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 removal is **AFFIRMED** and the instant appeal is **DISMISSED**.



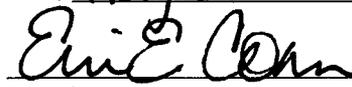
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

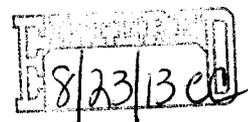
CERTIFICATION

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, August 23, 2013.


Erin E. Conn
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**

Margaret E. Lafferty,

Case No. 2012-REM-06-0149

Appellant

v.

July 10, 2013

Franklin County Auditor,

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 February 4, 2013. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Franklin County Auditor Clarence Mingo, and was represented by Assistant Prosecuting Attorney Denise L. DePalma. The parties stipulated to the jurisdiction of the Board over the instant matter.

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

"Violations of the Franklin County Auditor Employee Handbook Standards of Conduct and Violations of the Last Chance Agreement dated 12/20/2011."

STATEMENT OF THE CASE

John Schaaf testified that he is employed as a Deputy Sealer of Weights and Measures, also known as a Weights and Measures Inspector, for the Franklin County Auditor's Office and has held that position since March 2011. He confirmed that he worked with Appellant, who was also a Weights and Measures Inspector, and that his supervisor was Agatha Shields.

The witness noted that Weights and Measures Inspectors carry out their duties during normal business hours at a variety of locations and interact frequently with members of the general public. He explained that they work with the owners and employees of businesses they are auditing and that customers of those businesses often mistake them for employees of those businesses.

Mr. Schaaf recalled that he and Appellant were working inside the building at a Speedway gas station in June 2012 scanning UPC codes. The witness stated that he and Appellant were complaining about their supervisor while they were working in the building and were overheard by a customer, who called the Auditor's office to report their behavior.

Mr. Schaaf acknowledged that he acted unprofessionally by engaging in the conversation in the presence of members of the general public and confirmed that he received a three-day suspension with a 90-day probation as a result of the incident. He indicated that he had no discipline prior to his suspension.

Corey Schwartz testified that he is employed by the Franklin County Auditor as a Deputy Sealer and has held that position for approximately five years. He stated that he is a Team Leader for the Weights and Measures Division and worked with Appellant from December 2007 until her termination. The witness indicated that as a Deputy Sealer he is responsible for testing scales, conducting price verifications and testing gas meters.

Mr. Schwartz explained that Weights and Measures Inspectors can perform their duties either as part of a team or individually. He recalled that on June 18, 2012, he was working on a team with Appellant and Mr. Schaaf at the Speedway gas station on Cemetery Road in Hilliard, Ohio. The witness testified that Mr. Schaaf was upset about being tardy that day and Appellant had complained about schedules. He stated that he was aware that they were talking loudly to each other while they were finishing the price verification inside the store but did not hear their full conversation because he was talking to the manager.

Mr. Schwartz stated his supervisor, Agatha Fields, informed him that a member of the public who was at the Speedway station while Appellant and the other members of the team were working there overheard Appellant's conversation with Mr. Schaaf and called to report their poor behavior and disparaging remarks.

He confirmed that he was asked to write a statement about the event and noted that he was counseled regarding the incident because, as Team Leader, he was responsible for the actions of all of the members of his team. The witness indicated that he had no input into the decision to remove Appellant.

Clarence Mingo testified that he presently holds the office of Franklin County Auditor and has served in that position for approximately four years. He confirmed that he made the decision to remove Appellant from employment and noted that Appellant had several instances of prior discipline, including a written warning, a three-day suspension and a five-day suspension with a last chance agreement. The witness noted that the last chance agreement was effective for a two year period from December 20, 2011 through December 20, 2013, and that Appellant was subject to immediate termination for failure to maintain performance or attendance at an acceptable level, violation of specified Standards of Conduct, or violation of the terms of the last chance agreement.

Mr. Mingo stated that Cindi Becker, his Deputy Chief of Staff, informed him that she had spoken with a member of the public who called in to report that he had overheard Appellant and another employee speaking poorly of the office and their employment with the office. The witness noted that he was not aware of any record of the call being made in writing, but indicated that Ms. Becker told him that the caller identified himself as a firefighter and he believed that the complaint had merit.

Mr. Mingo recalled that he participated in Appellant's pre-disciplinary hearing on June 20, 2012, and reviewed the employee handbook and Appellant's last chance agreement. He noted that all of Appellant's prior discipline appeared to be related to conduct and professionalism. The witness stated that Appellant's conduct in this instance violated the standards of conduct found in the employee handbook.

Mr. Mingo confirmed that he signed the order of removal that was provided to Appellant.

Appellant testified that one of the biggest parts of her job as a Weights and Measures Inspector was investigating complaints received from the public. She noted that the complaints they received were often not valid and questioned why the complaint made against her was assumed to be valid and not investigated more thoroughly. Appellant observed that anyone could call and make up an incident.

Appellant recalled that she was told that a member of the public had reported that she was involved in a conversation where someone used profanity. She acknowledged that she was present at the Speedway station that day but stated that she was not wearing a shirt that identified her and the caller could not have known from her appearance who she worked for.

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 a Weights and Measures Inspector on June 18, 2012. She was part of a team investigating a complaint at a Speedway gas station on Cemetery Road in Hilliard, Ohio, that day. While they were at the Speedway station, a member of the general public overheard a conversation between Appellant and Mr. Schaaf during which they made negative comments concerning their employment and their supervisor. That individual contacted the Auditor's Office to report their inappropriate behavior and profane language.

Prior to June 18, 2012, Appellant had received discipline on several occasions, including a written warning, a three-day suspension, and a five-day suspension with a last chance agreement. The last chance agreement was effective for a two year period from December 20, 2011 through December 20, 2013, and provided for Appellant's immediate termination in the event that she failed to maintain performance or attendance at an acceptable level, violated specified Standards of Conduct, or violated of the terms of the last chance agreement.

Appellant was placed on paid administrative leave on June 19, 2012, participated in a pre-disciplinary hearing and was subsequently removed from employment with Appellee on June 20, 2012.

CONCLUSIONS OF LAW

Appellant was removed from employment with Appellee based upon her alleged violation of a last chance agreement, entered into in 2011. Ohio Revised

Code Section R.C. 124.34(B) provides that where a valid last chance agreement (LCA) exists, this Board has jurisdiction only to determine whether the employee's conduct violated the agreement; if Appellant's actions were sufficient to violate the LCA, then the removal must be affirmed. As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, that Appellant engaged in the conduct alleged.

Testimony and evidence contained in the record is sufficient to support a finding that Appellant engaged in conduct during the course of her employment that was so egregious that a member of the general public was prompted to contact the Auditor's Office to report her inappropriate behavior.

The LCA executed by the parties in 2011 provides that Appellant agreed and understood that immediate termination from her position would occur for:

- Failure to maintain performance or attendance at an acceptable level during the length of this agreement;
- A single instance of violation of the Employee Handbook – Standards of Conduct; or
- Violation of the terms of this Agreement.

The R.C. 124.34 Order of Removal provided to Appellant indicated that her removal was based upon violations of the Franklin County Auditor Employee Handbook Standards of Conduct and Violations of the Last Chance Agreement dated December 20, 2011. I find that Appellant's conduct was sufficient to violate Appellee's standards of conduct, specifically, failure of good behavior; disrespectful conduct ... against supervisors, fellow employees or the public whether the behavior is verbal, nonverbal or physical; and/or making or publishing false or malicious statements concerning any employee, supervisor, the County or its agencies, departments or projects, ... (Appellee's Exhibit 4, pages 25-26).

As previously noted, where a valid last chance agreement exists, this Board's review is limited to a determination as to whether or not Appellant violated the agreement. Based upon the above analysis, I find that Appellant's violation of the Employee Handbook Standards of Conduct constituted a cause for immediate termination, pursuant to the LCA in place between Appellant and Appellee. Therefore, pursuant to Ohio Revised Code Section 124.34(E), Appellant has no

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right of appeal to this Board and I respectfully **RECOMMEND** that her removal be affirmed and the instant appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: