

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

Barbara Barr,

Appellant,

v.

Case No. 2014-RED-08-0211

Lorain County Department of Job and 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.

The Full Board has carefully and very thoroughly examined of the entire record in this matter. This includes a review of the thorough Report and Recommendation of the Administrative Law Judge (ALJ), a review of any objections to that report which have been timely and properly filed, and further consideration of this matter at Oral Argument held before the Full Board where both sides were ably and professionally represented by counsel. Following that comprehensive review, the Board hereby adopts the findings of the ALJ and modifies the Recommendation of the ALJ for the reasons, below.

The record reflects that Appellant misused her position for personal reasons. However, Appellant's actions must be counterbalanced with her many years of satisfactory service with Appellee in her position. Further, Appellant's rather unique and difficult personal circumstances that unquestionably impacted on her behavior in this matter seem unlikely to be repeated. Finally, if Appellant is prospectively restored to her former position or a comparably-ranked position/pay, she still will have paid a hefty monetary penalty for her actions. This should certainly sensitize her to the need to carefully and faithfully follow all of Appellee's practices and procedures going forward.

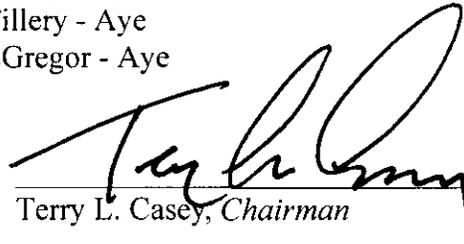
Wherefore, it is hereby **ORDERED** that Appellant's instant **REDUCTION** be **MODIFIED** to a **FINE** equivalent to the sum owed to Appellant representing the difference between her current pay and her back pay arising from restoration to her former classification of Clerical Supervisor, commencing from the effective date of the reduction until the final Order of this Board, pursuant to R.C. 124.03 and R.C. 124.34.

(INSTRUCTION: The Appointing Authority will set off the fine against the back pay owed at the time of restoration. For example, if Appellant Barr is restored the same day as the final Board Order, there will be no money owed to Appellant Barr.)

It is further **ORDERED** that this fine so levied should be construed as the highest level of discipline short of removal that Appellee utilizes in its disciplinary procedures.



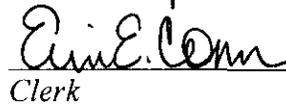
Casey - Aye
Tillery - Aye
McGregor - Aye


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, July 20, 2016.


Erin E. Conn
Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE July 27, 2016. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-RED-08-0211

Transcript Costs: \$792.00 Administrative Costs: \$25.00

Total Deposit Required: * \$817.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: August 4, 2016

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

Barbara Barr

Case No. 2014-RED-08-0211

Appellant Barr

v.

December 7, 2015

Department of Job & Family Services
Lorain County

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 March 18 and 19, 2015. The record was held open until June 1, 2015, for the submission of closing briefs. Present at the hearing were Appellant Barbara Barr, represented by Brent L. English, Attorney at Law and Appellee Lorain County Department of Job and Family Services designee Marge Kiely, Program Administrator, represented by Eugene P. Nevada, Attorney at Law.

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

Appellant Barr was demoted from her position of Clerical Supervisor to the position of Data Entry Operator 2, effective August 11, 2014. The pertinent part of the reduction order states as follows:

Reason for this action is that you have been guilty of:

1. During the month of March 2014, you engaged in a pattern of involving a WEP worker in your family's personal, non-job related, activities; and did so on paid time. **(Failure of Good Behavior; Mifeasance)**

2. On March 19, 2014, you summoned a WEP worker to your office on paid time and showed the WEP worker a list of phone numbers that you identified as belonging to drug dealers. You then indicated one number, and asked the WEP worker if she recognized it. When the WEP worker identified it as belonging to the father of her son, you ordered the WEP worker to involve herself in drug related activity by telling her to tell the father of her son to stay away from your son. **(Failure of Good Behavior; Misfeasance)**
3. After the March 19, 2014 incident, you involved the WEP worker further in the drug related situation by contacting her about a threatening phone call that was received. During the call you questioned her about your prior conversation involving the phone numbers that you knew or suspected as being related to drug activity. During the conversation you told the WEP worker that she needed to fix things. **(Failure of Good Behavior)**
4. Misuse of agency time, resources and equipment. **(Failure of Good Behavior; Misfeasance; Violation of Employer's Work Rules/Policies/Regulations)**
5. During the interviews you made false and/or misleading statements in response to questioning **(Dishonesty; Failure of Good Behavior; Malfeasance)**, including but not limited to, the following:
 - a. That it is within your job duties as Front Desk Supervisor to run criminal records searches for outstanding warrants on persons at the agency.
 - b. That you did not using (sic) agency time and resources to track, look into, and otherwise follow up on your son's drug affiliations.
 - c. That you did not look into Joshua McDaniel due to his affiliation with your son, but because he was at the agency that day and met criteria for doing so.

STATEMENT OF THE CASE

Appellee's first witness was Barbara Barr, as if on cross examination. Appellant Barr verified she received Appellee's Exhibit 1, a First Notice of a Pre-Disciplinary Conference, issued on April 4, 2014. Appellant Barr testified the conference was rescheduled for April 24, 2014, and that she was notified of this in another Notice of Pre-Disciplinary Conference letter, sent on April 17, 2014, and identified as Appellee's Exhibit 2. These notices informed Appellant Barr of the misconduct charges against her, which included the first four charges listed above and a fifth, which was added after the first Pre-Disciplinary Conference.

The initial conference was conducted by designee Michael D. Esposito, Shareholder-Director of Client Development at Clemans, Nelson & Associates, Inc, as outlined in Appellee's Policy Manual.

The first Pre-Disciplinary Conference Report, Appellee's Exhibit 4, originally issued on July 2, 2014 and revised on July 24, 2014, dealt with the Pre-Disciplinary Conference of April 24, 2014. Mr. Esposito recommended there was cause to issue discipline with regard to the first four issues listed in Exhibit 7. However, Mr. Esposito found it would be difficult to establish that Appellant Barr "abused your authority as a supervisor by retaliating against the WEP worker by having her reassigned to a less desirable job when she failed to carry out your illegal request." Based on these findings, Mr. Esposito found that, "there is cause to issue discipline for misfeasance and failure of good behavior based on the above listed substantiated behaviors."

The second Pre-Disciplinary Conference took place on July 3, 2014, and was again conducted by Mr. Esposito. Appellant Barr testified she was notified of this hearing upon receiving a Second Notice of Pre-Disciplinary Conference letter, which was dated June 27, 2014.

It was at this time that the fifth charge was introduced by Appellee, alleging Appellant Barr had "made objectively false and/or misleading statements in response to questioning" during her Pre-Disciplinary Conference held on April 24, 2014.

In the Pre-Disciplinary Report of August 3, 2014, identified as Appellee's Exhibit 5, Mr. Esposito found that, "there exists cause to issue discipline for making false and/or misleading allegations both during the prior pre-disciplinary conference and the second conference as well." Mr. Esposito also stated there was "cause to issue discipline under this area," with regard to the second charge of "Misuse of Agency Equipment and/or Resources for non-Agency Business."

On August 6, 2014, the Lorain County Board of Commissioners authorized the demotion of Appellant Barr from the position of Clerical Supervisor to Data Entry Operator 2, as stated in Appellee's Exhibit 8.

Appellant Barr testified that in her job before her demotion she was a Front Desk Supervisor. In this capacity, Appellant Barr stated she was in charge of the front desk workers responsible for being the first point of contact for the walk-ins to the agency. Appellant Barr supervised four agency workers and one Work Experience Program (WEP) worker. The WEP program requires certain individuals receiving assistance from Appellee to work a small number of hours each week in exchange for the assistance.

Appellant Barr stated she was aware of Appellee's Code of Responsibility, identified as Appellee's Exhibit 11, which is signed by Appellant Barr and dated February 1, 2014. Appellant Barr testified she was aware that violation of these policies could result in discipline, up to and including termination.

Furthermore, Appellant Barr testified she had read Appellee's Internet and Groupwise Policy, as well as the Policy on Harassment, Appellee's Exhibits 12 and 14, respectively. Appellant Barr stated she understood that the computer systems were only for expressly authorized purposes. She confirmed that she was aware that violation of any of these policies could result in discipline, up to and including removal.

Appellant Barr testified her son was a heroin addict at the time of the alleged incidents, in March, 2014. She stated she had asked co-workers if anyone knew of a certain acquaintance of her son's, who Appellant Barr believed was involved in her son's drug abuse and whose name was "Princess". Appellant Barr stated that at this time, WEP worker Pansey Raymore stated that this person lived across the street from her. Appellant Barr stated this conversation took thirty seconds and that

the staff of the organization was very close and personal business was frequently discussed among the workers.

Appellant Barr testified she was never given any specific instructions on how to supervise WEP workers such as Ms. Raymore. Appellant Barr stated that on March 19, 2014, she brought to work a list of phone numbers belonging to individuals whom she believed were involved with her son's use of drugs. Appellant Barr testified she had the list on her desk because she was considering turning it in to the police, something which she admitted served no business purpose.

Appellant Barr testified she had asked Ms. Raymore if she recognized any of the numbers on the list, of which Ms. Raymore replied she recognized the number of her "baby's daddy" who was known as "Dink". After this, Appellant Barr stated she told Ms. Raymore she was considering turning the number over to the police. Under questioning, Appellant Barr stated this was a personal matter and, as such, was unrelated to the business of the Appellee, and that she should have never involved Ms. Raymore. Appellant Barr was adamant that she did not ask Ms. Raymore to intervene in the situation with "Dink" and that the subject would never have been broached if not for Ms. Raymore first coming to Appellant Barr with a personal problem.

Appellant Barr then testified that, later that same day, her son received a threatening phone call which seemed related to her prior conversation with Ms. Raymore. In this phone call, the lives of both Appellant Barr and her son were threatened. At this point, Appellant Barr contacted Ms. Raymore via Facebook, who requested that Appellant Barr call her, to which Appellant Barr complied. Appellant Barr stated she contacted Ms. Raymore to let Ms. Raymore know that she was not going to turn the phone numbers over to the police, with the hope that Ms. Raymore would pass this message along to the threatening caller, whom Appellant Barr believed to be "Dink". Appellant Barr again testified under questioning that there was no valid business reason for her call to Ms. Raymore.

Appellant Barr testified that on March 20, 2014, the following day, she told the individual in charge of assigning WEP workers, Ralph Berrios, that she would like for Ms. Raymore to be re-assigned, presumably away from the front desk area. Appellant Barr stated that the reason for this request was that errors had continued to be made by her staff and that she needed to find out if these errors were coming from front desk employee, Abigail Frasher, or Ms. Raymore. However, Appellant

Barr testified that later that day she also told Mr. Berrios that the re-assignment was motivated by the events of the previous day.

Appellant Barr testified that she looked up Josh McDaniel, her son's drug dealer, in the Lorain Municipal Court database because he had been at the office, "acting crazy" that week. Appellant Barr stated she believed this was within her job duties because she was "there to protect her staff," as their supervisor.

Appellee's next witness was Steven Johnson, Investigations Supervisor for the Office of the Chief Inspector of the Ohio Department of Job and Family Services. At the request of the Lorain County Director of Job and Family Services, Mr. Johnson's office reviewed Appellant Barr's internet usage and items stored to the computer drive. Mr. Johnson testified that the request was the result of a concern by Appellee that Appellant Barr was possibly misusing her computer.

Mr. Johnson testified that his office generated a report which stated that on March 19, 2014, Appellant Barr, or someone using her credentials, accessed the Lorain County Clerk of Common Pleas Court docket of Joshua McDaniel. This report is contained in Appellee's Exhibit 28. Under questioning by Appellant Barr's counsel, Mr. Johnson testified he personally had not done the work reflected in the report.

Appellee's next witness was Ryan Beaty, an Investigator for the Chief Inspector of the Ohio Department of Job and Family Services. Mr. Beaty was the individual assigned to conduct an audit on Appellant Barr's computer usage. Mr. Beaty testified that, as stated by Mr. Johnson, Appellant Barr, or someone using her credentials, accessed the Lorain County Clerk of Common Pleas Court docket of Joshua McDaniel. Under questioning by Appellant Barr's counsel, Mr. Beaty stated that the total time of the search was less than one minute in duration.

Appellee's next witness was Tina Curry, a Security Guard at the Lorain County Department of Job and Family Services. Ms. Curry testified she is typically stationed at the front door of the main lobby, in front of the only door to the lobby, and that anyone walking into the lobby would have to walk by her station. Ms. Curry testified she was able to recognize Joshua McDaniel by sight, as she knew him previously, and that on March 19, 2014, she did not see him enter the building nor did she remember Appellant Barr telling her McDaniel was in the lobby acting strange. Under questioning by Appellant Barr's counsel, Ms. Curry stated she was

not at the front door for the entirety of the work day. Ms. Curry also denied that she had a conversation regarding Mr. McDaniel with Appellant Barr and her husband at a restaurant.

Ms. Curry testified she remembered March 19, 2014, well and on that day, Appellant Barr asked her to walk her to her car, which she did. Possibly the next day, Appellant Barr told Ms. Curry there had been a car in the parking lot that she suspected was a drug dealer and that is why she asked Ms. Curry to walk her to her car. Ms. Curry testified she had seen the car Appellant Barr described with a black male in it and knew the person's nickname to be "Dink". Ms. Curry stated the car had been parked in the fire lane and before she went out to ask the driver to move the car, he had left.

Ms. Curry identified Appellant's Exhibit A as her handwritten statement which she wrote on March 24, 2014, after she was asked for such a statement.

Appellee's next witness was Ralph Berrios, an Employment Service Counselor at the Lorain County Department of Job and Family Services. Mr. Berrios testified that at the time in question he was in charge of assigning certain WEP workers to their assignments.

Mr. Berrios testified that on March 20, 2014, Appellant Barr came into his office and requested that Ms. Raymore be reassigned, mostly because of personal issues, and that there were problems between Ms. Raymore's baby's father and Appellant Barr's son. Further, Mr. Berrios testified that before that date, Ms. Raymore had been receiving "glowing reports" from Appellant Barr. Mr. Berrios stated he re-assigned Ms. Raymore to a new department in an entirely new building, so that the personal issues between Ms. Raymore and Appellant Barr would not be at play. He identified Appellee's Exhibit 23 as his statement regarding the incidents of that day.

Appellee's next witness was Mr. Esposito, Director of Client Development with Clemans Nelson. As such, his responsibilities include Human Resources, labor relations and personnel issues. He stated he was the Pre-Disciplinary Conference Hearing Officer in the matters regarding Appellant Barr. Upon Appellee's request, Mr. Esposito played a recording of Ms. Raymore's testimony given during Appellant Barr's first Pre-Disciplinary Conference, including cross-examination.

In Ms. Raymore's testimony, she stated that on March 19, 2014, Appellant Barr asked her to look at the previously mentioned list of numbers and see if she recognized any of the numbers. Ms. Raymore stated she told Appellant Barr that one of the numbers belonged to the father of her child. Ms. Raymore stated that Appellant Barr then told Ms. Raymore to tell this individual to "leave her son alone with the drug thing."

Under cross examination Ms. Raymore stated that after learning she had not had recent contact with her baby's father, Appellant Barr told Ms. Raymore she did not have to tell him to stay away from her son since they were not communicating with one another. Ms. Raymore testified however, that on March 19, 2014, Appellant Barr called her and accused her of telling her baby's father that Appellant Barr would give his phone number to the police. Ms. Raymore also stated that on March 20, 2014, Appellant Barr called her into her office and told her she was going to be reassigned because of the incident that happened on the previous day and her work mistakes.

Appellee's final witness was Marge Kiely, a Program Administrator at the Lorain County Department of Job and Family Services. Ms. Kiely was Appellant Barr's direct supervisor during the incidents in question. Ms. Kiely testified it was not part of Appellant Barr's job duties to run background checks on clients, and Appellant Barr would therefore not have the authority to run a background check on Joshua McDaniel. Ms. Kiely stated that on March 20, 2014, she met with Ms. Raymore and Mr. Barrios regarding Ms. Raymore's re-assignment. A typed version of Ms. Kiely's notes from the meeting is included in Appellee's Exhibit 21, and Ms. Raymore's statement regarding the entire incident with Appellant Barr is included in Appellee's Exhibit 24.

Ms. Kiely testified she recognized Appellee's Exhibits 29 and 30 and that she had written both memos. Ms. Kiely stated that on June 29, 2012, she sent Exhibit 29, a verbal warning, to Appellant Barr for failing to follow the chain of command and retaliation. The incidents that caused the reprimand took place on June 25 and 26, 2012, with the in-house security guard at the time. Appellee's Exhibit 30 detailed why the verbal warning was issued, including that "supervisors are held to a higher standard" and "perception overrides intent." Ms. Kiely also stated that there is an agency wide practice that WEP workers are considered clients, not employees, and therefore conversations with WEP workers should reflect their status as clients and not employees.

Ms. Kiely also testified she recognized Appellant Barr's Exhibits D, E and F, as Annual Performance Evaluations given to Appellant Barr and that they are an accurate representation of Appellant Barr's work. The evaluations consistently state that Appellant Barr was "highly accurate to exceptional" based on quality of work and was "productive" based on quantity of work. Appellant Barr also received average to above-average scores on the rest of the evaluations.

Appellant Barr's first witness was Timothy Barr, the husband of the Appellant Barr. Mr. Barr testified that he and Appellant Barr ran into Ms. Curry at a Dave and Buster's restaurant in June of 2014, and that Ms. Curry and Appellant Barr had a conversation about the previously mentioned incident involving Joshua McDaniel.

Karen McClendon was Appellant Barr's next witness. Ms. McClendon has worked for 15 years at the Lorain County Department of Job and Family Services as an Income Maintenance Aid Clerk 2. Appellant Barr was Ms. McClendon's supervisor until Appellant Barr's demotion. Ms. McClendon testified that she remembers Joshua McDaniel being at the office on the day in question, and stated he was acting suspiciously. However, Ms. McClendon later stated that Mr. McDaniel had been in the office multiple times in the past and so she was not entirely sure as to the exact dates he was there.

Appellant Barr testified she has been employed by Appellee for approximately twenty years and has been a supervisor for that amount of time. In June, 2011, she began supervising the front desk and screening areas, but beginning in August, 2013, she no longer supervised the screening area.

Appellant Barr explained the agency serves between 1,500 to 2,000 clients a day and it was the responsibility of her office to move the lines of clients, answer questions and direct clients to the proper area. There were four stations at the front window and she and two other employees had a closed, walled office in the area. Appellant Barr stated she had a desktop computer with her own log in and password. She had internet access on her computer and was not aware of any prohibition against accessing public court websites.

Appellant Barr testified that sometime in 2013, she had asked Josh McDaniel to stop giving drugs to her son. She stated that at one point, although she does not remember the date, she went up to the front desk to check on her employees and

she saw a man walking in and out of the building and recognized him as Josh McDaniel. He was pacing in and out of the bathroom and acting strangely. Appellant Barr testified she called Ms. Curry over to the front window and asked if she saw the man and Karen McClendon witnessed her talking to Ms. Curry. Appellant Barr then stated she walked into her office and looked on-line at the court docket to see if McDaniel had any outstanding warrants. She testified she did this as she was concerned about how he was acting and she thought he may have been high on drugs and she felt threatened for her staff. Appellant Barr testified she does not feel she violated any policies by looking on-line for this information and feels that it was within her job responsibilities to do so.

Appellant Barr testified mistakes were being made in her section with regard to where the mail or applications were being placed. She felt either Ms. Raymore or another employee, Abby, were making the mistakes but when she asked them, they blamed the other.

Appellant Barr testified that one day, unprompted, Ms. Raymore went into her office and told her she should be proud of her as it had been awhile since she had talked to her abusing boyfriend. Ms. Raymore showed her her phone with a large number of texts and emails from her boyfriend that she had not responded to. Appellant Barr testified that she had no idea that Ms. Raymore would recognize any of the phone numbers on the list she showed her and was shocked when Ms. Raymore told her one of the phone numbers belonged to the father of her child. Appellant Barr stated she is not friends on Facebook with any of her other employees, but Ms. Raymore had friend requested her. Appellant Barr testified that Ms. Raymore was a wonderful worker and she did not want her out of her section but Abby kept blaming the mistakes on Ms. Raymore and the only way for her to determine if it was Ms. Raymore who was making the errors, was to transfer her out of her section, especially since Abby was a full-time employee. Appellant Barr stated Mr. Berrios was not telling the truth.

Appellant Barr denied asking Ms. Raymore anything about Princess and she denied asking Ms. Raymore to tell the father of her child to stop giving drugs to her son.

FINDINGS OF FACT

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

1. At the time of her demotion, Appellant Barr was a Clerical Supervisor and had been employed with Appellee for approximately twenty years. Her past discipline consists of a verbal warning in June, 2012.
2. As a long-term employee and a supervisor, Appellant Barr was familiar with Appellee's Code of Responsibility and Appellee's other standards and policies.
3. On March 19, 2014, Appellant Barr asked a WEP worker under her supervision, Pansey Raymore, to look at a list of phone numbers and see if she recognized any of them. Appellant Barr believed that these numbers belonged to individuals who had been selling drugs to her son and that she was thinking of turning the phone numbers over to the police. When Ms. Raymore stated that she did know one of the numbers, Appellant Barr instructed Ms. Raymore to tell that individual to stop selling drugs to Appellant Barr's son. After her son received a threatening phone call that same day, Appellant Barr messaged Ms. Raymore on Facebook, then talked to her on the phone and asked her to tell the individual that she was not going to give any of the telephone numbers to the police.
4. On March 20, 2014, Appellant Barr requested that Ms. Raymore be re-assigned, due to the events of the previous day and due to the fact that she had to determine in Ms. Raymore was making mistakes on her work.
5. In March, 2014, Appellant Barr searched the Lorain County Court website for information pertaining to Joshua McDaniel, on her work computer, in violation of Appellee's Internet and Groupwise Policy.
6. Effective August 11, 2014, Appellant Barr was demoted from her position of Clerical Supervisor to the position of Data Entry Operator 2.

CONCLUSIONS OF LAW

In order for Appellee's reduction of Appellant Barr to be affirmed, Appellee had the burden of proving by a preponderance of the evidence the allegations contained in the reduction order. Appellee has met its burden.

Appellant Barr was accused of five different incidents of misconduct, including: failure of good behavior, misfeasance, violation of employer's work rules/policies/regulations, and dishonesty.

It is clear that Appellant Barr "engaged in a pattern of involving a WEP worker in her family's personal, non-job related, activities on paid time." Appellant Barr admitted to showing a list of phone numbers to Ms. Raymore and she admitted to messaging her on Facebook and then talking to her on the telephone. The only thing Appellant Barr is disputing is that she asked Ms. Raymore to tell the father of her child to quit selling drugs to her son. Appellant Barr's self-serving testimony does not appear credible. If she did not ask Ms. Ramsey to pass along any messages to the father of her child, then why bother to message her on Facebook or to call her at all? If Appellant Barr felt that the threat made to her son was a result of simply showing some phone numbers to Ms. Ramsey with no comments to her, then there would be no reason for her to think that the threat was related to her conversation with Ms. Raymore.

While the question of whether or not Appellant Barr told Ms. Raymore to pass a message along to the father of her child was a topic of much conversation, the important point is that Appellant Barr involved Ms. Raymore, a WEP worker who was not considered to be an employee, but a client, into the matters of her personal life. It is most unfortunate that Appellant Barr's son was involved in drugs, and while Appellant Barr appeared to be a very caring mother who was doing her best to look out for her son, she overstepped her authority when she involved her subordinate into her and her son's personal life. She had no reason to Facebook Ms. Raymore and had no reason to call her that day but for personal, non-work related reasons. Appellant Barr admitted that she used poor judgment that day by involving Ms. Raymore in her personal matters. To further complicate matters, the very next day, Ms. Barr decides it is time to transfer Ms. Raymore out from under her supervision and into another area. That is either a huge coincidence or is retaliation. The evidence points to retaliation.

Appellant Barr testified that errors had been happening in her section for awhile and that Ms. Raymore and another employee, Abby, blamed each other for the errors. If this had been going on for a period of time, why did Appellant Barr feel the need to transfer Ms. Raymore from her section the very next day after the incident with the phone numbers? While Appellant Barr testified that Mr. Berrios' testimony that she told him the transfer was due to personal reasons was false, the circumstances and timing of the transfer request, suggest otherwise.

Ms. Raymore was a WEP worker and per the testimony of Appellant Barr, a very good worker. As a client worker, it was inappropriate and a failure of good behavior for Appellant Barr to involve her in matters of Appellant Barr's personal life and then to retaliate against her because she blamed her for her son receiving threats. Ms. Raymore's transfer appears to be primarily motivated by personal, non-work related reasons.

It is clear that Appellant Barr committed a "misuse of agency time, resources and equipment" when she used her computer to ascertain whether or not Mr. McDaniel had any outstanding warrants or not. The evidence established that this clearly was not within her job duties. Appellant Barr's reasoning for doing so, that she was protecting her workers, makes no sense. How would looking something up on a computer protect her employees? There was a security guard in the building, Ms. Curry, and if Appellant Barr truly felt that either she or her workers were being threatened or in danger from Mr. McDaniel, then she should have followed the policy by letting Ms. Curry deal with the situation and/or speaking with a supervisor. Looking to see if someone has an outstanding warrant does not ensure an employee's safety. Although the computer time was less than one minute, it is still a violation of the Internet Usage Policy.

In Appellant Barr's 2013 performance evaluation, Ms. Kiely put Appellant Barr on notice that as a supervisor, she is held to a higher standard and that applied to her conversations with the general public and her staff. Ms. Kiely stated she had talked to Appellant Barr about "setting boundaries" and her "Intra-agency relationships". It is these exact reasons that Appellant Barr was reduced in her position. A supervisor who placed her subordinate in possible harm's way by involving her in a situation involving the sale of heroin is not something that could go unnoticed. Then to further exacerbate the situation by retaliating against that subordinate is not the type of behavior that is expected or can be tolerated by a supervisor.

Barbara Barr
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As Appellee has met its burden of proof, it is my **RECOMMENDATION** that Appellee's reduction of Appellant Barr be **AFFIRMED** pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.



Marcie M. Scholl
Marcie M. Scholl
Administrative Law Judge