

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

William J. Fitzpatrick,

*Appellant,*

v.

Case No. 2014-SUS-09-0236

Franklin County Sheriff,

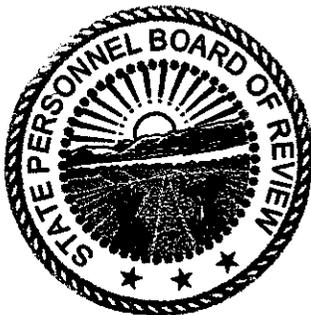
*Appellee,*

**ORDER**

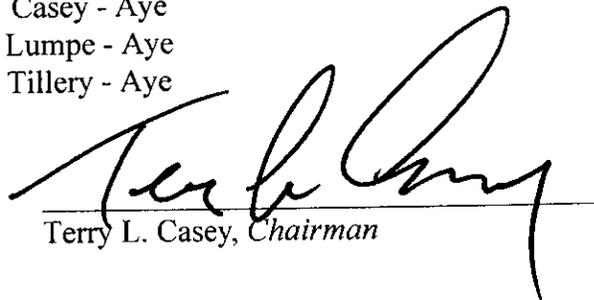
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 ten-day suspension is **AFFIRMED**.



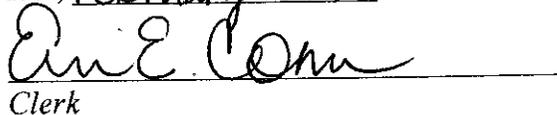
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, February 29, 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 March 7, 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-SUS-09-0236

Transcript Costs: \$504.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$529.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: March 15, 2016

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

William J. Fitzpatrick

Case No. 14-SUS-09-0236

*Appellant*

v.

October 30, 2015

Franklin County Sheriff

Jeannette E. Gunn

*Appellee*

*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 a ten-day suspension. A record hearing was held in the instant matter on January 14, 2015. Appellant was present at record hearing and was represented by Daniel H. Klos, Attorney at Law. Appellee was present at record hearing through its designee, Assistant Human Resources Director Joel Bradley, and was represented by Assistant Prosecuting Attorney Denise L. DePalma.

The Order of Suspension issued to Appellant stated as grounds for his suspension:

Violating the following regulations: AR102.8 Insubordination, AR 102.9 Neglect/Inattention to Duty and AR102.12.2 Communication Through Channels/Reports, 102.43 Low or Substandard Performance and 280.1 Email Use and Maintenance. You submitted a report on June 26, 2014 which contained errors. Your name was placed on the dry erase board in the roll call room indicating his need to correct his report. Corporal Pak sent an email on June 26, 2014 detailing the corrections that needed to be made to the report. Corporal Pak sent another email on June 30, 2014 at 2:29 a.m. (which was the Sunday June 29 duty day for third shift) reminding you to correct your report and instructing you to have it fixed by the start of your next shift. You did not respond until after your next shift had begun and you had been contacted directly by Corporal Pak. You did not check your

email on June 26, 2014 or June 29, 2014 (June 29 duty day). You also did not check the dry erase board in the roll call room at the beginning of your shift on June 29 or June 30, 2014. As a result, you did not correct your report as instructed by the beginning of your shift o[n] duty day June 30, 2014.

On July 1, 2014 (duty day of June 30, 2014) Deputy Fitzpatrick marked off with a suspicious female at the Speedway on 3008 Noe Bixby Rd. He ran a records check on her which came back clear. After her records check came back clear, Deputy Copas marked that he had a resister at Nafzger Park which is at 2845 Noe Bixby Rd and that he needed another car. Deputy Fitzpatrick stated he did not hear the location even though it was given at the same time that Deputy Copas marked that he had a resister. Deputy Fitzpatrick then failed to ask for Deputy Copas' location or if more cars were needed.

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

Appellant has been employed by Appellee for approximately twenty-three years. At the time of the incidents forming the basis for this discipline, Appellant was assigned to third shift; third shift hours begin at 11:00 pm and conclude the following day at 7:00 am. Appellant's immediate supervisor was Corporal Shawn Pak.

Appellant submitted Report 5294 at 5:50 am on June 26, 2014 (June 25/26 shift), approximately one hour prior to the end of his shift. Upon review of the report, Corporal Pak determined that there were several errors in the report that caused it to be rejected by the Justice Portal computer system. Reports that are rejected by the computer system will not print off to the Detective Bureau until corrected. Corporal Pak sent an email to Appellant on June 26, 2014, at 11:55 pm apprising him of errors in the report. The June 26 email did not specifically instruct Appellant to correct the report and did not establish any deadline for corrections to be made. Corporal Pak also posted Appellant's name on the dry erase board in the roll call room indicating the need to correct the report; Appellant testified that he did not know his name was on the board and noted that he typically stands at or outside the door for roll call.

Appellant did not correct Report 5294 during his next shift, which started on the evening of June 26, 2014 (June 26/27 shift). He asserted that he was unable to access his email during the June 26/27 shift due to computer problems. Because Appellant had not yet corrected the report or otherwise responded to his June 26 email, Corporal Pak sent Appellant a second email during Appellant's next scheduled shift (June 29/30 shift). In that email, sent at 2:29 am on June 30, 2014, Corporal Pak instructed Appellant to correct his report by the start of his next shift (June 30/July 1 shift). Appellant did not respond to Corporal Pak's June 30 email until after his June 30/July 1 shift had begun. After receiving an MDT instant message from Corporal Pak regarding the errors in his report, Appellant attempted unsuccessfully to fix the errors. Later in his shift, Appellant tried again to correct the errors and was successful on his second attempt.

Appellant confirmed that he knows he is required to check his email at least once during each shift and that he is required to report to the roll call room at the beginning of each shift.

On July 1, 2014, at 1:27 a.m. Appellant marked out with a suspicious person wandering through the parking lot of the Speedway gas station located at 3006 Noe Bixby Road. Appellant ran a check that came back at 1:30 a.m. showing the individual had no warrants. Appellant determined that the individual had no transportation or money for cab fare and was concerned that she could not get home safely.

At 1:33 a.m. Deputy Copas marked that he had a resister on the ground in Nafzger Park, approximately 200 yards from Appellant's location at the Speedway station, and needed a car for transport. Nafzger Park is located at 2845 Noe Bixby Road, approximately 200 yards from Appellant's location at the Speedway gas station. Appellant testified that he heard Deputy Copas' request but did not hear his location because he was outside his cruiser and the volume on his walkie talkie was turned down. He did not contact the dispatcher to ascertain Deputy Copas' location and explained that he did not want to interfere with radio traffic on the channel.

Deputy Copas received an almost instantaneous response from two other units indicating that they were en route and did not rebroadcast his request for assistance. At 1:35 Deputy Copas marked that he had the resister in custody and told the responding cars to slow down. Appellant testified that he thought Deputy

Copas was in a different location near I-70 and Hamilton Road until he saw the responding units pass his location and turn into the park entrance. The responding units marked on scene at approximately 1:37 a.m.

Appellant confirmed that he is familiar with Appellee's Rules of Conduct and knows that violation of any rule is cause for discipline. He had notice of the charges made against him and an opportunity to respond during a pre-disciplinary hearing that took place on August 12, 2014.

Active discipline in Appellant's file included two written reprimands and a three-day suspension. Appellant's previous discipline was based on a failure to provide information during a pursuit, absenteeism, failure to provide name and badge number, and failure to report to roll call.

### **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 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, 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 both that Appellant's due process rights were observed and that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in effectuating Appellant's ten-day suspension.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's suspension was based upon violations of Appellee's work rules, specifically AR102.8 Insubordination, AR 102.9 Neglect/Inattention to Duty and AR102.12.2 Communication Through Channels/Reports, 102.43 Low or Substandard Performance and 280.1 Email Use and Maintenance.

Appellee asserted that Appellant's failure to promptly respond to Corporal Pak's email by fixing the errors found in Report 5294 constituted a violation of AR 102.8, AR 102.9, AR 102.12.2 and 280.1. Appellee's Administrative Rule 102.8 Insubordination provides that personnel shall promptly obey any lawful order(s) of a superior officer and any orders relayed from a superior officer by an officer of the same or lesser rank. Administrative Rule 102.9 Neglect or Inattention to Duty requires personnel to give suitable attention to the performance of all assigned duties, and not to engage in activities or personal business which would cause them to neglect or be inattentive to duty. Deputies are also required to take appropriate action on the occasion of a crime, or any act, which deserves police attention, in compliance with R.C. 2921.44, Dereliction of Duty.

Administrative Rule 102.12.2 Communication Through Channels/Reports provides that personnel shall submit all necessary reports on time and/or before reporting off duty in accordance with established office procedures. Reports shall be truthful and complete and no one shall knowingly enter or cause to be entered any inaccurate, false or improper information or alter, remove or destroy any report once filed for the purpose of obstructing justice, misleading superior officers or altering the natural order of information.

280.1 requires employees to log into a County computer and the County e-mail exchange at least one time during each duty shift. The policy also provides that an employee encountering issues while attempting to log in and/or check email is required to notify his supervisor and request service using the IT ticket system.

Finally, the policy notes that failure to follow instructions, directions or orders given in an email may be grounds for discipline.

Appellant testified that he knew he was required to check his email at least once each shift and conceded that he did not do so on his June 26/27 shift. Although he indicated that he was unable to access his email, no evidence indicated that he either notified his supervisor of the problem or requested an IT service ticket. Testimony and evidence indicate that, although Corporal Pak's initial email to Appellant contained instructions for correcting the errors in Report 5294, it did not directly order him to make corrections within a specific time frame. Appellant's failure to check his email on June 26/27 violated Rule 280.1, but I find that it did not constitute insubordination (AR Rule 102.8).

On June 29/30, insufficient testimony and evidence was presented to establish whether Appellant did or did not check his email; Corporal Pak's second email was sent at 2:28 am on June 30 and instructed Appellant to make corrections to his report before the start of his next shift. Corporal Pak contacted Appellant by MDT instant message on June 30 after the start of Appellant's shift. After that communication Appellant attempted to immediately correct his report but was unsuccessful; he successfully completed his corrections prior to the end of his June 30/July 1 shift. Absent evidence or testimony demonstrating that Appellant was aware of Corporal Pak's June 30 email prior to his receipt of Corporal Pak's MDT instant message, I find that Appellant's failure to correct Report 5294 by the beginning of his June 30 shift did not constitute insubordination, as that rule appears to imply that an order has actually been communicated to the employee. I note that Appellee's email policy does not require that an employee check his email at any particular time during a shift.

Corporal Pak also posted Appellant's name on the dry erase board in the roll call room to notify him that Report 5294 contained errors. Appellant indicated that he was unaware that his name was posted on the roll call board because he does not typically enter the roll call room when reporting for duty at the beginning of his shift. I find that Appellant failed to give suitable attention to the performance of his assigned duties, as prohibited by AR 102.9 Neglect or Inattention to Duty.

AR 102.12.2 Communication Through Channels/Reports requires employees to submit timely and complete reports in accordance with office procedures. It prohibits the knowing entry of inaccurate, false or improper information or alteration,

removal or destruction of a filed report for the purpose of obstructing justice, misleading superior officers or altering the natural order of information. Evidence demonstrated that Appellant filed Report 5294 in a timely manner and no testimony was presented to indicate that Appellant had knowingly provided inaccurate, false or improper notification. Accordingly, I find that Appellant's actions did not violate AR 102.12.2

Appellee also asserted that Appellant's failure to respond to Deputy Copas' assistance call on July 1, 2014, violated AR 102.9 Neglect/Inattention to Duty and 102.43 Low or Substandard Performance. Administrative Rule 102.9 Cause for Suspension or Dismissal provides that Appellee's employees will hold their positions during good behavior and efficient service, but may be suspended or dismissed for misfeasance, malfeasance, or nonfeasance or for cause as contained in Chapter 124, Ohio Revised Code, or Civil Service Rules. Low or substandard performance is one of the qualifying types of rule violations set forth in subsection 102.43.1.

Appellant acknowledged that he did not respond to Deputy Copas' assistance call on July 1, 2014, stating that he did not initially hear Deputy Copas' location because he was outside his cruiser when the call was broadcast. He explained that he did not contact dispatch to rebroadcast the location because he wanted to keep the radio channel clear for other traffic. Testimony at record hearing indicated that, at a minimum, Appellant could have contacted dispatch on another channel to determine Deputy Copas' location and that all officers in Deputy Copas' zone were expected to respond until they knew the requesting officer was secure. I find that Appellant's failure to respond to Deputy Copas' assistance call on July 1, 2014, violated AR 102.9.

To summarize the foregoing analysis, I find that Appellee has met its burden of proof with regard to Appellant's alleged violation(s) of AR 102.9 Neglect/Inattention to Duty and 280.1 Email Use and Maintenance as related to Appellant's failure to correct Report 5294 in a timely manner. I further find that Appellee has met its burden of proof with regard to Appellant's alleged violation of AR 102.9 as related to his failure to respond to Deputy Copas' assistance call on July 1, 2014. Taken together, I find that Appellant's conduct is sufficient to constitute substandard performance, as referenced by AR 102.43.

In determining whether Appellee's imposition of a ten-day suspension was an appropriate disciplinary response, the Board should consider not only the

seriousness of Appellant's infractions but also his prior work record and/or disciplinary history, his employment tenure, and any evidence of mitigating circumstances. Appellant is a twenty-three year veteran of the Sheriff's Office, with active discipline consisting of two written reprimands and a three-day suspension. In mitigation, Appellant observed that he took prompt action to correct the errors in Report 5294 once he became aware of them. Appellant noted in response to the July 1, 2014, incident that although Deputy Copas indicated that he had a resister, his assistance request was only for another car to transport the individual. He also noted that two units responded en route to Deputy Copas' call within a matter of seconds, marking on-site within two minutes after being told by Copas to slow down. Appellant presented no evidence to demonstrate that similarly situated employees had been treated disparately.

The more serious of the two incidents which formed the basis for Appellant's discipline is Appellant's failure to properly respond to Deputy Copas' assistance call. In this instance, the mitigating factors cited by Appellant are what make a ten-day suspension appropriate, rather than a more severe disciplinary response.

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that Appellant's ten-day suspension be **AFFIRMED**.

  
Jeannette E. Gunn  
Administrative Law Judge