

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

BRIAN HASLAM,

Appellant,

v.

Case No. 12-REM-08-0190

STARK COUNTY MULTI COUNTY JUVENILE ATTENTION SYSTEM,

Appellee

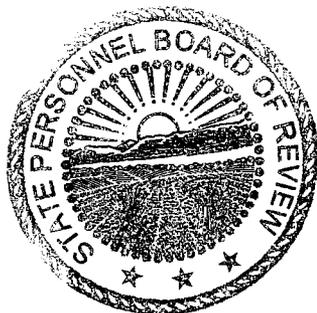
ORDER

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 from his position as Youth Leader III be **AFFIRMED**, pursuant to Ohio Revised Code §§ 124.03 and 124.34.

Casey - Aye
Lumpe - Aye
Tillery - Aye

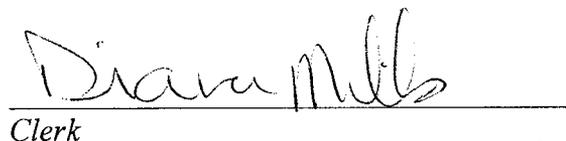



TERRY L. CASEY, CHAIRMAN

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.



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

BRIAN HASLAM,

Case No. 12-REM-08-0190

Appellant

v.

October 30, 2012

STARK COUNTY MULTI COUNTY JUVENILE
ATTENTION SYSTEM,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard at record hearing on October 24, 2012. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Stark County Multi County Juvenile Attention System (JAS), was present through its designee, Robert Doney, Superintendent of the JAS, and was represented by Michael P. Zirpolo, Jr., Attorney at Law.

This cause comes on due to Appellant's August 27, 2012 filing of an appeal from his removal from the position of Youth Leader III with the JAS' Tuscarawas Attention Center (TAC), effective August 17, 2012. The pertinent R.C. 124.34 Order of Removal was signed and hand-delivered to Appellant on August 16, 2012, making his appeal timely filed.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.34.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The pertinent language in Appellant's instant R.C. 124.34 Order of Removal reads:

You have been guilty of failure of good behavior and/or acts of misfeasance and/or malfeasance to-wit: on June 23, 2012, you

stunned fellow employee Adam Richards with a stun gun. Further, at various times within the weeks before that date, you brandished a stun gun at other employees, and blocked the exit to the Tuscarawas Attention Center parking lot preventing a fellow employee Robyn Hug[h]es from leaving the parking area while brandishing a stun gun at her.

At hearing, eight witnesses testified. Appellee called seven of these witnesses on direct and Appellant called himself to testify. Further, one witness was recalled to ensure that the record contained proper and sufficient identification of Appellee's Exhibit B-1.

By way of background, Appellee, JAS, is a multi-county juvenile attention system organized under R.C. Chapter 2151. The JAS has several facilities in the five counties that make up its organization. The TAC is one of those facilities. Robert Doney is the Superintendent of the JAS and serves as its appointing authority. Mr. Doney also served as Appellee's designee at hearing.

The TAC is a secured facility housing both adjudicated boys and girls. Rod Schneider serves as the TAC's current Administrator and also testified at hearing. Appellant served at the TAC as a Youth Leader III until shortly before his removal. He was then temporarily transferred to the Tobin Center pending the disposition of various disciplinary charges directed against Appellant that ultimately led to the instant removal.

The underlying facts of this case are fairly simple and the parties are in basic agreement concerning these facts. However, the parties do not agree on the gravity that should be assigned to these facts nor do they agree on the motivating factors that led the appointing authority to remove Appellant.

The specific and underlying facts of this matter are as follow:

Some time prior to June 23, 2012, TAC Supervisor Terry Abrams passed Appellant on I-77 on the way home from work and Appellant held up a dark object to Appellant's head and pretended to fire it. Mr. Abrams testified that he believed it to have been Appellant's stun gun. Appellant testified that it could have been his cell phone with a stun gun application that makes flashing lights and commensurate sounds.

Testimony offered at hearing was that Mr. Abrams and Appellant later joked about the episode and Mr. Abrams concluded the conversation by reminding Appellant not to bring the stun gun on work property. Unfortunately, as we shall see, Appellant did not heed Mr. Abrams' suggestion/instruction.

On June 23, 2012, following the end of his shift, Appellant was standing by the vehicle of fellow TAC employee, Robyn Hughes, discharging his stun gun. As another TAC employee who was on duty, Adam Richards, passed by Appellant carrying boxes to the trash, Appellant fired the stun gun at Mr. Richards, hitting Mr. Richards' right side. Mr. Richards was able to walk on without assistance, sought no medical assistance thereafter, and described the result as something like a bee sting. Ms. Hughes apparently witnessed this interaction between Appellant and Mr. Richards in Ms. Hughes' vehicle's sideview mirror.

Mr. Richards testified that he thought Appellant was engaging in horseplay. The record also reflects that Mr. Richards apparently also indicated that if Appellant stunned Mr. Richards again, Mr. Richards was probably going to do body damage to Appellant.

On June 24, 2012, TAC employee Robyn Hughes was leaving at the end of her shift and was being let out of the secured facility by Supervisor Marsha Whitlack. At this time, Ms. Hughes expressed trepidation about going out into the parking lot with Appellant present with his stun gun and asked if she could wait inside in the corridor until Appellant has exited the grounds, which Ms. Hughes was allowed to do.

Ms. Hughes also expressed her concerns about being fired on with Appellant's stun gun and apprised Ms. Whitlack that Appellant had previously blocked Ms. Hughes' car so that she was unable to drive away from the facility. There is some dispute in the record but Ms. Hughes also informed Ms. Whitlack that Appellant engaged in similar behavior of blocking her in and shooting his stun gun at her car 10 or more times the whole month before he stunned Adam Richards on June 23, 2012.

On June 26, 2012, after work, Appellant apparently used his vehicle to block in fellow employee Robyn Hughes and came up to her car firing his stun gun several

times. Earlier in the day, Ms. Hughes, Supervisor Terry Abrams, Adam Richards, and Appellant had all been working together.

While in the parking lot, after Appellant blocked in Ms. Hughes, she attempted to get Mr. Abrams' attention to show him that Appellant had a stun gun but Appellant left the lot before she could do so. As Mr. Abrams passed her in the parking lot, Ms. Hughes rolled down her vehicle's window and told Mr. Abrams: If I am going to get stunned, I am going to file a grievance.

The record reflects that several other employees had also threatened to file grievances, lawsuits, or criminal complaints if Appellant stunned them.

An investigation ensued that resulted in two separate pre-disciplinary conferences. Appellant's principal defense at that time and at hearing before this Board was that this was essentially horseplay and that horseplay went on all the time at work. At the pre-disciplinary conference, Appellant also offered never to do this again. He indicated at hearing that he never would have stunned Robyn Hughes and that his stunning of Adam Richards was an accident that had no lingering medical effects. Appellant also elicited testimony that there was some horseplay and joking at the TAC worksite, although it did not involve the use of a stun gun.

Appellant also posited: that certain employees blew this matter out of proportion perhaps for their own benefit; that Appellee's witnesses had been coached to keep referencing the stun gun at hearing; that his removal may have been the result of union animus due to his sister-in-law's organizing activities at the TAC, or animus because Appellant later sought to bring in a different union; and that his removal may have been the result of his application for a vacant Administrator position at another facility that led to an outside applicant being selected instead of perhaps the Superintendent's preferred internal candidate. Appellant was allowed to present into the record his various alternative theories concerning Appellee's motivation for removing him but was unable to substantiate any of them at hearing.

Appellant also elicited testimony from TAC Administrator Rod Schneider that Mr. Schneider always gave Appellant good evaluations. Mr. Schneider further stated that he always thought a lot of Appellant, with just a few negatives regarding the youths and that he and Appellant talked about those items. Mr. Schneider

further indicated that was why he was so surprised to hear of the instant allegations concerning the stun gun.

Appellant also offered testimony that, aside from a few items in his personnel file regarding horseplay, he had a clean disciplinary record in his 12 years of service with the JAS.

Appellant further asserted at hearing that other JAS employees were never removed who were alleged: to have stolen from the TAC; to have bitten a resident youth; to have body slammed a resident youth – employee Calvin Hope employed at another of the JAS centers; or to have sat upon resident youths causing injury. Appellant offered several generalized examples of these allegations and they were accepted into the record; although he was unable to confirm at hearing any specifics involving most of these alleged incidents. He additionally alleged without specificity that other employees had brought stun guns onto the TAC property in their vehicles.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth, above, whether express or implied. Next, I adopt the recitation of events and facts set forth, above.

I further find that Appellant did fire upon and hit Adam Richards with a stun gun on TAC property. I also find that Appellant frequently fired a stun gun at or near other TAC employees on TAC property. As well, I find that, on a number of occasions Appellant used his motor vehicle to block in employees on property in the TAC parking lot, impeding their travel and mobility, in combination with his activities involving the stun gun.

Additionally, I find that Appellant was expressly put on notice not to bring a stun gun onto the TAC property and he ignored or failed to heed that well-reasoned instruction. Finally, as a former Police Officer, Appellant should have had sufficient familiarity with Ohio's criminal code to have realized how frequently he may have crossed the line into behavior potentially prohibited by R.C. Title XXIX ("Crimes – Procedure").

It is most unfortunate that Appellant did not heed the instruction not to bring his stun gun onto TAC property. If he had, he would not have stunned or threatened anyone with his stun gun at the TAC. Further, without his stun gun, perhaps he would not have felt a need to impair or impede the movements of his fellow employees.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant committed a failure of good behavior, misfeasance, or malfeasance by committing the acts found, above? Based on the findings set forth, above, and for the reasons set forth, below, this Board should find that Appellant has committed malfeasance and, accordingly, affirm Appellee's removal of Appellant from the position of Youth Leader III.

Black's Law Dictionary defines malfeasance as:

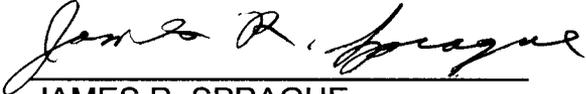
... a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act ... which a person ought not to do at all ... (Black's Law Dictionary, 6th Deluxe Ed., p. 956. Further citations omitted).

Clearly, here, Appellant engaged repeatedly in acts which he had no legal right to perform and from which he should have refrained. His acts also caused disruption of the workplace and could have resulted in Appellant facing civil and criminal complaints. His behavior was out of bounds and unacceptable in or at a modern governmental workplace setting.

Accordingly, I find that Appellant committed malfeasance, as described, above. Because I have found, herein, that Appellant committed malfeasance, it is not necessary, at this time, to also determine whether Appellant committed either a failure of good behavior or misfeasance. However, of the three R.C. 124.34 disciplinable offenses listed in the instant R.C. 124.34 Order of Removal, malfeasance is generally considered to be the most serious offense of the three.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellee's **REMOVAL** of Appellant from his Youth Leader III position, pursuant to R.C. 124.03 and R.C. 124.34.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: