

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Darlene Mitchell,

Appellant,

v.

Case No. 2013-REM-09-0243

Department of Rehabilitation & Correction,
Toledo Correctional Institution,

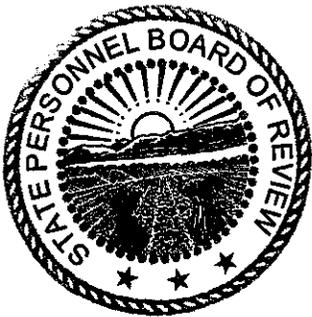
Appellee,

ORDER

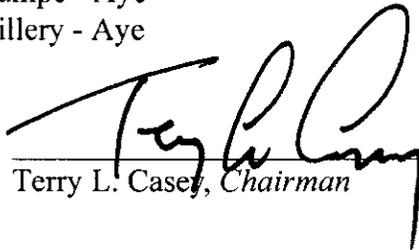
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 motion is **GRANTED** and the appeal is **DISMISSED** for lack of jurisdiction.



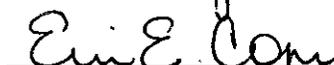
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, 2014.


Erin E. Conner
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**

Darlene Mitchell

Case No. 2013-REM-09-0243

Appellant

v.

May 2, 2014

Department of Rehabilitation & Correction,
Toledo Correctional Institution

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter comes on for consideration on May 2, 2014, upon the Appellant's September 27, 2013, filing of an appeal to this Board regarding an alleged removal, and after a status conference was held on November 22, 2013 at 1:30 p.m., along with filing of the Appellee's Motion to Dismiss on April 15, 2014 and the Appellant's Response to the Appellee's Motion to Dismiss filed on April 25, 2014.

With respect to the case at hand, the Appellee in Its Memorandum in Support, clearly laid out Ms. Darlene Mitchell's employment history with the Department of Rehabilitation and Correction (DRC), Toledo Correctional Institution (ToCI). The uncontested facts are that the Appellant began her employment at ToCI on August 13, 2001, and remained employed by ToCI until she was laid off on June 22, 2008. Further, on November 22, 2010, Ms. Mitchell was rehired at ToCI as a Human Services Program Administrator 2, and on August 26, 2012, transferred into a vacant Correctional Warden Assistant 2's position, wherein she reported directly to the Warden of ToCI.

As a Correctional Warden Assistant 2, Ms. Mitchell was responsible for overseeing the random drug testing policy of DCR employees at ToCI. Effective November 19, 2011, DRC had a policy regarding random drug testing for employees wherein a Department Coordinator would notify Field Coordinators at DRC facilities with list of position numbers (PNs) for employees who were subject to random drug testing. See Appellee's Exhibit B. It was the Field Coordinator's

responsibility to schedule a specimen collection for each employee who's PN had been identified. The specimen collection appointment must be scheduled within seven days of the Field Coordinator receiving the employees PN's. Moreover, it was noted within the memorandum in support that the Field Coordinators are to inform the selected employee's supervisor of the scheduled time and date for the specimen collection.

If an employee tests positive, then the employee will receive a pre-disciplinary hearing, and, if just cause was found, be placed upon a Last Chance Agreement (LCA). Impeding the testing process is considered a positive test result. Impeding the test is defined as:

Any activity in which the employee, after notification, does not immediately go to, nor immediately return from the collection site and supply an original specimen. Examples include, but are not limited to, refusing to go to a collection appointment, not attending a collection appointment in a timely manner, and altering the specimen. The employee will be considered to have a positive test if they are found to have impeded the test process or tampered with their specimen.

In September of 2013, Ms. Darlene Mitchell was the random drug test Field Coordinator at ToCI. On September 8, 2013, Ms. Darlene Mitchell was informed that her PN had been randomly selected for a drug test. (See Ms. Pinski's affidavit) However, the facts would show that Ms. Mitchell failed to schedule appointment to have her specimen collected. Further, Ms. Mitchell did not inform her supervisor, the Warden, that her PN had been randomly selected for drug test. (See Ms. Pinski's affidavit). Ms. Mitchell claimed that after she had been notified that her PN had been selected for testing, she forgot to schedule appointment to have a specimen collected because she was very busy. As a result, Ms. Mitchell then received a pre-disciplinary hearing regarding the facts stated above.

The uncontested facts then revealed that an order of removal was prepared with an effective date of September 18, 2013, and was signed by Mr. Ed Shelton, the Warden of ToCI. (See Ms. Pinski's affidavit). However, the order of removal was held in abeyance, as Ms. Mitchell agreed to sign a Last Chance Agreement. Moreover, Ms. Mitchell's electronic employment history does not indicate that she was given any discipline on September 18, 2013, nor did it show any break in

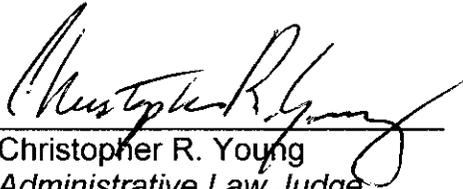
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service, along with the fact that Ms. Mitchell is still employed as a Correctional Warden Assistant 2 at ToCI. (See Ms. Pinski's affidavit).

Since Ms. Mitchell was not removed from employment, the above captioned appeal must be dismissed for lack of jurisdiction. There is no language in Ohio Revised Code Section 124.03(A) which confers jurisdiction on the Board to hear an appeal of an employee who had a removal order held in abeyance as a result of signing a Last Chance Agreement. Further, Ohio Revised Code Section 124.34 (B) makes it equally clear that this Board only has jurisdiction to hear appeals regarding Last Chance Agreements only after an employee has been removed for violating that Last Chance Agreement.

Further, with respect to the Appellant's Response to the Appellee's Motion to Dismiss pursuant to Ohio Administrative Code Section 124-11-07(2) states that an adverse party may not rest upon mere allegations and denials, but that its response, by affidavit or otherwise, shall set forth specific facts showing there is an genuine issue in dispute, which she did not do. While the Appellant argued in its response that she had to take two weeks of vacation time, and should be made whole because of this ordeal, again that is not something that this Board has jurisdiction to consider, as well.

Therefore, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeal be **DISMISSED** for lack of jurisdiction.


Christopher R. Young
Administrative Law Judge