

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

TASHA SPROWLS,

Appellant,

v.

Case No. 12-REM-11-0248

WAYNE COUNTY CARE CENTER,

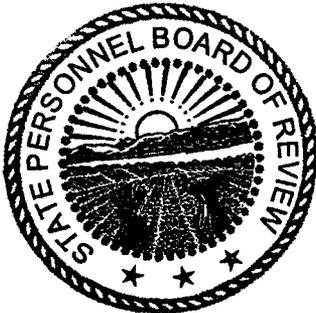
Appellee

ORDER

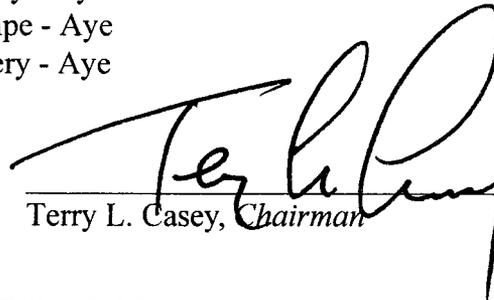
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 of Appellant from her Environmental Services Worker position is **AFFIRMED**, pursuant to Ohio Revised Code Sections 124.03 and 124.34.



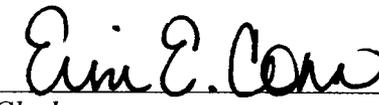
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

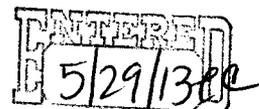
CERTIFICATION

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, May 29, 2013.


Erin E. Cow
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**

TASHA SPROWLS,

Case No. 12-REM-11-0248

Appellant

v.

April 12, 2013

WAYNE COUNTY CARE CENTER,

JAMES R. SPRAGUE

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on April 9, 2013. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Wayne County Care Center (the Center), was present through its designee, Steve Eva, Administrator, and was represented by Eugene P. Nevada, Attorney at Law.

This cause comes on due to Appellant's November 23, 2012 timely filing of an appeal from her removal from her position of Environmental Services Worker with the Center. Appellant was served with the instant R.C. 124.34 Order of Removal on November 14, 2012 and that Order was effective November 17, 2012.

(On December 20, 2012, this Board issued a final Order adopting Appellee's rescission of an R.C. 124.34 Order of Removal involving these same parties in SPBR Case No. 12-REM-10-0233; due to a procedural defect. O.A.C. 124-3-03 (C) permits Appellee to, again, discipline an employee for the same allegations that had been contained in a rescinded R.C. 124.34 disciplinary Order.)

On February 12, 2013, a pre-hearing was held in this matter. At the pre-hearing, the parties established a schedule for the exchange of documents and witness lists. Further, available dates for hearing were identified. The undersigned also reviewed with the parties and counsel this Board's rules concerning the issuance of subpoenas, as well as the procedure that would be utilized at hearing.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The pertinent R.C. 124 Order of Removal indicates:

Violation of Wayne County Personnel Policy Manual Section 8.06 - Discriminatory Harassment. Employee displayed objectionable and pornographic photographs to coworkers, explaining that the photographs were of another coworker's fiancé. Employee further explained that the coworker whose fiancé was in the photographs was also displayed on the internet site, pointing out that she was recognizable by a tattoo. Staff member allegedly in photographs was publicly humiliated and disgraced by Ms. Sprowls' actions. Ms. Sprowls was directly responsible for the web site being shared with other coworkers.

At hearing, five witnesses testified.

First to testify was **Tasha Sprowls, Appellant**, on as if on cross examination. Appellant served as an Environmental Services Worker from October, 2010 until her removal. In that capacity, Appellant performed various housekeeping, cleaning, custodial, laundry, and miscellaneous duties in several areas of the Center. The record does not reflect that Appellant had any cognizable prior discipline, before her instant removal from her position.

Next to testify was **Karli Starcher**, an L.P.N. at the Center. Ms. Starcher was present when Appellant showed Ms. Starcher and Melisa Taylor (another co-worker who has since been removed) a photograph or series of photographs contained on a web site as set forth in the allegations contained in the instant R.C. 124.34 Order.

Next to testify was **Jan Miller**, R.N., who serves as the Center's Resident Assessment Coordinator (RAC) and who acted as the Hearing Officer for Appellant's pertinent pre-disciplinary hearing.

Next to testify was **Anastasia Miller**, a State Tested Nurse Aide at the Center. Ms. Miller is the co-worker referenced in the R.C. 124.34 Order's allegations as having been identified by Appellant's above-referenced actions (*i.e.* by a recognizable tattoo). Ms. Miller's fiancé, Darius Wallace, is also referenced in the allegations as having been so identified.

Next to testify was **Steve Eva**, the Center's Administrator, who served as Appellee's designee at hearing.

Last to testify was **Tasha Sprowls, Appellant**, who testified in a narrative format. Appellant combined her testimony from re-direct off as if on cross examination with her testimony on direct examination.

While the facts in this matter are in dispute, the chain of events that led to Appellant's removal is, for the most part, established in the instant record. This chain of events begins with Appellant assisting a friend who attends college in Cincinnati and who is studying psychology, sex therapy, or both, to conduct research. During that effort, Appellant came across a website (Please see Appellee's Exhibit 8. for the URL of this website).

Testimony is in conflict regarding Appellant's motivation for her subsequent action, which was to bring this website and its specific contents to the attention of one of her co-workers, Melisa Taylor. Apparently, Ms. Taylor then approached L.P.N. Karli Starcher, who is a supervisor at the Center, and asked her to come see something. The three then gathered at a picnic table when Appellant was not on duty.

Appellant alleges this meeting occurred on July 25. Appellant referenced a Doctor's appointment, that Appellant's supervisor was on vacation, and that Appellant was working in laundry as reference points to substantiate this alleged date. She also noted that, in September, she only worked the 1st, 2nd, and 3rd (with two days in laundry on the 5:00 to 1:30 shift and one in assisted care on the 7:00 to 3:30 shift). She further stated that she was off on September 4 and 5 for the holiday break and that she was placed on administrative leave on September 7.

According to Appellant, at the picnic table Appellant then showed Ms. Starcher (*via* Appellant's cell phone) a single picture of a star tattoo and explained that Appellant had identified Anastasia Miller's fiancé on this website engaging in various sexually explicit and implied acts with a number of different women.

Appellant further alleges that, while Appellant held the phone, Ms. Starcher angled the picture so that Ms. Starcher could see its content. Appellant described herself here as smiling but concerned as to whether this information should be shared with Ms. Miller, particularly since Ms. Miller had previously shared with

Appellant and apparently with other co-workers that Ms. Miller's fiancé, Darius Wallace, had committed previous indiscretions, at least one of which resulted in the birth of a child. Appellant also averred that she went initially to Ms. Taylor because Appellant felt Ms. Taylor was closer to Ms. Miller than was Appellant.

Appellant also stated that the phone she had at that time, while a smart phone, was malfunctioning, would not zoom in and out, and would only show one photo at a time. Appellant has since gotten a different phone and she did not bring her previous phone to the hearing.

Appellant alleges that the three of them then decided to "squash" the matter and this was the last that Appellant was involved in the matter until she was called in by management and placed on administrative leave.

Appellant appeared to deny that she, herself, shared this information with anyone further. It was not established in the record who ultimately shared this information with other workers at the Center.

(Anastasia Miller later testified that co-worker Rachael Woodruff pulled Anastasia Miller aside and told her there was a note on her locker. This note, as stated, gave functional information allowing Anastasia Miller to locate the aforementioned website and access its requisite contents. However, the record does not establish how Ms. Woodruff came to possess information regarding the note nor that she actually knew the specific contents of the note.)

Appellant also questioned why there was not timely implementation of the paragraph of Appellee's policy regarding discriminatory harassment (Section 8.06 of Appellee's Personnel Policy Manual at Page 3 of 4 and identified as Appellant's Exhibit G. and Appellee's Exhibit 5.). This paragraph calls for the completion of a complaint form by the employer no later than two days after the date the alleged harassment occurred. Appellant alleges that since the pertinent conversation occurred in July and no complaint form was then completed, the process set forth in Appellee's manual was not followed.

Karli Starcher, L.P.N., was also present during this three-person conversation. She recalled at hearing that she was approached by Melisa Taylor, and the result of their conversation was that they came out and sat at the picnic table and Appellant

then joined them. Ms. Starcher recalled this meeting occurred in September. She stated she remembered it was around the time she was pregnant and it was hot out.

Ms. Starcher stated that, while they were sitting at the picnic table, Appellant provided background regarding the website and the identifications that could be gained from it. She further recalled that both Appellant and Melisa Taylor scrolled down and that Appellant specifically scrolled to show them the photo. Ms. Starcher indicated that on various pictures that she observed during this activity a man was observed as well as a lot of women. The man's genitalia were exposed and intercourse was depicted in the photos, Ms. Starcher averred. She also stated that, while some of the photos were shot more discreetly, on others Darius Wallace's face was clearly recognizable and in one photo in particular, Mr. Wallace was unclothed and appeared to be entering a woman who was bent over, according to Ms. Starcher.

Ms. Starcher testified that she thought the photos could be regarded as obscene and pornographic, although she did not feel it was offensive since the intent here was apparently to help Anastasia Miller. However, she stated she felt that what was happened later reflected a bad motive and that someone was trying to get Ms. Miller.

Ms. Starcher specifically testified that she held Appellant's phone in her hand to see the photo.

Ms. Starcher further testified that she thought that on that day, Appellant was showing concern for Ms. Miller, asking should we tell her, how would we tell her, or words to that effect.

Ms. Starcher noted that, several days later, Ms. Starcher learned that an aide and another nurse had heard about the website and the note identifying the URL that Ms. Miller found in Ms. Miller's locker. Ms. Starcher indicated that she later saw a copy of the note (Appellee's Exhibit 8., as previously indicated). She confirmed that she ultimately chose to report the matter to Lisa Stoner, the Center's RN Supervisor, and to Angela Young, the Center's Director of Nursing.

Ms. Starcher averred that, because only the three of them knew at one time of the website, and because she did not tell anyone initially, this information must

have been further disclosed by either Appellant or Melisa Taylor and that doing so led to or perpetrated attacks against Ms. Miller.

Jan Miller, RAC, testified concerning the pre-disciplinary hearing at which she served as Hearing Officer. (Jan Miller will continue to be referenced as "Jan Miller" in this Report and Recommendation to avoid confusion with Anastasia Miller).

Jan Miller indicated that, prior to her immediate 13 years of service as the Center's RAC, she served for 10 years as the Center's Director of Nursing. Jan Miller referenced Personnel Policy 8.06, which at Page 1 of 4, A. (Definition) 3. and 4. respectively states that "sexual harassment" includes, among other things,

Graphic or degrading verbal or written comments about an individual, the individual's appearance, or the individual's sexual orientation;

The display of sexually suggestive objects, pictures, or the display of same through other media;

Jan Miller further noted a violation of this policy is considered a Group III offense. (Please see Appellee's Exhibit 8., Page 5 of 5 at Number 14., which reads: "Discriminatory harassment, including harassment of a sexual nature.")

She confirmed that substantiated Group III offenses, considered the most severe, can result in discipline up to and including termination, in accordance with Section 10.03, Page 4 of 5, of the Manual. She indicated that termination is the most likely outcome of a finding that the employee has committed a Group III offense.

She further confirmed that pertinent portions of the Manual are available online 24 hours a day, seven days a week.

Jan Miller further testified that Appellant confirmed at the pre-disciplinary hearing that, in her three-way meeting, Appellant brought the website up on her phone and then scrolled until she found the afore-mentioned picture.

Jan Miller further indicated that she recommended the maximum penalty in her Hearing Officer's report. This was because, she stated, she could not see how these two employees, Anastasia Miller and Appellant, could continue to work

together. She indicated that Anastasia Miller is humiliated and hurt and Anastasia Miller sat in Jan Miller's office and cried during one entire session. Jan Miller posited that Anastasia Miller is embarrassed that her co-workers know about her fiancé.

Jan Miller was questioned by Appellant concerning Appellee's Exhibit 1., Appellant's pre-disciplinary hearing notice, which affixes "early September 2012" as the time that Appellant brought in her cell phone and showed the photo or scrolled through and showed photos to Karli Starchier and Melisa Taylor. Appellant inquired how, if this happened in early September, could the Hearing Officer's report (Appellee's Exhibit 6.) indicate that the pertinent information was conveyed to Anastasia Miller a few weeks later; since Appellant was placed on administrative leave September 7? Jan Miller responded that Appellee did not have an exact date of when the incident occurred, but believed the note was stuck on Anastasia Miller's locker a few days later.

Anastasia Miller confirmed in her testimony that, after Rachael Woodruff brought the note to her attention, she accessed the pertinent web site and saw inappropriate photos of her fiancé taken in her house, and reported it to her supervisor. She also stated that co-workers would stop talking when she came in the room. She affirmed that this was a difficult situation which causes her stress and that she did not want to go to work.

She confirmed that it was still upsetting to her, knowing this information was brought into the workplace by Appellant and that to do so was immature. She offered that you don't bring pornographic material to work and that Appellant doing so hurt her.

Anastasia Miller further indicated that when Rachael Woodruff approached her about the note, Ms. Woodruff stated that she had heard everyone talking about it and wanted to bring it to Anastasia Miller's attention. She offered that this happened probably in mid-August. She further offered that she did not feel that Ms. Woodruff put the note there.

Steve Eva, the Center's Administrator, indicated that he believed that Appellant's actions constituted violations of Policy 8.06 A. 3. and also 4., in that Appellant's actions constituted utilizing or opining in a manner that was graphic and degrading, showed a tattoo and other specifics, showed sexually specific objects,

and presented what was a website objectionable by its nature. He further stated that the offense was, in his opinion, so egregious that it merited removal.

Mr. Eva further offered that he did not feel that Appellant and Anastasia Miller could work in the same building again, based on the nature of the pertinent material and on how Anastasia Miller was informed of that material.

Mr. Eva confirmed that Appellant always had a smile on her face and was very friendly. He further confirmed that she did not call off *et cetera* and that she was a pretty reliable employee. He also confirmed that there were individuals who were not interviewed for the investigation of this matter. Those individuals included Rachael Woodruff, Tiffany Skully, Alicia Zigler, Mathu Moore, and Melisa Taylor, he confirmed. He also offered that Rachael Woodruff and Melisa Taylor are no longer employed at the Center and that, based on the way they left employment, management had no reason to think they would be helpful.

Appellant referred Mr. Eva to a call sheet (Appellant's Exhibit 1.) that she had created. She questioned him and he could not refute that she attempted to reach him by phone on a number of occasions in September but that he did not get back with her until September 27 and that the pre-disciplinary hearing was scheduled for October 1. He indicated that often he is busy and that he has no specific reason to offer as to why he did not call. Mr. Eva confirmed that he talked to Karli Starcher, Appellant, Lisa Stoner, and Angela Young about this matter.

Appellant then directed Mr. Eva to Appellant's Exhibit H., concerning why Appellant was not given any paperwork to process at her exit interview. Mr. Eva responded that Jennifer Babcock serves as the Center's Business Office Manager and that she generally handles exit procedures for individuals who have been removed. He continued that he is not aware of any reason as to why Appellant did not receive any paperwork.

Further, Appellant referred Mr. Eva to Policy 10.6 (Appellant's Exhibit F.) covering pre-suspension, reduction, and removal. Appellant questioned Mr. Eva as to why she was never provided by her supervisor or anyone else with a written notice advising her of the charges until they appeared in her pre-disciplinary hearing notice. Mr. Eva responded that, because Appellant was on administrative leave for which she was paid, this section was inapplicable to her administrative leave.

Appellant questioned Mr. Eva on the time frame involved in this matter. She noted, again, that Policy 8.06 (Page 3 of 4 at Section 5.) calls for the employer to complete the complaint form within two days. Accordingly, she asked that, if she was put on administrative leave on September 7, did not the offense have to be committed by September 5? Mr. Eva indicated he did not know the date the form was filed and did not specifically remember the date the incident occurred but that he knew it was in September.

Appellant then offered her combined re-direct and direct testimony. Much of this testimony is set forth in the beginning of the instant Statement of the Case.

Appellant testified regarding the dates noted in her summary, above, concerning her assertion that the three-way meeting could not have been conducted in September as alleged, since she only worked September 1, 2, and 3, was off on September 4 and 5 for the holiday, and was placed on administrative leave on September 7. She reiterated that, for Policy 8.06 to have been properly effectuated, that would mean that, since her administrative leave began September 7, the incident would have had to have occurred within the previous two days, and that she was off work on both September 4 and 5 and off the clock on September 3.

As noted in the summary, above, Appellant asserted that the three-way meeting took place on July 25. She offered that all three involved decided to squash the matter, that she did not talk about it for weeks, and that neither Karli Starcher nor Melisa Taylor brought it back up to Appellant. She indicated that she had been told that it was OK to bring up your own personal life but to talk about other would be gossip or malicious, in her words.

She offered that her old phone was not functioning properly and could not zoom in and out. She indicated she believed she got her new phone in August and that she went to the Verizon office on August 6 or 7 to place an order and received her new phone about a week later, because it took that long to ship, she stated.

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 find that Appellant did bring into the work site on her cell phone a series of pictures of a graphic and sexual nature. Further, Appellant not only discussed same with two of her co-workers, but she also displayed those pictures to her two co-workers. Indeed, credible evidence has been presented that multiple photos were displayed and that Appellant allowed them to be viewed while scrolling through the photos on her phone.

Unfortunately, because one of the three participants most likely further discussed this matter, and because of the subject matter involved here, when Anastasia Miller was apprised of the need to review this material and did so, she was, by all accounts, shocked and humiliated, and found it very challenging to continue to work at the Center.

Accordingly, Appellant has violated Policy 8.06 A., Sections 3. and 4. as identified, above. Further, Appellee has demonstrated that a violation of these provisions is a Group III offense, as set forth at Policy 10.03 Number 14. Appellee has also demonstrated that the commission of a Group III offense can result in discipline up to and including removal. Here, Appellee chose that penalty for Appellant's action and sufficiently explained on the record the rationale for so choosing that penalty for Appellant.

Additionally, the record demonstrates that this incident set in action a series of events that caused significant disruption to the workplace, not only for Anastasia Miller, but also for her co-workers, supervisors, and management. Indeed, during this general time frame, at least two employees in addition to Appellant left the work place under less than favorable conditions. Finally, it is likely that the disruption that was proximately caused by Appellant's action will continue to have a deleterious impact on the Center for some time to come.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether an employee, who violates an employer's standards of conduct through the possession and dissemination of what can be considered to be obscene or pornographic material, no matter how well intentioned the employee was in so doing, constitutes sufficient cause to justify the removal of that employee? Based on the findings set forth,

above, and for the reasons set forth, below, this Board should answer in the affirmative, and should affirm Appellee's removal of Appellant.

We begin by noting that the violations that Appellant committed clearly constitute several instances of failure of good behavior, as set forth in R.C. 124.34. Appellant's dissemination of these pictures to her co-workers, no matter how well intentioned, was clearly a violation of Appellee's policy governing same. Additionally, both the humiliation of Anastasia Miller and the overall disruption of the workplace appear to be proximate results of Appellant's actions.

As well, Appellee is correct to assert that it must consider its legal vulnerability, had it chosen to accept and, in essence, ratify Appellant's behavior. Such an act could have opened Appellee up to liability from Anastasia Miller or others in the workplace and could have weakened Appellee's potential future defenses, if it later chose to strictly enforce its prohibition against discriminatory harassing behavior.

It is unfortunate that Appellant chose to pursue her course of action that led to her removal. One such reason is that the record can support a contention that Appellant was well intentioned when she brought this material to work, seeking counsel on whether and, if so, how to tell Anastasia Miller of what was displayed on the website, much of which Anastasia Miller had yet to discover. What is also unfortunate is that, by all accounts, Appellant was a friendly, cheerful, steady, and reliable worker with no prior discipline in her job with Appellee. Based on the record, then, we can credibly say that Appellee lost a good worker through that worker's own one-time rash but well intentioned act.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the removal of Appellant from her Environmental Services Worker position, pursuant to R.C. 124.03 and R.C. 124.34.



JAMES R. SPRAGUE
Administrative Law Judge