

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

Heather Crosier,

Appellant,

v.

Case No. 2014-REM-10-0246

Department of Rehabilitation and Correction,

Appellee.

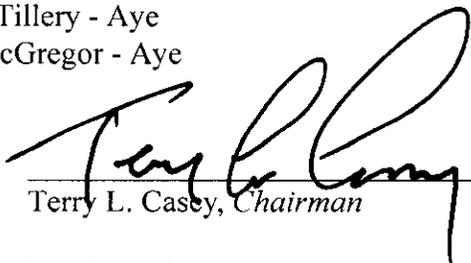
ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal. Following the parties' respective filing of objections and responses thereto, the Full Board conducted an Oral Argument on June 22, 2016. We note that, at Oral Argument, both sides were ably and professionally represented by counsel, who made cogent and persuasive presentations to the Board.

The Full Board has carefully and thorough examined the entirety of the record, including the Report and Recommendation of the Administrative Law Judge, the objections and responses to objections filed in this matter, and the development of the record that arose through Oral Argument. As a result, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** from her position of Program Administrator 2 is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.

Casey - Aye
Tillery - Aye
McGregor - Aye

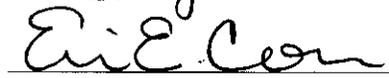


Terry L. Casey, *Chairman*

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 19, 2016.



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 26, 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-10-0246

Transcript Costs: \$576.00 Administrative Costs: \$25.00

Total Deposit Required: * \$601.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: August 3, 2016

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

Heather Crosier,

Case No. 14-REM-10-0246

Appellant

v.

February 19, 2016

Department of Rehabilitation &
Correction, Central Office

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 her removal from employment with Appellee. A record hearing was held in the instant matter on May 6, 2015. Appellant was present at record hearing and was represented by Daniel A. Klos, Attorney at Law. Appellee was present at record hearing through its designee, Superintendent Tracy Reveal, and was represented by Joseph N. Rosenthal and Anna M. Seidensticker, Assistant Attorneys General.

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

"On March 11, 2014, you entered into a Last Chance Agreement (LCA). Pursuant to the terms of the LCA, you agreed if you committed any violation of the performance track of the ODRC SOEC while the LCA was in effect, the appropriate discipline would be termination from employment. You admittedly violated a directive issued by Dr. Tracy Reveal, Superintendent of the Corrections Training Academy that all requests for guest instructors from Chillicothe Correctional Institution (CCI) must be submitted to Amy Hamilton, Warden Asst. at CCI. Your failure to follow the directive is a violation of the ODRC SOEC Rule 7-Failure to follow post orders, administrative regulations, policies, or written or verbal directives and Rule 50-Any violation of ORC 124.34...and for incompetency[.]

inefficiency, dishonesty, drunkenness, immoral conduct[,] insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the Director of Administrative Services or the commission, or any failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office...."

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant was employed by Appellee in a position classified as Program Administrator 2 (PA2), assigned to the Corrections Training Academy (CTA). She was employed in that position from November 2001 until her removal, effective October 2, 2014. Appellant's immediate supervisor was Beth Kreger.

As a PA2, Appellant was responsible for teaching classes at CTA and for recruiting volunteer instructors. Appellant, along with other impacted employees, was notified via an email sent by Superintendent Tracy Reveal on May 12, 2014, that any requests for Chillicothe Correctional Institution (CCI) employees to serve as volunteer instructors should be sent to the Warden's Administrative Assistant, Amy Hamilton. Superintendent Reveal's directive represented a change in standard practice.

In June 2014, Appellant recruited Charity Adkins to serve as a volunteer instructor at CTA; Ms. Adkins was employed by Appellee in a position assigned to CCI. Appellant failed to request Ms. Adkins as a volunteer instructor through Ms. Hamilton, as previously directed by Superintendent Reveal. As a result of her failure to comply with Superintendent Reveal's May 12, 2014, email, Appellant was charged with violations of Rule 7 and Rule 50 of Appellee's Standards of Employee Conduct; both are performance track violations.

Appellant signed a last chance agreement (LCA) on March 11, 2014, that was effective for a two year period. The terms of that agreement specifically provided that, during the agreement's two-year effective period, any violation by Appellant of the performance track of Appellee's Standards of Employee Conduct would result in Appellant's termination from employment. The agreement held in abeyance an Order of Removal issued to Appellant dated March 11, 2014.

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. The standard of proof required by this Board, a "preponderance of the evidence," means that Appellee must produce evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against her, 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. In this instance, evidence established that Appellee procedurally complied with the requirements of the pre-disciplinary process and with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in effectuating Appellant's removal.

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 the Appellant, and that the Appellant violated that standard of conduct. Appellant was removed from employment with Appellee based upon her alleged violation of a last chance agreement. R.C. 124.34(B) provides that where a valid last chance agreement (LCA) exists, this Board has jurisdiction only to determine whether the employee's conduct violated the agreement; if Appellant's actions were sufficient to violate the LCA, then the removal must be affirmed.

Appellant acknowledged that she had received Dr. Reveal's May 12, 2014, email directing staff to send requests for CCI employees to serve as volunteer instructors to Amy Hamilton. Appellant further acknowledged that she failed to comply with Dr. Reveal's instructions when she requested CCI employee Charity

Adkins as a volunteer instructor in June 2014. Accordingly, I find that Appellant violated the standard of conduct that had been communicated to her. I further find that Appellant's violation of that standard of conduct was sufficient to constitute a violation of Appellee's Rule 7 of the Standards of Employee Conduct. A violation of Rule 7 is set forth in Appellee's Standards of Employee Conduct as a violation of Appellee's performance track.

The LCA executed by the parties held in abeyance an Order of Removal issued to Appellant and dated March 11, 2014. As part of the LCA, Appellant agreed to refrain from any further performance-related misconduct. All parties agreed that:

"...if the employee violates this Last Chance Agreement, or commits any violations of the Performance Track of the ODRC Standards of Employee Conduct, the appropriate discipline shall be termination from her position. The Employer/Agency need only prove that the employee violated this agreement and/or the Standards of Employee Conduct."

Appellant asserts, and Appellee does not dispute, that her failure to comply with Dr. Reveal's instructions was a mistake, rather than an intentional or willful act. Under different circumstances, Appellant's intent might be considered a factor mitigating the severity of the discipline imposed. As previously noted, however, where a valid last chance agreement exists, this Board's review is limited to a determination as to whether or not Appellant's conduct violated the agreement. The Board has no authority to modify the discipline imposed.

Accordingly, I find that Appellant's conduct constituted a violation of the performance track of Appellee's SOEC, and a violation of the LCA executed by the parties on March 11, 2014, and in effect at the time of Appellant's removal from employment. Therefore, I respectfully **RECOMMEND** that Appellant's removal from employment be **AFFIRMED**.


Jeannette E. Gunn
Administrative Law Judge