

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Ruth Blankemeyer,

Appellant,

v.

Case No. 2013-REM-12-0395

Putnam County General Health District,

Appellee,

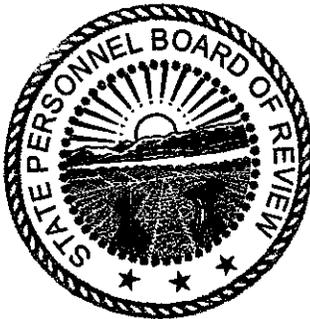
ORDER

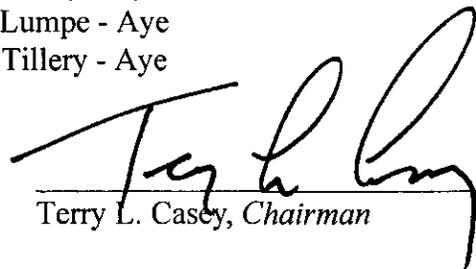
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 position of Clerk with the Putnam County General Health District is **AFFIRMED**, pursuant to R.C. 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, September 22, 2014.


Eric E. Con
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**

Ruth Blankemeyer

Case No. 2013-REM-12-0395

Appellant

v.

August 15, 2014

Putnam County General Health District

Appellees

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on July 7, 2014. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Putnam County General Health District (Putnam County Health), was present through its designees, Sherri Recker, Director of Nursing (DON), and Catherine Kouns Born of Clemans Nelson & Associates Inc., Personnel Consultant for Putnam County Health. Appellee was represented by Eugene P. Nevada, Attorney at Law. By agreement of the parties, written closing statements were timely filed on or before August 7, 2014 and the instant record was then closed.

This cause comes on due to Appellant's December 4, 2013 timely filing of an appeal from Appellant's removal from her position of Clerk with Appellee. Appellant's pertinent R.C. 124.34 Order of Removal was signed on November 26, 2013, was hand-delivered on November 27, 2013, and became effective on December 2, 2013.

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 of Appellant's R.C. 124.34 Order of Removal reads as follows:

Insubordination by refusing to perform assigned work or to comply with the written or verbal instructions of a supervisor (insubordination, neglect of duty, failure of good behavior or nonfeasance) to wit:

On September 4, 2013, an email was issued to the employee by the Director for Nursing (DON) instructing her to provide the DON with a copy of the billing procedures and for the employee to train two coworkers on the billing procedure.

On September 6, 2013, when it became clear that the employee did not provide the billing procedures another email was issued to her from the DON instructing her to write out the standard operating procedure (SOPs) for billing and to review them in person with the assigned coworkers before October 1, 2013. The employee did not write out the SOPs as instructed, did not review the procedures with one of the coworkers as instructed and it was the other coworker who actually compiled the policies and procedures for regular immunization and flu clinics. The employee as [sic] insubordinate: a termination offense.

At hearing, three witnesses testified.

First to testify was **Appellant, Ruth Blankemeyer**, who testified as if on cross examination.

Next to testify for Appellee was **Sherri Recker, RN, MSN**, Putnam County General Health District Director of Nursing.

Next to testify for Appellee was **Dr. Mary Ann Myers, M.D.**, Putnam County, Health Commissioner.

Last to testify was **Appellant, Ruth Blankemeyer**, who testified on her own behalf.

Appellant, Ruth Blankemeyer has been a Clerk for Putnam County Health for approximately fourteen years. Appellant's position includes billing and facilitating the immunization program. More specifically, the Clerk billed all nursing services provided that were reimbursable which included: clinics; Bureau of Children with Medical Handicaps (BCMh), a state-administered program that operates within the Ohio Department of Health; lead testing, including completed paperwork for the same; and performing clerical tasks. Appellant reported directly to Sherri Recker, the Director of Nursing.

In March of 2012, the Ohio Department of Health sent correspondence to all local health departments informing them of pilot programs for public health billing due to continuing fiscal challenges. The new programs enabled billing for immunization services for insured patients. Local health departments were to incorporate processes and procedures to allow the local health departments to direct bill (as well as re-bill for

denials). In that same month, Appellee began implementing an insurance billing system using existing software which did not have the function to create billing statements. Thus, Appellee and other local health departments had to create their own client billing statements.

At hearing, Appellant attempted to demonstrate the daunting task of authoring Appellee's billing standard operating procedures (SOP) by discussing the magnitude of Appellee's pertinent pilot billing program and its subsequent effects. These, Appellant averred, were illustrated by Appellant's involvement in a support group for county clerks attempting to establish these procedures in their respective regions. (See Appellant's Exhibit 3).

Appellant testified that on or about July 11, 2012, she sent an electronic correspondence to DON Recker and Health Department Administrator Ruth Gerding that a manual on the billing process was created and was being stored on the shared drive. (See Appellant's Exhibit 7). There is no indication in the aforementioned correspondence that the billing manual was attached to the electronic correspondence. Appellant seems to have positioned the manual behind the correspondence in Appellant's Exhibit 7 as a reference.

Appellant further testified that a hard copy of the billing manual draft was given to Mary Duling, Appellee's Immunization Supervisor. However, because Appellant did not produce Ms. Duling as a witness to corroborate this event, Appellant cannot substantiate creating the billing manual or establish a time frame for same. Appellant also stated that she did not give any other supervisor a copy of the aforementioned billing manual draft.

Appellant testified that she requested a meeting with Health Commissioner Mary Ann Myers, M.D. On or around June 7, 2013, Appellant met with Dr. Myers to confer on issues regarding problems with the software program and billing statements. Dr. Myers confirmed Appellant's testimony on this point by stating that Appellant initially approached Dr. Myers to request a meeting to discuss Appellant's concerns regarding the standard operating procedure.

On or around June 10, 2013, another meeting occurred. That meeting was prompted by Appellee. At that meeting, Appellee issued a list of job duties for Appellant to accomplish in the form of a Performance Improvement Plan (PIP).

On or around July 10, 2013, a Written Reprimand and another PIP were issued to Appellant and signed by both Appellant and DON Recker establishing a 30-day extension for completion of outlined tasks. (The PIP covered four items: updating client billing statements; immunization billing and posting of payments; follow-up and re-billing of denials; and updating BCMH billing.)

On or about August 14, 2013, Appellant met with DON Recker and Health Department Administrator Ruth Gerding. At that time, Appellant received a three-day Suspension.

The Suspension alleged the following violations: failure to successfully complete the PIP's directions in regard to attitude and behavior; continuing exhibition of disruptive behavior; failure to develop or maintain effective working relationships; failure to communicate effectively in the workplace; and exhibiting a disrespectful and argumentative attitude toward Appellant's supervisor, DON Recker, and toward Health Department Administrator Gerding.

On or about September 4, 2013, electronic correspondence was sent from DON Recker to Appellant that directed Appellant to perform two tasks: 1) to provide a copy of the billing SOP to DON Recker and 2) to review those same procedures with Immunization Supervisor Mary Duling and Clerk Laurie Meyer; to ensure that Ms. Duling and Ms. Meyer understood the process used to bill for immunizations.

Appellant testified that she did not provide a copy of the SOP to DON Recker in electronic or hard copy form. Appellant further testified that she was directed to place an electronic copy on the shared drive for others to have access to the SOP.

DON Recker testified that, at the time DON Recker sent her September 4, 2013 electronic correspondence to Appellant, DON Recker understood that a billing SOP prepared by Appellant existed and thus requested a copy from Appellant, but never received one.

On or about September 6, 2013, DON Recker sent another electronic correspondence to Appellant, this time directing Appellant to perform the following: to update the billing SOP that Appellant began in 2012 and provide a copy of same to DON Recker; to review these same procedures with Ms. Duling and Ms. Meyer; and to complete the aforementioned tasks by October 25, 2013. Appellant testified that she did not approach supervisors between the September 6, 2013 date of the email and the October 25, 2013 drop dead date to ask for an extension.

DON Recker testified that she never received a copy of the SOP nor did she believe Appellant reviewed the procedures with Ms. Duling or Ms. Meyer. She further testified that Appellant did not approach her with concerns on the tasks or request an extension to complete it, after DON Recker issued her September 6, 2013 correspondence. DON Recker testified that she reviewed the documents on the shared drive that Appellant *had placed* there (Please see Appellee's Exhibit 12.)

According to DON Recker, these specific documents were unacceptable because there were multiple explanations in other electronic files, inconsistent

nomenclature, inaccurate steps, and references to hard documents which could not be found.

By October 25, 2013, Appellant had not completed the two tasks, namely, to produce an SOP and to review these procedures with Ms. Duling and Ms. Meyer.

Health Commissioner Mary Ann Myers testified that she had a phone conversation with Appellant at approximately 4:30 p.m. on October 25, 2013. She testified that Appellant was upset because Appellant was directed to train Ms. Duling and Ms. Meyer but never made arrangements with both individuals. Dr. Myers further stated that, at that time, Appellant offered that there were billing system problems but that Appellant had not sought help or asked for any extensions.

The uncompleted tasks gave rise to the pre-disciplinary conference on October 30, 2013, and the subsequent removal of Appellant from her position as Clerk with Putnam County Health on December 2, 2013.

Based on the testimony presented and evidence admitted at hearing and upon the written closing statements submitted by the parties, 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 Appellee established that dramatic recent changes had occurred regarding its billing procedures for immunizations and for other revenue generating functions. Commensurately, Appellee established there had been a dramatic recent increase in the importance of its immunization billing/reimbursement procedure.

Appellee demonstrated the importance of cross-training to ensure timely and accurate immunization reimbursement procedures and activities.

Appellee further demonstrated that Appellant had adequate notice of the need to perform several assignments as well as demonstrated the importance of timely and accurately completing these tasks. Appellant did not seek additional guidance from her supervisor or from Appellee's management on completing these tasks. Undoubtedly, Appellant's supervisor, DON Sherri Recker, was busy with her own assigned duties. Yet there is nothing in the record to indicate that DON Recker would not have been available to offer Appellant further direction concerning these tasks. (It is interesting to note that Appellant had requested and did have a meeting with Dr. Mary Ann Myers, the Health Commissioner, and that meeting prompted the creation of Appellant's aforementioned initial PIP.)

CONCLUSIONS OF LAW

Appellant was removed from her employment with Appellee. Her removal was based upon her alleged violations of Appellee's directives for Appellant to provide a copy of the standard operating procedure for billing and to train Ms. Meyer and Ms. Duling on that same procedure, evidenced by the electronic correspondence of September 4, 2013.

Yet, the language set forth in the instant R.C. 124.34 Order of Removal is not entirely clear as to whether Appellant's removal was based in part on Appellant's allegedly failure to review the billing standard operating procedures with co-worker Laurie Meyer. Accordingly, the undersigned makes no finding or conclusion based on Appellant's alleged failure to conduct that specific review with Ms. Meyer.

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.

In the instant matter, the evidence presented at the hearing demonstrated that Appellant did not provide an SOP to DON Recker, as instructed. It is unrebutted that Appellant received the September 4, 2013 electronic correspondence containing the two directives issued by her immediate supervisor. Thus, Appellant knew of the directives given to her, one of which was to create and submit the billing SOP to DON Recker.

There is no evidence that Appellee prevented or impeded any communication with Appellant either in person or electronically. Appellant knew to create and submit the SOP but refused to perform the assigned work and did not comply with the written instructions of her supervisor.

Furthermore, Appellant neglected to seek out her supervisors for assistance to complete the SOP or at any time seek to obtain an extension to ensure her compliance; from her September 4, 2013 notice date to her October 25, 2013 due date.

Accordingly, Appellee demonstrated that Appellant committed **nonfeasance**. This is because Appellee demonstrated that Appellant willfully refused to comply with Appellant's two PIPs, as supplemented by her subsequent Written Reprimand and three-day Suspension. By so doing, Appellant willfully refused to perform acts which should have been performed.

Appellant maintains that she created the SOP as directed. She claims that she created and stored pertinent information basically constituting the SOP on Appellee's shared drive. Appellant also submitted a hard copy draft of the alleged SOP along with the electronic correspondence at hearing as a reference.

Appellant's offered further evidence of a potential version of the SOP through offering a screenshot of the shared drive illustrated in Appellee's Exhibit 12 in a folder named "Billing Job Manual." (*Appellee* also included in that same exhibit - Appellee's Exhibit 12 - hard copies of all the documents that were stored within that shared drive folder.)

However, this screenshot appears to show the shared drive folder with various documents with differing billing-related titles and various dates modified. Thus, this document fails to further Appellant's claim, because this document fails even to clearly identify the correct SOP.

Even if we were to construe the evidence in a light most favorable to Appellant, the record would still clearly demonstrate that Appellant failed to comply with the unequivocal directive to create *and send* DON Recker a finished SOP. Based on the evidence presented by both parties, Appellant did not directly furnish a hard or electronic copy of the SOP to DON Recker.

Appellant failed to produce Mary Duling as a witness to testify at hearing. Let us assume for the sake of argument that Appellant had produced Ms. Duling as a witness. Let us further assume that Ms. Duling had been able to corroborate that a hard copy of the billing manual draft was given to Ms. Duling. Under these assumed circumstances, perhaps Appellant might have been able to substantiate her claim that she forwarded an SOP to a fellow staff member. *Yet, this still would have been insufficient to rebut Appellee's substantiated claim that Appellant never gave the SOP to DON Recker, Appellant's supervisor, as clearly directed.*

The evidence presented at the hearing also demonstrated that Appellant did not complete the second directive, namely to review the SOP with, at a minimum, Ms. Duling. To support these allegations, Appellee has offered, among other things, information that Appellee garnered through a telephone conversation conducted between Appellant and Health Commissioner Mary Ann Myers on the day of the deadline (*i.e.* October 25, 2013).

Both Appellant and Health Commissioner Mary Ann Myers testified at hearing. Further, Appellee established the reliability of this information as well as the necessity to admit same. Thus, Appellee satisfied O.A.C. 124-9-02's requirements concerning hearsay testimony in this instance.

We recognize that Appellant *was* working with Laurie Meyer to understandably take advantage of Laurie Meyer's medical billing background. Thus, had Appellant called Laurie Meyer at hearing, it might have been theoretically possible for Appellant to have shown that Appellant reviewed the so-called SOP with Laurie Meyer.

Yet, Appellant called neither Ms. Duling nor Ms. Meyer to testify at hearing. Moreover, there is *no question* that Appellee disciplined Appellant for Appellant's failure to review the so-called SOP *with Ms. Duling*.

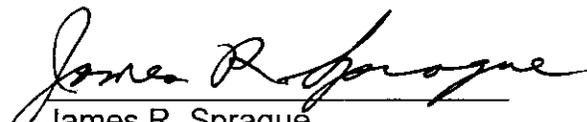
It is undisputed that Appellant was given directives against a backdrop where the importance of immunization billing was elevated. This activity took on greater importance; due to comprehensive changes that had taken place regarding the methods by which Ohio's general health districts incur large amounts of reimbursable expenses and must timely collect for same.

To summarize, Appellant was given clear direction to complete several tasks. Appellee demonstrated the critical need to timely complete these tasks. Appellant had opportunities to ask for additional direction from her superiors but did not do so. As well, Appellee reinforced the importance of timely completing these tasks in a Written Reprimand and a three-day Suspension issued to Appellant on these very topics.

At bottom, Appellant failed to provide an SOP to Appellant's supervisor and wholly failed to train one of two co-workers as instructed, thus committing nonfeasance. Because I have found, above, that Appellant committed nonfeasance, it is not necessary at this time to review whether Appellant also committed failures of good behavior, insubordination, and neglect of duty.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the **REMOVAL** of Appellant from her position of Clerk with the Putnam County General Health District pursuant to R.C. 124.03 and R.C. 124.34.


James R. Sprague
Administrative Law Judge