

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Kenneth Kanagy,

*Appellant,*

v.

Case No. 2014-REM-06-0145

Crawford County Board of Commissioners,

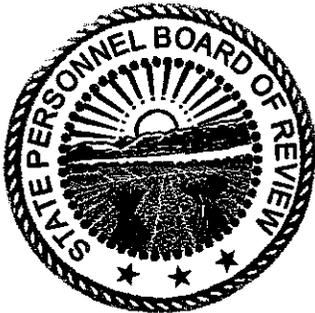
*Appellee,*

**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.

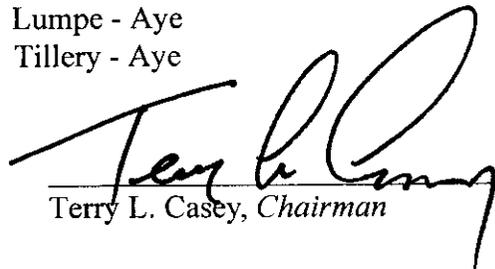
Wherefore, it is hereby **ORDERED** that Appellant's removal from employment with Appellee is **AFFIRMED**.



Casey - Aye

Lumpe - Aye

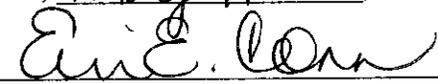
Tillery - Aye

  
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 11, 2016.

  
Eric E. Conner  
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 May 18, 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-REM-06-0145

Transcript Costs: \$471.00                      Administrative Costs: \$25.00

Total Deposit Required: \* \$496.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: May 26, 2016

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

Kenneth Kanagy

Case No. 14-REM-06-0145

*Appellant*

v.

April 13, 2016

Crawford County Board  
of Commissioners

*Appellee*

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of his removal from employment with Appellee. Record hearing was held in the instant matter on May 20, 2015, and July 7, 2015. Appellant was present at both days of record hearing and was represented by Daniel A. Klos, Attorney at Law. Appellee was present at record hearing through its designee, Crawford County Department of Job and Family Services Director, Linda Bassett, and was represented by Marc A. Fishel, Attorney at Law.

The R.C. 124.34 Order of Removal issued to Appellant stated as grounds for his removal:

Insubordination, failure of good behavior, unnecessary shouting, and willful neglect of assigned duties. Ken became argumentative, disrespectful, and loud with his direct supervisor. He refused to carry out assigned duties prior to the argument. Upon investigation of Ken's work files (cases) they were lacking the necessary documentation required by law.

**CONSOLIDATED STATEMENT OF THE CASE  
AND FINDINGS OF FACT**

At the time of his termination on June 18, 2014, Appellant was employed by Appellee Crawford County Board of Commissioners as an Adult Protective Services (APS) worker with the Crawford County Department of Job and Family Services (JFS). His position was classified as a Social Services Worker 2. Appellant's immediate supervisor at that time was Andy Nigh.

Appellant was employed by Crawford County JFS for approximately eight and one half years prior to his termination and during his tenure had received training in performing the duties associated with his position. He had received a copy of and was familiar with the County standards of employee conduct that applied to his employment with the Crawford County JFS. Appellant was familiar with the Ohio Administrative Code (OAC) standards promulgated by the Ohio Department of Job and Family Services (ODJFS) that outlined the manner in which he was required to perform his APS job duties and the timelines and documentation associated with those duties.

Appellant was required by the OAC to maintain current and complete case notes and reports of his APS activities. He was responsible for investigating screened referrals that involved the alleged abuse and neglect of adults aged sixty and older. Appellant worked with the Crawford County Probate Court, local law enforcement and other agencies dealing with elderly constituents to coordinate protective services for those individuals as needed.

For the caseload assigned to him, it was Appellant's practice to maintain some information in an electronic file on the Crawford County JFS computer system and some information in a physical file, pending entry into the computer system. The physical files were kept in a filing cabinet in Appellant's office. Ultimately, all case information was required to be maintained in the electronic file on the Crawford County JFS computer system.

In March and April 2014, Mr. Nigh and the Director of the Crawford County JFS, Linda Bassett, conducted a review of the open cases on Appellant's APS caseload. Mr. Nigh and Ms. Bassett reviewed both the physical files and the electronic files, including information stored in Appellee's document imaging system

and the statewide APS system, and documents found in Appellant's office and concluded that 28 of the 32 cases reviewed did not contain the information required by the OAC to be included in the file. All of the 28 incomplete cases were missing one or more of the following: intent to investigate letters, investigative reports, and case notes.

In addition to performing APS duties, Appellant was one of several employees who monitored child visitations taking place at the agency. Although Appellant was the primary individual tasked with monitoring visitations, his APS responsibilities took priority and other employees were assigned to the task when Appellant's APS duties made him unavailable. JFS staff had the option to monitor visitation either by being physically present in the visitation room with clients or by observing activity in the rooms on the computer monitoring system and it was common practice for staff to perform other incidental administrative tasks while also monitoring visitation.

During a March 24, 2014, workplace discussion between Appellant and Mr. Nigh about Appellant's use of leave time, Appellant became argumentative and threatened to leave work prior to supervising assigned visitations. After being instructed that he was required to stay, Appellant did so. The volume of Appellant's voice was loud enough that an employee in another area overheard his discussion with Mr. Nigh and reported the incident to her supervisor.

Appellant was placed on administrative leave on April 28, 2014. He had notice of and participated in a pre-disciplinary conference on May 28, 2014. Appellant was made aware of the charges against him at the pre-disciplinary conference and had an opportunity to respond to the charges.

Appellant received a two-day disciplinary suspension in August 2013 for insubordination arising from his alleged failure to comply with a supervisor's verbal orders. He received a six-day disciplinary suspension in March 2009 and a ten-day disciplinary suspension in November 2013 for neglect of duty arising from alleged failures to follow up on APS client issues in a timely manner.

## CONCLUSIONS OF LAW

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed was an appropriate response. In weighing the appropriateness of the discipline, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Evidence contained in the record indicates that Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing on May 28, 2014. Appellant had notice of the charges against him and an opportunity to respond to those charges; Appellee hand-delivered the R.C. 124.34 Order of Removal to Appellant on June 18, 2014. Accordingly, I find that Appellant's due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's removal was based upon charges of insubordination, failure of good behavior, unnecessary shouting, and willful neglect of assigned duties, arising from two separate instances: Appellant's discussion with

Mr. Nigh on March 24, 2014, and Appellant's alleged failure to properly maintain his APS caseload files, as determined by Mr. Nigh and Ms. Bassett's investigation in March/April 2014.

Testimony at record hearing indicated that on March 24, 2014, Appellant became argumentative and loud during a discussion with Mr. Nigh about Appellant's use of leave time. Although Appellant threatened to leave work prior to supervising assigned visitations, he did not actually do so. Appellee's standards of employee conduct define insubordination as refusing to perform assigned work or comply with written or verbal instructions of supervisors, and/or abusive or threatening gestures or language toward supervisors. Appellant was familiar with Appellee's standards of employee conduct and had previously received a two-day suspension for insubordination in 2013 based upon his alleged refusal to comply with a supervisor's verbal orders. In this instance, Appellant did not ultimately follow through on his initial threat to leave work without performing his assigned duties; I find, however, that Appellee demonstrated by a preponderance of the evidence that Appellant's language and demeanor was threatening and/or abusive toward his supervisor, Mr. Nigh. Such conduct constitutes insubordination, as outlined in Appellee's standards of employee conduct. I further find that Appellant's disruptive workplace behavior may properly be characterized as a general failure of good behavior.

Appellee presented credible and detailed testimony at record hearing to establish that 28 of the 32 APS cases assigned to Appellant did not contain complete documentation and/or reports as required by the Ohio Administrative Code. See, O.A.C. 5101:2-20-02, 5101:2-20-04. Sufficient evidence was introduced at record hearing to establish that Appellant was familiar with the OAC requirements for maintaining APS records. I find that Appellant's failure to maintain case files in accordance with the standards set forth by the Ohio Administrative Code is sufficient to constitute a neglect of duty.

Appellant asserted at record hearing that removal was too harsh a disciplinary response to the charges made against him. He cited as mitigating factors his supervisor's failure to monitor his performance and argued that he was unable to follow up on APS clients and keep his files up to date because of Appellee's assignment of visitation observation duties. Credible testimony was offered to establish that other staff were assigned to monitor visitation when Appellant's APS duties made him unavailable. Testimony and evidence further

established that Appellant was aware of his statutory responsibility to maintain complete and accurate records in his APS case files as well as the need to follow up on APS client issues in a timely manner; an attempt by Appellant to shift responsibility to his supervisor for his own failure to perform the duties of his position is specious.

Based upon a review of all of the information contained in the record, I find that Appellant's conduct was sufficient to constitute insubordination, failure of good behavior and neglect of duty. Given Appellant's previous disciplinary history for similar violations, I further find that removal from employment was an appropriate disciplinary response on the part of Appellee.

Therefore, I respectfully **RECOMMEND** that Appellant's removal from employment with Appellee be **AFFIRMED**.

  
Jeannette E. Gunn  
Administrative Law Judge