

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Salome Davis,

*Appellant,*

v.

Case No. 2014-REM-12-0299

Perry County Board of Developmental Disabilities,

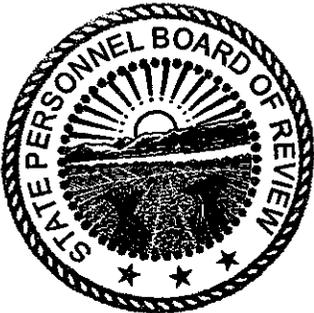
*Appellee,*

**ORDER**

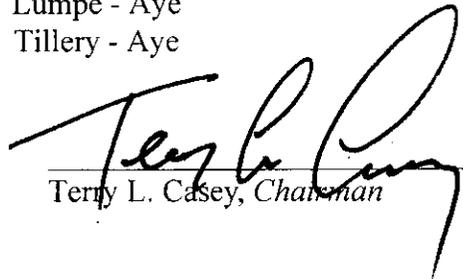
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 is **DISAFFIRMED** and that Appellant be reinstated to her position as Workshop Specialist, pursuant to the authority granted by R.C. 124.03 and R.C. 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, August 17, 2015.

  
\_\_\_\_\_  
Erin E. O'Connell  
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 August 24, 2015.** 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-12-0299

Transcript Costs: \$193.50 Administrative Costs: \$25.00

Total Deposit Required: \* \$218.50

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: September 1, 2015

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

Salome Davis,

Case No. 14-REM-12-0299

*Appellant*

v.

May 13, 2015

Perry County Board of Developmental  
Disabilities,

*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 April 9, 2015. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Superintendent David C. Couch, and was represented by Stephen P. Postalakis, Attorney at Law.

Appellant was removed from employment with Appellee effective December 23, 2014. The R.C. 124.34 Order of Removal issued to Appellant stated as grounds for her removal:

Failure to report to work: Discipline Policy 417 states; "Unexcused absence from work or failure to report off work for any absence" is a Group II Offense. Ms. Davis was scheduled to report to work on 10/21/14 at 7:00am and did not report to work at that time, nor did Ms. Davis report the tardiness/absence until her supervisor initiated the contact

Insubordination: Discipline Policy 417 states: "Insubordination by refusing to perform assigned work or to comply with written or verbal instruction of the supervisors" is a Group III Offense. Ms. Davis was instructed by her supervisor to attend Medication Administration Certification training and failed to report to work, as instructed)

Upon review of the responses and substantiated charges detailed in the 11/24/14 Pre-disciplinary Conference Report and given the fact there is a significant history of discipline, including multiple suspensions, Ms. Davis is being removed from her position with Perry Co. Board of DD as a Workshop Specialist.

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

Appellant was employed by Appellee, Perry County Board of Developmental Disabilities, as a Workshop Specialist at its Adult Services Vocational Center, PerCo. Appellant had direct contact with clients served by PerCo and was responsible for personal care and work direction for six to twelve clients on a daily basis. In October 2014, Appellant's regular work schedule was 8:30 a.m. to 3:00 p.m.

As a Workshop Specialist, Appellant was responsible for administering medication and performing nursing tasks for clients as authorized and assigned. Appellant was required to maintain a current certification for Medication Administration in order to carry out these duties.

Appellant registered on her own initiative for a Medication Administration Certification training class to be held by the Mid East Ohio Regional Council (MEORC), a third party organization, at PerCo on October 21, 2014, from 7:00 a.m. to 10:00 a.m. As a courtesy, Appellant's direct supervisor sent an email reminder about the October 21 training several days in advance and a text message the day before the class to the individuals he supervised who were registered to attend, including Appellant.

Appellant failed to arrive at PerCo at 7:00 a.m. on October 21, 2014, and her supervisor sent her a text message to ask where she was. Appellant indicated to her supervisor that she had simply forgotten about the training class. When she arrived at PerCo shortly after 8:00 a.m., Appellant was denied access to the training class by the instructor. Appellant remained at PerCo until the beginning of her regular work schedule and worked her normal hours that day.

Appellant subsequently scheduled, paid for and attended another training class in order to fulfill the requirements for her Medication Administration Certification. Her certification did not lapse and her job duties were not interrupted because she lacked necessary certification.

Appellant had previously received multiple warnings and discipline for attendance-based rule infractions. She was familiar with Appellee's Employee Policies.

### **CONCLUSIONS OF LAW**

In any disciplinary appeal before this Board, Appellee bears the burden of establishing certain facts by a preponderance of the evidence. 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 upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, 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 or 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. Uncontroverted evidence contained in the record indicates that Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing on November 24, 2014. Appellant had notice of the

charges against her and an opportunity to respond to those charges. The record further indicates that a copy of the R.C. 124.34 Order of Removal was signed by David Couch, Superintendent of the Perry County Board of Developmental Disabilities, hand-delivered to Appellant on December 9, 2014, and was effective on December 23, 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 an alleged unexcused absence from work/ failure to report off work and insubordination, arising from a failure to attend a training class scheduled to take place at 7:00 a.m. on October 21, 2014. Specifically, Appellee alleged that Appellant's actions violated Discipline Policy 417.

No evidence was presented at record hearing to establish that Appellant's attendance at the October 21, 2014, Medication Administration Certification training class was mandated by Appellee. Testimony at record hearing established that Appellant registered for the class on her own initiative, rather than at the direction of her supervisor. Her supervisor, Jay Barnhart, observed that he forwarded reminders about the class to Appellant and the other individuals under his supervision who were registered for the class as a courtesy. Mr. Barnhart further observed that it was Appellant's personal responsibility to maintain the appropriate certification for her position. Appellant arrived in a timely manner for and worked her normally scheduled hours on October 21, 2014.

Appellee failed to establish that it relied in any way on Appellant's expressed intention to attend the October 21, 2014, training class. It did not show that it had incurred any unreimbursed expense associated with Appellant's registration or that it had been required to schedule additional staff to perform Appellant's work duties while she participated in the class. Appellee did not show that it had taken administrative action to adjust Appellant's work schedule for October 21, 2014, or that she had been given a direct order or otherwise notified that it was a work requirement that she attend the training class. Appellant's certification remained current at all times and her duties were not interrupted by her failure to attend the October 21 class.

Salome Davis  
Case No. 14-REM-12-0299  
Page 5

Accordingly, I find that Appellant's conduct was not sufficient to constitute an unexcused absence from work or failure to report off work, nor did it constitute insubordination. Appellee failed to demonstrate by a preponderance of the evidence that Appellant violated its established standards of conduct.

Therefore, I respectfully **RECOMMEND** that Appellant's removal be **DISAFFIRMED** and that Appellant be reinstated to her position as Workshop Specialist, pursuant to the authority granted by R.C. 124.03 and R.C. 124.34.



Jeannette E. Gunn  
Administrative Law Judge