STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Sherri A. Allen,

Appellant,

v. Case Nos. 2014-TFR-06-0127
2014-RED-06-0128

Department of Public Safety,

Appellee,

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 reduction in position be **MODIFIED** to a written reprimand, and that her transfer within Appellee's Office of Personnel from a position classified as Program Administrator 2 to a position classified as Administrative Professional 4 be **DISAFFIRMED**.

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, September 29, 2015.

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 October 6, 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 Numbers: 2014-TFR-06-0127 & 2014-RED-06-0128

Transcript Costs: $289.50 Administrative Costs: $25.00

Total Deposit Required: * $314.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: October 14, 2015

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Sherri A. Allen	Case Nos. 14-TFR-06-0127 14-RED-06-0128
Appellant	
v.	August 27, 2015
Department of Public Safety, State Highway Patrol	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on due to Appellant's timely appeal of her disciplinary reduction and transfer. A record hearing was held in the instant matters on November 12, 2014. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Program Administrator 3 Laura Mourne, and was represented by Ryan D. Walters and Abigail J. Ledman, Assistant Attorneys General.

Appellant was reduced in position from the classification of Program Administrator 2 to Administrative Professional 4 and reassigned within Appellee's Office of Personnel effective June 20, 2014. The R.C. 124.34 Order of Reduction issued to Appellant stated as grounds for her reduction and reassignment:

> As a result of administrative investigation AI #2014-0277, the Employee was found to be inefficient in preparing for the CALEA assessment and failed to notify supervisors that she was not adequately prepared for the CALEA assessment.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant was employed by Appellee in a position classified as Program Administrator 2 (PA2) from March 2013 until June 20, 2014. Appellant was responsible for acting as Appellee's CALEA (Commission on Accreditation for Law Enforcement Agencies) Accreditation Manager, and for maintaining and managing OSHP policies and procedures. Effective June 20, 2014, Appellant was reduced in

position from Program Administrator 2 to a position classified as Administrative Professional 4; she had no prior disciplinary history. Appellant's reduction was premised upon her alleged inefficiency in preparing for Appellee's April 2014 CALEA assessment, and failure to notify supervisors that she was not adequately prepared for the assessment.

CALEA is an independent accrediting authority that develops national public safety standards for law enforcement professionals. CALEA accreditation is a voluntary process that benefits Appellee by creating agency accountability and reduced liability. In order to maintain accreditation with CALEA, agency policies and procedures are reviewed by an on-site CALEA assessor every three years.

Appellee's most recent CALEA audit was in April 2014; that audit was the first in which Appellant participated as Accreditation Manager. Appellant was responsible for monitoring Appellee's policies to determine their compliance with CALEA standards, maintaining documents demonstrating proof of compliance with those standards ("proofs") over the three year period being reviewed, and developing policies and procedures to reflect new CALEA standards. Appellant was also responsible for familiarizing Appellee's employees with the accreditation process and for providing new employees with accreditation information. She was required to submit an annual report to CALEA and to coordinate CALEA audits. As Accreditation Manager, Appellant was responsible for performing all of the tasks related to the CALEA process and did not supervise any other employees who performed duties related to CALEA accreditation.

Prior to her 2013 appointment to the PA2 position, Appellant occupied a position classified as a Publication Specialist 2 (PS2). When she began working in the PS2 position in 2006, Appellant was one member of a three-person unit that performed duties related to CALEA accreditation. Appellant was initially responsible for gathering proofs from field posts and General Headquarters sections, while the two other employees in the unit maintained the policies and procedures.

In 2011, one of the employees who maintained policies and procedures retired and supervision of the CALEA unit was transferred to Captain Arthur Combest, in Appellee's Office of Field Operations. Captain Combest performed the policies and procedures duties previously assigned to the employee who had retired until he was placed on medical leave in December 2012; at that time, the responsibility for maintaining policies and procedures was added to Appellant's duties and she became the only employee performing duties related to CALEA accreditation. Captain Combest returned to active duty in February 2013, and

supervision of the CALEA unit was transferred shortly thereafter to the Office of Personnel. Appellant continued to perform duties associated with CALEA accreditation and was promoted to the PA2 position in March 2013. Appellant was supervised by Staff Lieutenant Heidi Marshall for approximately six months before supervisory responsibility was reassigned to Laura Mourne.

During the three year period preceding the April 2014 CALEA audit, Appellee transitioned from maintaining CALEA records in paper form to maintaining CALEA records electronically. At Appellant's request, two employees were assigned to assist her with the transition by scanning "proofs" into the computer and highlighting policies. Appellant provided general updates on the status of her projects at the weekly section staff meetings she attended with her direct supervisor and Captain Crispen, executive officer for the Office of Personnel. While Appellant mentioned that assistance would be appreciated, she never indicated during the staff meetings that she was either behind in her work or overwhelmed by her duties. Appellant did request that her duties related to OSHP policy maintenance be suspended to allow her to focus on the upcoming CALEA assessment.

Shortly after Laura Mourne became Appellant's direct supervisor in late 2013 or early 2014, Captain Crispen instructed her to work with Appellant to create a checklist for the upcoming CALEA audit. After developing the checklist, Ms. Mourne and Appellant worked on preparing materials for the audit. Appellant complied with all of the directives given to her by Ms. Mourne.

In the process of responding to a February 2014 pre-audit request for files from the CALEA lead assessor, it was determined that approximately one-third of the CALEA files were incomplete and lacked "proofs" from prior years or other required information. Appellant indicated that some of the documents previously scanned into the computer had been lost following a computer migration and some were filed incorrectly by the employees assisting her. Captain Crispen subsequently gave Appellant and Ms. Mourne a directive to have the files completed by April 1, 2014. By working overtime and with assistance from additional personnel, Appellant and Ms. Mourne were able to meet Captain Crispen's deadline.

The on-site CALEA audit took place in mid-April 2014 as scheduled and Appellee was subsequently reaccredited by CALEA. Assessors indicated at the time of the audit, however, that Appellee did not meet the standard for accreditation "with excellence." Following the audit, Appellant was placed on a Performance Improvement Plan as the result of receiving an overall rating of "Needs Improvement" in her annual performance review.

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 that Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing on or about June 16, 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 Reduction was signed by the Director of the Ohio Department of Public Safety and hand-delivered to Appellant on June 20, 2014, which was the effective date of the employment action. 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 her alleged

inefficiency in preparing for Appellee's April 2014 CALEA assessment, and failure to notify supervisors that she was not adequately prepared for the assessment. Upon a review of the R.C. 124.34 Order provided to Appellant, I find that the Order contains no reference to a specific work rule which Appellant is alleged to have violated, and cites none of the infractions listed in R.C. 124.34 which may form the basis for discipline of a classified civil servant other than inefficiency. Accordingly, this Board's review must be limited to a determination as to whether or not Appellee had an established standard of conduct related to inefficiency that was communicated to Appellant, whether or not Appellant's conduct violated that standard, and whether or not the discipline imposed upon Appellant was an appropriate response by Appellee.

No evidence or testimony was presented to identify a specific policy or rule defining the term "inefficient." The word "inefficient" is commonly defined as "not capable of producing desired results without wasting materials, time, or energy" ("Inefficient." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 26 Aug. 2015. http://www.merriam-webster.com/dictionary/inefficient). The facts of the case indicate that multiple employees were required to either work overtime or adjust their schedules in order to prepare for the 2014 CALEA audit. Although there was some testimony to indicate that a flurry of last-minute preparation was common, Appellee produced sufficient evidence to establish by a preponderance that the level of extra work required to prepare for the 2014 audit was significant and excessive. Accordingly, I find that Appellee has demonstrated that Appellant's conduct and job performance was inefficient and violated a general standard of conduct.

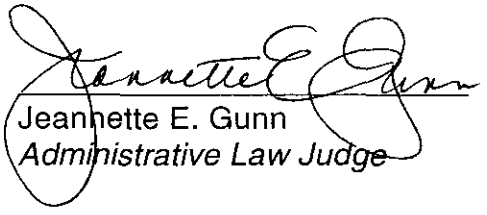
Appellant outlined a number of mitigating factors to support her argument that the discipline imposed by Appellee was excessive. She testified, and Appellee did not dispute, that she had asked the individuals who supervised her prior to Ms. Mourne for assistance in performing her CALEA job duties prior to Fall 2013, but had received only minimal help.

Appellant also pointed out that during the period prior to the 2014 CALEA assessment Appellee was transitioning from keeping its CALEA records in paper files to storing them electronically; she identified several problems associated with this process, including a loss of files due to computer migration and misfiling of documents by individuals who helped her with document scanning. I further note that Appellant had held the position of CALEA Accreditation Manager for approximately one year prior to the 2014 assessment and had not yet participated in an audit in that capacity.

No testimony or evidence was introduced to demonstrate that Appellant acted maliciously or with an intent to deceive her supervisors. Appellant complied with all of the directives she received from Ms. Mourne and Captain Crispen.

Appellee retained its CALEA accreditation. Although Appellee noted that it was not reaccredited "with excellence," conflicting testimony failed to establish whether Appellee had been accredited "with excellence" in the past. Appellee failed to demonstrate any tangible harm arising from its failure to be accredited "with excellence" by the 2014 assessment. Accordingly, based upon a review of the totality of the testimony and evidence, I find that Appellee's disciplinary response was too harsh.

Therefore, I respectfully **RECOMMEND** that Appellant's reduction in position be **MODIFIED** to a written reprimand, and that her transfer within Appellee's Office of Personnel from a position classified as Program Administrator 2 to a position classified as Administrative Professional 4 be **DISAFFIRMED**.



Jeannette E. Gunn
Administrative Law Judge