

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

Jonathan Welch,

*Appellant,*

v.

Case No. 2015-REM-03-0033

Ohio State University,

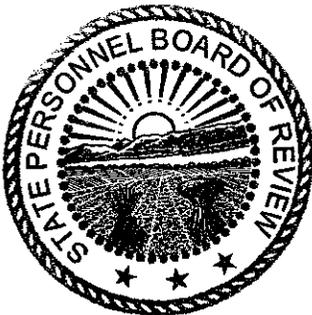
*Appellee,*

**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge (ALJ) in the above-captioned appeal. Further, the Full Board scheduled an Oral Argument in this matter to be held on October 14, 2015. Appellee appeared at Oral Argument through its counsel. Appellant failed to appear. Appellee then moved for the Board to adopt the recommendation of the ALJ and affirm the instant removal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the ALJ, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the ALJ.

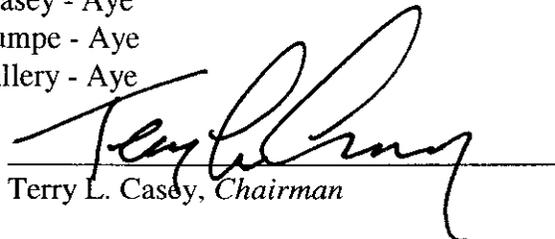
Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** from the position of Patient Revenue Cycle Specialist be **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.



Casey - Aye

Lumpe - Aye

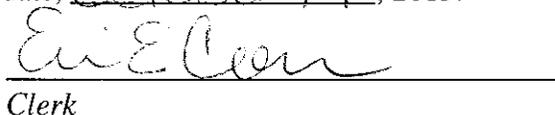
Tillery - Aye

  
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, October 14, 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 21, 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: 2015-REM-03-0033

Transcript Costs: \$295.50 Administrative Costs: \$25.00

Total Deposit Required: \* \$320.50

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: October 29, 2015

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

Jonathan Welch,  
*Appellant*

Case No. 2015-REM-03-0033

v.

July 27, 2015

Ohio State University,  
*Appellee*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This case came to be heard on July 15, 2015. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Ohio State University (OSU), Wexner Medical Center, was present through its designee, Marc Stoffel, Human Resources Consultant, and was represented by Wendy K. Clary and Abigail J. Ledman, Assistant Attorneys General.

This cause comes on due to Appellant's March 25, 2014 timely filing of an appeal of his removal from the position of Patient Revenue Cycle Specialist with the Ohio State University Wexner Medical Center (OSUWMC). Appellant's pertinent R.C. 124.34 Order of Removal was served upon Appellant on March 20, 2015 and was effective on March 21, 2015.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.34.

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

The pertinent language in Appellant's R.C. 124.34 Order of Removal states:

Failure of good behavior: You received a Level Two Notice on September 25, 2014 for conduct unbecoming. Since that time, on February 10, 2015, you initiated a verbal exchange with your coworker in which you demonstrated unprofessional workplace conduct. Your actions are contrary to the established OSUMC Standards of Employee Conduct, and demonstrate a continued failure of good behavior.

Five witnesses testified at hearing.

First to be called by Appellee was **Jonathan Welch**, the Appellant in this current matter.

Next to be called was **Shannon Haager**, Associate Director of Patient Access Services. Ms. Haager served as Appellant's indirect supervisor.

Next to be called was **Roderick Eckle, III**, Admitting Supervisor at the OSUWMC, who was Appellant's supervisor from August of 2013 until Appellant's removal on March 21, 2015. Mr. Eckle reports to Ms. Haager in the OSUWMC chain of command

Next to be called was **Keith Calloway**, Employee and Labor Relations Consultant in the Office of Human Resources at OSU. Mr. Calloway was the Hearing Officer for Appellant's pre-disciplinary conference that involved the issues delineated in the instant R.C. 124.34 Order of Removal. Following the conclusion of that pre-disciplinary conference, Mr. Calloway recommended that Appellant be removed.

First to be called by Appellant was **Jessica Drusbacky**, Patient Revenue Cycle Specialist at the OSUWMC. At the time of the incident that resulted in Appellant's removal, Ms. Drusbacky was training Appellant.

Finally, Appellant, **Jonathan Welch**, called himself to offer direct narrative testimony.

Appellee has essentially alleged that Appellant committed two serious breaches of Appellee's Standards of Employee Conduct, the second of which resulted in his removal.

The first alleged breach resulted in Appellant receiving a Level Two Notice, which is the step below termination. *It is the second incident that is currently before this Board.*

At hearing, Appellee introduced Appellee's Exhibit 5, which was a copy of the Level Two Notice Appellant received for the alleged incident which took place on August 12, 2014 (*i.e.* the first incident). The document, which is signed by Appellant, details the alleged incident, includes a "Plan for Improvement" and lists the possible consequences of any future issues.

Appellee's Exhibit 5 states that, in this **(first) alleged incident**, Appellant responded to a request from the Emergency Department Nurse Manager inappropriately and unprofessionally. Specifically, the Level Two Notice states that the Nurse Manager was standing in the doorway and as Appellant exited, Appellant pushed through the Nurse Manager, making shoulder to shoulder contact and knocking her off balance. It further states that Appellant yelled "[W]e get the shaft around here!" in the presence of other employees in the area, where patients could have heard, if they had been present. Finally, it states that Appellant slammed his computer-on-wheels around in the hall.

Upon cross-examination, Appellant admitted that the incident report was accurate, and testified that the incident represented his first-ever anxiety attack.

Appellant subsequently testified that he only made contact with the Nurse Manager because the Nurse Manager had placed her arm across the doorway and refused to let Appellant leave the room. He testified that it was only then that he moved past her as a means to escape the room and current situation and it was then that his shoulder grazed the Nurse Manager.

This entire situation, he averred, resulted from Appellant attempting to pick up one of the pieces of pizza that a physician had purchased for the Emergency Department staff on this opening day. Appellant further averred that the Nurse Manager had chastised Appellant for attempting to procure the pizza and that the Nurse Manager rather vociferously indicated that the physician had bought the pizza for the clinical staff, in other words *not* for the Patient Revenue Cycle personnel.

Appellant also offered that this opening day was filled with tension and stress and could essentially be described as controlled chaos.

The "Plan for Improvement" included in Appellant's afore-mentioned Level Two Notice states:

Jonathan must remain calm and professional at all times with all people with whom he has contact in the workplace. This includes not raising his voice, throwing things, misusing equipment, and not engaging in inappropriate physical or verbal contact with others.

The "Consequences of Further Issues/Impact" section of the Plan states: "Future issues will result in corrective action up to and including termination."

Appellee's Exhibits 7 through 9 detail **the second incident**, which led to Appellant's removal. Appellee's Exhibit 9 is a Corrective Action Form stemming from Appellant's pre-disciplinary conference, which took place on March 12, 2015.

The Corrective Action Form contains a summary of each side's respective presentations to the pre-disciplinary conference.

Paragraph One of that summary indicates:

Specifically, Management explained that on 2/10/15, the employee initiated an argument with his co-worker, Ms. Drusbacky in the Ross Heart Hospital, within the Admissions Office; which is a public area. Management stated that the employee became visibly angry, raised his voice and verbally insulted his co-worker. Management stated that the employee's behavior caused Ms. Drusbacky to become 'shaky and uncomfortable' in the workplace. Additionally, management stated that the employee's voice could be heard by other staff working in the office, including staff who were assisting patients.

Paragraph Three of that summary indicates:

At the hearing, the employee apologized for his behavior on 2/10/15. The employee admitted that he was talking a lot; but maintained that he was not loud. The employee stated that he was 'a nervous wreck' on 2/10/15, because he has been taking on a lot with working and also being in graduate school. The employee stated that he has been close to breaking over the last year ...

The recommendation of the pre-disciplinary conference Hearing Officer, Employee and Labor Relations Consultant Keith Calloway, was that termination of Appellant was appropriate.

Appellant agreed at this Board's hearing that he did have an argument with Ms. Drusbacky on the day in question. Yet, he also insisted that he did not insult Ms. Drusbacky and that he remained calm during the exchange, despite talking in a raised tone.

Appellant testified that Ms. Drusbacky had, in the course of training him, instructed him to act in a way that he believed violated University policy and the law. He stated that he was simply informing her that he did not feel comfortable conducting himself in such a manner.

Appellant also testified that he was not even facing Ms. Drusbacky during this incident and that she was closer to the door than he was. Therefore, he offered, Ms. Drusbacky could have left at any time if she had indeed felt threatened.

Appellant stated that he considered leaving the area before the argument escalated. Yet, he offered, for him to do so, he would have had to walk past Ms. Drusbacky, and he feared this would only exacerbate the situation. Appellant further testified that he believed Ms. Drusbacky's response to his actions was based on her disdain for him as an employee.

During her direct testimony at hearing, Patient Revenue Specialist Jessica Drusbacky stated that, after she listened to Appellant's insults on the day in question, she felt in fear of her safety. She also indicated that she later told Shannon Haager (Associate Director of Patient Access Services and Appellant's indirect supervisor) that Ms. Drusbacky was requesting not to have to work with Appellant again, since Ms. Drusbacky felt fearful in Appellant's presence.

During her testimony on direct, Associate Director Haager confirmed that Ms. Druabacky had indicated that Appellant was confrontational. Ms. Haager also confirmed that, during their conversation regarding Appellant, Ms. Drusbacky was "shaky" and that Ms. Drusbacky asked not want to work with Appellant again.

At hearing, Appellee also introduced Appellee's Exhibit 3, which is "The Ohio State University Medical Center Standards of Employee Conduct". Page 25 and 26. of the Standards contain a section titled "Treat All Employees with Respect, Dignity, and Fairness".

Paragraph One of that section reads, in pertinent part:

It is the responsibility of members of The Ohio State University Medical Center team to create and maintain a work environment in which employees are treated with respect and dignity.

Paragraph Two of that section reads, in pertinent part:

Both managers and staff members have a responsibility to ensure that the work environment is free of harassment or abuse ....

That section also states, at p. 26: "... OSUMC has a zero tolerance policy for disruptive, unprofessional behavior of any staff member and any member of the medical staff." ...

Testimonial and documentary evidence established that Appellant had been sufficiently informed of and trained on the OSUMC Standards of Employee Conduct. Furthermore, testimonial and documentary evidence established that,

after his first incident, Appellant was more than adequately informed of the standard his behavior needed to meet if he was to continue to work for Appellee.

Appellant testified that the first incident was the first time he had suffered a panic attack at work, but that he had been treated for anxiety for an extended period of time before the incident. However, at that time of the first incident, Appellant did not yet have any FMLA documentation on file with Appellee.

After the first incident, Appellee, Appellant, and Appellant's physician worked to put an Accommodation Plan in place for Appellant, as shown in Appellee's Exhibit 6. Nonetheless, Appellant was still aware that outbursts at work would not be tolerated.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth above, whether express or implied.

Next, I note that Appellee has complied with all pertinent procedural due process prerequisites.

Further, I find that the record in this matter demonstrates that Appellant failed to follow the mandates of the OSUMC Standards of Employee Conduct in the incident involving Appellant and Ms. Drusbacky, detailed above.

### **CONCLUSIONS OF LAW**

This case presents the Board with the question of whether an employee, who had already been disciplined for a previous verbal argument and physical interaction with a co-worker, should be removed for a second verbal incident with a co-worker? Based on the findings set forth, above, and for the reasons set forth, below, the Board should answer that Appellant's removal should be affirmed.

R.C. 124.34 (A) sets forth the disciplinable offenses that this Board may consider when reviewing a properly filed appeal from discipline. Among those grounds is any " ... **violation of any policy or work rule of the officer's or employee's appointing authority** ...". (emphasis added)

Unquestionably, Appellant has committed a violation of the OSUMC Standards of Employee Conduct; by being verbally aggressive and hostile toward a

co-worker. Appellant's and Ms. Drusbacky's heated exchange took place in an area where the public could have overheard and where at least one nearby co-worker did become aware of the volume of this exchange.

Further, Appellant's interaction with Ms. Drusbacky violated the standards of action spelled out for him in the Plan for Improvement following the first incident. It is clear from multiple exhibits and testimony, including multiple documents bearing his signature, that Appellant was well aware of Appellee's standards of conduct and the standard to which his actions would be held.

It also follows that Appellee has demonstrated that Appellant committed the R.C. 124.34 disciplinary offense of **failure of good behavior**, as cited in Appellant's R.C. 124.34 Order of Removal; when Appellant engaged in an escalating verbal exchange with his trainer in an area where the public could have overheard and where at least one nearby co-worker did become aware of the volume of same. (Please see, *Black's Law Dictionary*, Deluxe 6<sup>th</sup> Ed., p. 594)

It is important to note that once Appellant's FMLA Accommodation Plan was filed, Appellee did provide Appellant with several workplace accommodations. These accommodations included moving Appellant out of the Emergency Department and into a less stressful environment (*i.e.* to the Ross Heart Hospital). These accommodations also included allowing Appellant to work a four-day week.

Perhaps ironically, it was due to Appellant's transfer to the Ross Heart Hospital that Appellant was receiving standard refresher training (here, from Ms. Drusbacky). The record reflects this training is conducted for all such OSU employees who transfer from one medical area to another.

In mitigation, we may consider that Appellant had been with OSU for more than five 5 years prior to his removal. The record reflects that, aside from Appellant's afore-mentioned Level Two discipline, Appellant had no other prior discipline. Further, Appellant testified that he had always met his monthly quotas and was the top revenue performer for several of his months in his position.

Accordingly, it may prove beneficial for this Board to consider whether it would be efficacious to review Appellant's past performance reviews and Appellant's payment benchmarks; to better understand the quality of Appellant's work. Furthermore, the extant record does not entirely answer the question of whether Appellant is solely responsible for the exchange with Drusbacky or whether, perhaps, OSUWMC management and its supervisory or training representatives may also share at least some of the responsibility for this unfortunate situation.

Finally, it appears that Appellant did care about his job and seemed deeply committed to assisting clients to the best of his abilities.

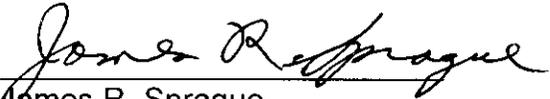
To summarize, it is clear, and I have found, above, that Appellant's behavior in the incident with Ms. Drusbacky violated the OSUMC Standards of Employee Conduct. Further, this violation also constitutes a violation of the two R.C. 124.34 disciplinable offenses noted, above. Both of these R.C. 124.34 offenses are cited in Appellant's R.C. 124.34 Order of Removal.

Additionally, this violation occurred during the course of fairly regular job duties, namely during standard refresher training. Therefore, the context of the violation does not present a special circumstance or justification for Appellant's actions.

Appellant's length of service with OSU, his clean disciplinary record outside of the two incidents, and his expressions of concern for Appellee's clientele are insufficient to override the severity of Appellant's offense. Accordingly, the extant record establishes that Appellant's removal, while unfortunate, is legally justified and appropriate.

### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the instant **REMOVAL** of Appellant from his Patient Revenue Cycle Specialist position with the Ohio State University, Wexner Medical Center, pursuant to R.C. 124.03 and R.C. 124.34.

  
James R. Sprague  
Administrative Law Judge