

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

SONIA TILLMAN,

Appellant,

v.

Case No. 12-SUS-02-0032

MONTGOMERY COUNTY DEPARTMENT OF JOB & FAMILY SERVICES,

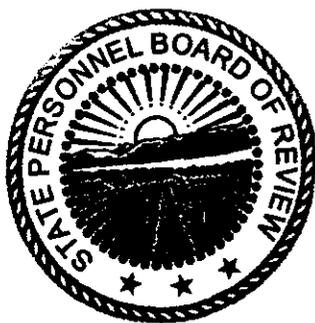
Appellee

ORDER

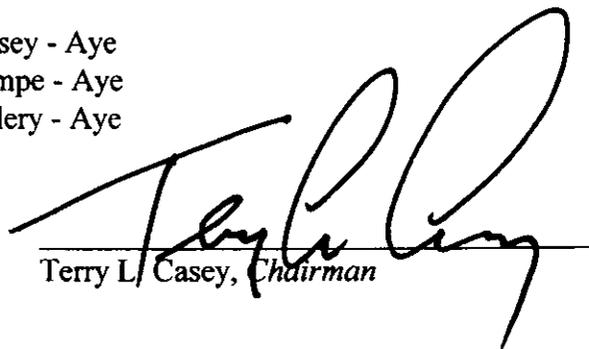
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the 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 Appellee's ten (10) day suspension of Appellant Tillman be **MODIFIED** to a five (5) day suspension.



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, January 16, 2013.


Clerk

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

ENTERED
1-16-13 ec

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

Sonia Tillman

Case No. 12-SUS-02-0032

Appellant

v.

November 9, 2012

Montgomery County Department
of Job & Family Services

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on June 5, 2012. Present at the hearing were the Appellant, Sonia Tillman, appearing *pro se* and Appellee Montgomery County Department of Job & Family Services designee Marcell Dezarn, Human Resources Manager, represented by Julie A. Droessler, Assistant Prosecuting Attorney.

The subject matter jurisdiction of this Board was established pursuant to Ohio Revised Code §§ 124.03 and 124.34.

On January 31, 2012, the Montgomery County Department of Job and Family Services (MCDJFS) served a ten (10) day suspension upon the Appellant, Sonia Tillman. The Appellant was suspended from her position as a Child Welfare Casework Supervisor from February 27-March 2 and March 5-9, 2012. The Order of Suspension, effective February 27, 2012, states that the Appellant was guilty of "failure of good behavior and neglect of duty." Specifically, the Order states:

You [Sonia Tillman] accessed an employee's confidential case file on at least three separate occasions. The file was ultimately restricted, however records indicate that you made another attempt to access the file after it was restricted. You acknowledged that you had done this and that you were aware of the policy regarding this action. You acknowledged having violated the MCDJFS Confidentiality Policy #OPP.ADM-005(B) and OPP.EIC.004(B). As a supervisor, your action

is particularly egregious because it is your responsibility to not only know, but to also follow departmental policy.

STATEMENT OF THE CASE

The Appellee's first witness was Leslie Kowen, the District 3 Manager for Appellee. Ms. Kowen manages the six Direct Service teams and their supervisors, which include Appellant Tillman. She has supervised Appellant Tillman for four years. Ms. Kowen explained that Appellant Tillman is the supervisor of the Alternative Response unit. That unit is responsible for responding to referrals of abuse and neglect by monitoring and determining if a case needs to be opened.

The Statewide Automated Child Welfare System (SACWIS) is the record keeping system used by all counties in Ohio. The Appellee, along with all other caseworkers state-wide, has access to that system. When someone accesses the system, he or she can attempt to click on any record. Records contain social workers' case notes. If a record is restricted, access to its contents is denied. A confidentiality and records access policy exists which requires all caseworkers to only access records related to their job functions or job responsibilities.

Ms. Kowen was presented with the Appellee's Exhibits D and F, which are the Ohio Department of Job and Family Services' Code of Responsibility and Appellee's Organizational Policy regarding Confidentiality, respectively. The Code of Responsibility governs the restrictions on accessing records in SACWIS, and the Organizational Policy discusses confidentiality requirements. Ms. Kowen stated the confidentiality requirements are very stringent and are taken very seriously because families have a right to have information on abuse and neglect to be treated confidentially.

Michelle Seiler, a Caseworker under Appellant Tillman's supervision, had an injured child and there were questions as to how the child became injured. An investigation into the matter was taking place in Preble County, and on February 15, 2011, Appellant Tillman brought to Ms. Kowen's attention that people at work might be looking at Ms. Seiler's record in SACWIS. She told Ms. Kowen that she had accessed the record and it was not restricted. Since the record was part of a Preble County investigation, no one at the office had a legitimate reason to be accessing that record. Ms. Kowen explained that if a file is restricted, then the case

notes are not accessible. The first two screens of a record are just identifying information.

Ms. Kowen testified Appellant Tillman did not state why she accessed the record, only that she was concerned about others in the office looking at it. Ms. Kowen responded she would notify the Intake Manager of the issue, and there was nothing more Appellant Tillman should do. Appellant Tillman did not receive any discipline after this first conversation because Ms. Kowen believed the issue to be closed. Ms. Kowen testified Appellant Tillman did not say that she had read the record, only that the record was not restricted. If Appellant Tillman had said she had read the entire record, then Ms. Kowen would have talked to her about violating confidentiality and would have initiated the disciplinary process. Ms. Kowen never looked at Ms. Seiler's record, and Ms. Kowen never talked to Appellant Tillman about this issue again until she was disciplined.

After Appellant Tillman had been disciplined, she told Ms. Kowen there was an issue of substantial physical child abuse in Ms. Seiler's SACWIS record, which indicated to Ms. Kowen that Appellant Tillman looked at the record, clicked on "referral," and checked in "disposition." Since this was a specific inquiry, Appellant Tillman did more than just see if there was a record; she actually read the record. Ms. Kowen then became concerned that Appellant Tillman had accessed the record more than once.

Appellant Tillman has no prior discipline and she felt the discipline she received in this instance was too extreme. She defended her actions of accessing Ms. Seiler's record because she was concerned how the ongoing investigation would affect Ms. Seiler's ability to do her work. Ms. Seiler was still at work in February 2012, but she later took a leave of absence. However, Ms. Kowen concurred with Appellant Tillman's ten-day suspension because she had accessed the record multiple times and it appeared she had read the entire record. Ms. Kowen stated there would have been no reason for Appellant Tillman to read Ms. Seiler's record.

Other employees who also accessed the record received discipline as well, but the only other individual Ms. Kowen was involved with was Michelle Seiler, who accessed her own record. Ms. Seiler would have been removed from her position, but she chose to resign instead, as there were additional factors at play other than just Ms. Seiler accessing her own record.

Appellee's next witness was Geraldine Pegues, Assistant Director for Childrens' Services. Ms. Pegues supervises Ms. Kowen. She identified Appellee's Exhibit C as a recommendation for discipline which contains a spreadsheet from the State of Ohio showing who accessed Ms. Seiler's record and at what times. It shows Appellant Tillman accessed Michelle Seiler's record on February 15, February 16, and May 4, 2011.

Appellee's Exhibit J was identified by Ms. Pegues as a record of Appellant Tillman's specific history in SACWIS. On February 15, 2011, Appellant Tillman spent approximately thirteen minutes in Ms. Seiler's record. Ms. Pegues testified it would only take approximately one minute to determine if the case file was restricted or not. On February 16, 2011, Appellant Tillman once again accessed Ms. Seiler's record, this time for approximately thirty seconds. Later that same day, Ms. Seiler's record became restricted. On May 4, 2011, Appellant Tillman again accessed Ms. Seiler's record for a few seconds. Since the record had been restricted at this point in time, the record was not able to be read.

At her pre-disciplinary meeting, Appellant Tillman admitted to the allegations of accessing Ms. Seiler's record. Ms. Pegues testified there was no reason for Appellant Tillman to access Ms. Seiler's record the second and third time. When she did so, she violated Appellee's confidentiality policy. Ms. Pegues testified Appellant Tillman also violated the trust of the community and the people who contact the agency to report abuse and neglect. Those people entrust Appellee with that information and do not expect that trust to be violated. Ms. Pegues stated the SACWIS system is not a public record and because Appellant Tillman violated the confidentiality policy, Ms. Pegues recommended a five to ten day suspension for Appellant Tillman. She further stated she recommended termination for Ms. Seiler since she accessed her own record which was under another county's jurisdiction. Ms. Stedam, a supervisor over clerical employees, also accessed Ms. Seiler's record, but at the time she tried to access it, it had been restricted so she had no ability to read the entire record. Ms. Pegues recommended a one day suspension for her.

Appellee's next witness was Marcell Dezarn, Human Resources Manager for the MCDJFS. On recounting how he learned of the events in question, Mr. Dezarn stated an employee told him that someone had likely accessed records in SACWIS who did not have permission. At first, Mr. Dezarn told the employee to let the matter drop because the MCDJFS could not determine who accessed specific records. Later, during a pre-disciplinary meeting with Ms. Seiler, she stated that people had looked at her confidential records. Mr. Dezarn then brought the issue to Ms. Pegues, who obtained data from the State of Ohio as to who accessed which records. When determining what disciplinary action to take against Appellant Tillman, Mr. Dezarn stated her clean record and tenure were taken into consideration, but the fact that she reviewed the record of one of her subordinates who was under criminal investigation, was also taken into consideration. A recommendation was then made to the county's Human Resources department.

Mr. Dezarn testified that when comparing similar discipline for other employees, the guidepost was that of Jo Anne Olsvig. Ms. Olsvig breached the MCDJFS's confidentiality policy and was given a ten-day suspension. She was a manager who was acting as a supervisor over Transportation at the time of her breach. Joanne Stidam is another employee who also accessed Ms. Seiler's record, but she only received a one-day suspension. Mr. Dezarn testified that Ms. Stidem is a very low-level supervisor of clerical workers. She does not make as much money as a Caseworker, and she does not have as much responsibility as Appellant Tillman. Additionally, Ms. Stidem accessed the record after it had already been restricted. By accessing the record, she violated the MCDJFS's policy, but since the record was restricted, she was unable to actually read the record. Mr. Dezarn testified there was no way to prove that Ms. Stidem intended to look at the record if she had had access, so a one-day suspension was appropriate.

Mr. Dezarn stated that because Appellant Tillman is a supervisor, she is held to a higher standard due to her responsibility of enforcing the rules. Mr. Dezarn testified two employees had been discharged in the past under similar circumstances. His original recommendation for Appellant Tillman's discipline was a five-day suspension. This recommendation was given to Stephanie R. Echols, the County Human Resources Director. Ms. Echols then determined that a ten day suspension would be more appropriate.

Mr. Dezarn testified that at the pre-disciplinary meeting on December 23, 2011, Ms. Tillman said she first accessed the record on February 15, 2011 to see if it was restricted. Mr. Dezarn testified Appellant Tillman probably would have received less discipline if she had not read the record and had only accessed it to determine if it was restricted. He stated she could have called someone with access to determine if the record was restricted; there was no need for her to determine herself if the record was restricted. Mr. Dezarn stated that it did help Appellant Tillman's case that she self-reported the fact that she accessed the record.

Appellant Tillman stated she holds the position of Child Welfare Casework Supervisor of the Montgomery County Alternative Response unit. Appellant Tillman admitted to the allegations that she accessed Ms. Seiler's record three times.

Appellant Tillman testified that on February 15, 2011, one of her employees had Ms. Seiler's SACWIS record pulled up on her computer screen, and other employees were standing around the screen. On that day, Ms. Kowen was out of the office, and Appellant Tillman was covering for her. She called and texted Ms. Kowen to let her know this was going on. Although Ms. Kowen testified she did not remember returning Appellant Tillman's call, Appellant Tillman testified that Ms. Kowen did return her phone call and Appellant Tillman told her what she observed in the office. She told Ms. Kowen she had verified in SACWIS that a referral had been made and a Preble County record for Ms. Seiler existed. Furthermore, she told Ms. Kowen she had read the whole record. Ms. Kowen said she would look into the matter and follow up with Appellant Tillman the next day.

On February 16, 2011, Appellant Tillman told Ms. Kowen she received a phone call from Ms. Seiler's ex-paramour asking how Ms. Seiler could judge others. Appellant Tillman then asked Ms. Kowen if a process or procedure was in place when one of the employees of the MCDJFS is accused of child abuse. She also asked Ms. Kowen if the file had been restricted yet and Ms. Kowen said she did not know. Appellant Tillman then checked SACWIS and saw that it was not, so she called and notified the individual who was working on restricting the record that it was still not restricted.

Appellant Tillman testified she continued to make inquiries of how Ms. Seiler's situation impacted her unit. She was concerned about Ms. Seiler's mental capacity and her ability to return to work. Appellant Tillman stated she talked with

Mr. Dezarn and asked if the MCDJFS could perform a fitness for duty test before allowing Ms. Seiler to return to work.

Sometime in May 2011, a news report came out that a criminal investigation into the death of Ms. Seiler's child was ongoing. A deputy sheriff requested public assistance, stating that the child's fatal injuries were inconsistent with the given story. At that time, Appellant Tillman again raised concerns with her manager and with the Human Resources staff. Around that time, Appellant Tillman was also informed that Ms. Seiler would be returning to work. On May 4, 2011, Appellant Tillman looked at Ms. Seiler's record again because she was concerned about Ms. Seiler returning to work. She stated she was attempting to see if the record showed that Ms. Seiler suffered a mental breakdown or something similar. Appellant Tillman testified she could not see anything at that time as the record was restricted.

Appellant Tillman explained that the Caseworkers within the Alternative Response unit are responsible for assessing the safety needs of children where child abuse and neglect referrals have been made against their caregivers. She stated she felt it was necessary for her to be made aware of any allegations of child abuse and neglect that one of her employees may have been involved in and how that could potentially affect the employee's ability to assess such referrals. Appellant Tillman stated she feels a ten-day suspension is excessive when others received only a one-day suspension, especially in light of the fact that she has no prior disciplinary record in her seventeen-year tenure. She also stated she feels a ten-day suspension was not appropriate in light of the MCDJFS's progressive disciplinary procedure, as detailed in the County Handbook.

Marcel Dezarn was recalled to the stand as the Appellee's rebuttal witness. Mr. Dezarn testified that he, Ms. Kowen, and Appellant Tillman had a discussion about Ms. Seiler's return to work. At that meeting, Mr. Dezarn told Appellant Tillman that they would look at the documentation to determine if Ms. Seiler's fitness for duty would be reasonable. Mr. Dezarn testified it is improper for a supervisor to know the medical information of an employee and a supervisor should not be looking for such.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. Appellant Tillman is a seventeen (17) year employee of Appellee and currently holds the position of Child Welfare Casework Supervisor. She has no prior discipline. Effective February 27, 2011, she received a ten (10) day suspension for failure of good behavior and neglect of duty.
2. Appellant Tillman supervises the Alternative Response unit, which responds to referrals of child abuse and neglect, monitors them, and determines if cases need to be opened.
3. Leslie Kowen is the Manager for District 3 within Appellee and is Appellant Tillman's direct supervisor. She has supervised her for four years.
4. Michelle Seiler was a Caseworker under Appellant Tillman's supervision. Preble County had an open investigation into Ms. Seiler, and the record of the investigation was stored in the Statewide Automated Child Welfare System (SACWIS).
5. On February 15, 2011, Appellant Tillman brought to Ms. Kowen's attention that employees were looking at Ms. Seiler's record in SACWIS. She also told her that she had accessed the record and that it was not restricted.
6. Appellant Tillman accessed Michelle Seiler's record in SACWIS two more times - on February 16 and May 4, 2011.
7. On February 15, 2011, Appellant Tillman spent approximately eleven minutes in Ms. Seiler's record. On February 16, 2011, Appellant Tillman was in Ms. Seiler's record for approximately thirty seconds. Finally, on May 4, 2011, Appellant Tillman again accessed Ms. Seiler's record, but it was restricted and unable to be read.

8. Joanne Stidem supervises clerical workers and she received a one (1) day suspension for attempting to look at Ms. Seiler's record. Because the record was already restricted when Ms. Stidem attempted to gain access, she had no ability to read the record; therefore Ms. Pegues recommended only a one-day suspension for her.
9. Jo Anne Olsvig was acting supervisor over Transportation in November, 2009 when she breached the MCDJFS's confidentiality policy. She received a ten-day suspension.
10. On December 23, 2011, a pre-disciplinary meeting took place and Appellant Tillman attended.
11. On January 31, 2012, the Board of County Commissioners approved a ten (10) day suspension for Appellant Tillman, effective February 27-March 2, and March 6-9, 2012.

CONCLUSIONS OF LAW

In order for the Appellee's ten (10) day suspension of Appellant Tillman to be affirmed, Appellee has the burden of proving by a preponderance of the evidence the allegations contained in the suspension order and that the discipline was proper and not disparate. Appellee has not met its burden with respect to the length of the suspension.

Appellant Tillman admits to the charges but argues a ten-day suspension is too harsh a corrective measure. She argues that other employees who also looked at Ms. Seidel's record received lesser punishments. Appellant Tillman also argues that Appellee's policy requires progressive discipline, and a ten day suspension with no prior discipline in her seventeen-year employment is not abiding by the progressive disciplinary policy.

Appellant Tillman received a ten-day suspension for violating Montgomery County Division of Job and Family Services (MCDJFS) Confidentiality Policy #OPP.ADM-005(B) and OPP.EIC.004(B). Policy #OPP.ADM-005(B) states that "MCDJFS is responsible for protecting the confidentiality and privacy of the families, children and individuals who have been involved with the department or who are currently receiving department services." The policy also states, "Client and case related information should only be viewed and discussed on a need to know basis and in performance of job duties."

The Confidentiality Policy fails to differentiate between accessing a confidential file and actually reading a confidential file. However, the Appellee testified that a difference exists. The Appellee differentiated accessing Ms. Seiler's record with actually reading her record. For instance, Joanne Stidem, the clericals' supervisor, violated the confidentiality policy by looking at Ms. Seidel's record. However, Ms. Stidem was unable to read the record because it was restricted when she accessed it. The Appellee stated that this was less harmful than if she had actually read the record. Therefore, Ms. Stidem was suspended for only one day.

Appellant's suspension letter states that Ms. Tillman "accessed an employee's confidential case file on at least three separate occasions." However, Ms. Seiler's record was protected when the Appellant accessed the record on the third occasion, so the Appellant was unable to read the record at that time. Furthermore, when Ms. Tillman accessed the record on the second occasion—on February 16, 2011—she was only in the record for approximately thirty seconds. Thirty seconds is such a short period of time that it lends credence to Appellant Tillman's testimony that she only accessed the record on the second occasion to see if it had been restricted yet.

Consequently, since the Appellee differentiates accessing Ms. Seiler's record with actually reading her record, then Appellant Tillman only read Ms. Seiler's record the first time she accessed it, likely did not read it the second time, and definitely did not read it the third time. Ms. Stidem received a one-day suspension for accessing Ms. Seiler's record but not actually reading it. In contrast, Appellant Tillman received a ten-day suspension for reading Ms. Seiler's record once and then accessing it two additional times.

If this Board is to consider whether disparate treatment exists, it must first be shown that Ms. Stidem and Appellant Tillman held equivalent positions. The Board's administrative rule 124-9-11 of the Ohio Administrative Code regarding disparate treatment states as follows:

(A) The board may hear evidence of disparate treatment between the appellant and **other similarly situated employees** of the same appointing authority for the purpose of determining whether work rules or administrative policies are being selectively applied by the appointing authority or to determine whether the discipline of similarly situated employees is uniform. Requests for discovery under this rule shall be limited to information relating to specific incidents or persons known to the employee or his representative.

(B) Evidence of disparate treatment will be considered in evaluating the appropriateness of the discipline which was imposed. (Emphasis added).

This Board has historically held that "similarly situated" means that both employees must be in the same classification or same pay range. Appellee's witnesses testified that Ms. Stidem and Appellant Tillman were not equivalent supervisors as Ms. Stidem supervised the clerical workers and, as such, she was a lower-level supervisor who did not have as much responsibility as Appellant Tillman and was in a lower pay range than Appellant Tillman.

Appellee's witnesses testified that Jo Anne Olsvig held a similar position to that of Appellant Tillman. Ms. Olsvig was a manager who was acting as a supervisor over Transportation when she breached the MCDJFS's confidentiality policy. She was given a ten-day suspension for her breach. However, in looking at Appellee's Exhibit K, the suspension order for Ms. Olsvig, it states her classification is Child Welfare Caseworker Manager and the allegations contained in the order do not state she was acting in any other capacity than that of manager. Therefore, it appears that while Ms. Stidem was in a lower classification than that of Appellant Tillman, Ms. Olsvig, as manager, was in a higher classification than Appellant Tillman's classification of Casework Supervisor.

Based on the evidence presented by Appellee, a supervisor at a lower level than Appellant Tillman was given a one (1) day suspension and a higher level

manager was given a ten (10) day suspension for violating the same confidentiality policy that Appellant Tillman violated. It would seem then, that Appellant Tillman's discipline should fall in the middle of the other two disciplines so that a five (5) day suspension would be more appropriate based on her supervisory level.

Other mitigating factors are present on behalf of Appellant Tillman, such as the fact that she self-reported her access, that she is a seventeen (17) year employee with no prior discipline and that fact that she brought forth a question regarding the policy of one of her subordinates returning to work with the types of charges pending against her that may or may not affect the work she did. The evidence established that Appellant Tillman received a call asking how Ms. Seiler could investigate claims of abuse when she was under investigation for the same type of claim. Appellant Tillman legitimately asked the question of Appellee if there was a policy in place to address the situation.

There is no doubt that Appellant Tillman did violate the confidentiality policy and as a supervisor, she is held to a higher standard, as she has a duty to enforce the policies in place. She also was in the wrong when she tried to access the record in May, 2011, to determine if there was any medical information in the record. Appellant Tillman did not have the authority nor the right to see any of Ms. Seiler's medical information. That being said, however, she did bring to the attention of Appellee that Ms. Seiler's record needed to be restricted and on the second occasion of her accessing the record, that is all she was trying to determine.

Given the fact that Appellee's witnesses and policy state that "Disciplinary action, when necessary, shall be handled on a case-by-case basis, but is to be applied fairly and consistently", it appears that in reviewing the disparate treatment in evidence, that the ten (10) day suspension was not consistent discipline for Appellant Tillman's level of supervision. Therefore, it is my **RECOMMENDATION** that Appellee's ten (10) day suspension of Appellant Tillman be **MODIFIED** to a five (5) day suspension.


Marcie M. Scholl
Administrative Law Judge