

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

Lance Maroney,

Appellant,

v.

Case No. 2016-RED-01-0004

Department of Youth Services,

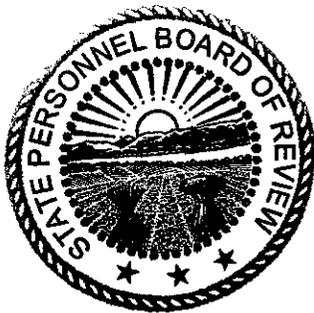
Appellee,

ORDER

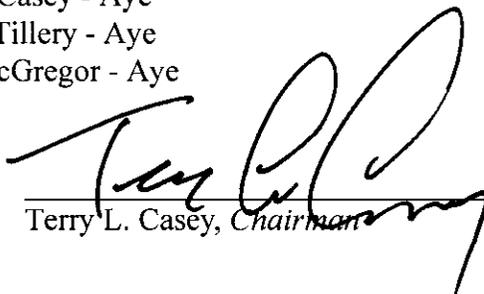
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 **REDUCTION** to Youth Specialist is **AFFIRMED** pursuant to R.C. 124.03 and R.C. 124.34. Further, it is **ORDERED** that Appellee may require Appellant to attend and complete a comprehensive anger management training as soon as practicable.



Casey - Aye
Tillery - Aye
McGregor - Aye

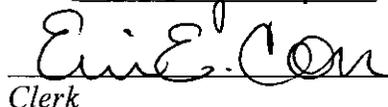


Terry L. Casey, *Chairman*

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 29, 2016.



Eric E. Con
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 5, 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: 2016-RED-01-0004

Transcript Costs: \$480.00 Administrative Costs: \$25.00

Total Deposit Required: * \$505.00

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

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

Lance Maroney

Case No. 2016-RED-01-0004

Appellant

v.

May 18, 2016

Dept. of Youth Services,
Indian River Juvenile Correctional Facility

Appellee

Raymond M. Geis
Administrative Law Judge

James R. Sprague
Chief Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

Appellant, Lance Maroney ("Maroney"), timely appeals his reduction (demotion) from Operations Manager (OM) to Youth Specialist.

A record hearing occurred on May 5, 2016. Maroney appeared and was represented by Dennis J. Neirmann, Attorney at Law. Appellee, Department of Youth Services, Indian River Juvenile Correctional Facility ("DYS"), was represented by Attorneys General Abigail J. Ledman and Matthew J. Karam. DYS Bureau Chief of Facilities and Training Administrator Amy Ast was DYS' designee.

Seven witnesses in addition to Maroney testified in the following order:

First, DYS called Operations Manager Bobby Tucker.

Next called was Psychologist James Buccigross, Ph.D.

Next called was investigator Tim Gillis.

Next called was DYS Deputy Director Ginine Trim.

Next called was DYS Bureau Chief and Training Administrator Amy Ast.

Maroney's counsel first called Operations Administrator Brian Lane.

Next called was Youth Specialist Khristi Cunningham.

Maroney testified last, on his own behalf.

The pertinent R.C. 124.34 Order was served January 8, 2016, became effective on January 9, 2016, and states in pertinent part:

Per the findings of Administrative Investigation #1001150213, it was determined that your actions on or about the date of October 10, 2015 are a violation of departmental work rules, specifically (Continued page 2) Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation Page 2-Lance Maroney Your actions are in violation of the following Policy 103.17 Rule(s) effective July 8, 2009, specifically: Rule 5.09P Violation of Ohio Revised Code 124.34 – performance related including, but not limited to such offenses as incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of the rules of the Director of Administrative Services, any other failure of good behavior, any other acts of misfeasance, malfeasance or nonfeasance in office or conviction of a felony. Rule 5.12P Actions that could harm or potentially harm an employee, youth or a member of the general public. Rule 5.15P Failure of a supervisor to properly supervise. Failure of a supervisor to properly supervise or enforce work rules or review use-of-force incidents. Includes but is not limited to failure to report EEO policy violations and failure to investigate harassment and discrimination complaints and/or situations; failure to properly review use-of-force incident packets and ensure completeness. Rule 5.28P Failure to follow work assignment or the exercise in poor judgment in carrying out an assignment. Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties of the position or the exercise in poor judgment in carrying out an assignment.

STATEMENT OF THE CASE

The instant R.C.124.34 is very confusing because it recites many irrelevant parts of each of the DYS work rules used. Further, it fails to offer any factual description of acts and events leading to the discipline. However, at hearing, DYS showed three videos which plainly illustrate the misconduct alleged.

The videos were shot contemporaneously and from different angles and positions. The videos collectively show that a youth spit on Maroney as he entered the hallway past the Operations Manager office, where the youth was sitting handcuffed against the wall.

The video then shows Maroney retrieving a "spit mask" which is a cloth placed on the youth's face to deflect projectile saliva back on the youth. As Maroney tried to place the mask the youth spit on him again.

Next, the video shows an undeterred Maroney continuing his attempt to encounter the youth. By this time, many staff are on the scene, responding. Another OM, Bobby Tucker ("Tucker"), arrives and pulls Maroney away from the youth.

Maroney is visibly upset and continues his attempt to go back toward the youth. Tucker struggles to keep Maroney away, is actually knocked to the floor during the struggle, and finally escorts Maroney back to the OM office. There, Tucker blocks the door while Maroney seems to gesture that he wants to leave the office. Tucker is heard on the tape saying, "You're not going to lose your job today" repeatedly.

By this time even more staff arrived on the scene. The youth, still in handcuffs, was not very cooperative to say the least.

DYS argues that Maroney had a duty to stand down because he was "tapped out" by Tucker who showed "mutual concern" for Maroney and the youth in attempting to deescalate the situation.

Through video and testimony, DYS attempts to establish that Maroney was angry, that he was a possible threat to the youth, and that his intervention was no longer needed as there was many staff on the scene.

Through testimony by DYS Deputy Director Ginene Trim and DYS Training Administrator Amy Ast, DYS methodically distilled its policies and procedures, including describing in detail the practice of giving "time and distance" to deescalate

a crisis caused by a non-compliant youth. Basically, if a youth is not an imminent threat or present danger to himself or others, staff, including Maroney, are trained to calm the situation or at least not make it worse; by backing off and letting things cool off in lieu of using force.

Indeed, the record demonstrates the recalcitrant youth was handcuffed and against the wall. He certainly was not going to get up and go anywhere very quickly.

Maroney disagrees. He states more or less that he was bound to do his job, whatever it took. He claims he was not going to hurt the youth and was not angry at him. He concedes he was angry at Tucker for unexpectedly coming behind him and pulling him. He admits to saying, "Get the fuck off me, get off me..." to him, when this happened.

Maroney states that the act of spitting is an assault, and that the youth was a danger to him, and possibly others. Maroney more or less implied that he did not know what diseases the youth may have had. Maroney just wanted to place the spit mask so the youth could not assault anyone anymore including him by spitting.

He was just doing his job. In his view, it is not right to penalize him for being persistent. In fact Maroney questions why his colleague Tucker was not the one to receive punishment for assaulting Maroney without good cause.

Additionally, Maroney requests this Board find that he was treated disparately *vis a vis* Tucker. Maroney alleges Tucker was given leniency during this incident and before this incident. Maroney notes that Tucker got a mere written reprimand for patting a youth on the rear end. How can Maroney's misconduct be worthy of demotion in light of comparison, he protests?

DYS objects to using Tucker as a comparator and asserts Tucker did not deserve discipline for restraining Maroney. He deserved accolade in its view. Also, DYS argues that the video conclusively shows there was no crisis situation such that Maroney must immediately place the spit mask.

Dr. James Buccigross testified that he easily saw that Maroney was angry and was not displaying good emotional self-control. Indeed, a reasonable person might conclude that Tucker may have saved Maroney's employment with DYS by his actions.

FINDINGS OF FACT

1. On or about October 15, 2015 a youth spit upon Maroney as Maroney was walking past the OM office.
2. In response, Maroney retrieved a spit mask from the OM office and attempted to apply it and the youth spit upon him again.
3. In response, Maroney began an attempt to reapply the spit mask.
4. Tucker supervised and pulled Maroney away from the youth.
5. In response, Maroney resisted and became angry.
6. At all times relevant, the youth was handcuffed and sitting or lying on the floor of the hallway.
7. Under DYS policies, the youth was not an imminent danger to self or others.
8. Under DYS practice, Tucker tapped Maroney out to indicate that Maroney was relieved and that the matter would be handled by Tucker.
9. Under DYS practice, Maroney had an affirmative duty to "stand down" and retreat in order to provide time and distance to the situation with the non-compliant youth.
10. Other staff arrived on the scene to relieve Maroney.
11. Under DYS OM protocol, prior to being tapped out, Maroney's duty was to supervise staff in their handling of the youth, and not attempt to apply any restraint himself.
12. Maroney willingly decided to administer the spit mask restraint himself in lieu of supervising a planned intervention or employing the "time and distance" de-escalation procedure.

CONCLUSIONS OF LAW

Maroney violated DYS Policy 301.05 regarding use of force when he judged the spitting incident with the youth as an enforcement necessity (that which requires

immediate application of force). (Exhibit 4) The record bears out that the youth was *not* an immediate danger to himself or to Maroney. Moreover, the youth was no threat to Maroney if Maroney used distance to separate himself from the youth. In these instances, Maroney's failure to abide by DYS policy also constitutes Neglect of Duty within the meaning of R.C. 124.34.

After the tap out, Maroney violated Rule 5.15 P by directly attempting to restrain the youth in lieu of overseeing the youth specialists attend to the youth.

Maroney also violated Rule 5.12 P and 5.28 P by continuing to resist Tucker after Maroney knew it was Tucker trying to tap him out and when he still continued to intervene with the youth. This is because Maroney's actions had the potential to harm others and represented poor judgment by becoming the problem, within the textual meaning of DYS work rules.

The final question is whether demotion is an equitable discipline under the circumstances. We say that it is. Deputy Director Trim's testimony is persuasive regarding the emotional skills needed by an Operations Manager for dealing with non-compliant youth.

An OM must have the capacity to stay cool, stick to policy, and direct others instead of taking matters into his own hands. This prevents diverting attention and resources away from the youth.

We do not pretend Maroney's job is easy. We note that Maroney displayed values of dedication, drive and persistence in his testimony. However, these traits did not serve Maroney well in this instance because he misapplied the governing policy.

Maroney acted in a risky fashion to re-engage a youth who spit upon him twice and obviously did not like him. This was not a self-defense or imminent danger situation. Maroney was obligated to apply his training, even if we understand his efforts to get the youth under control.

We trust that DYS policies of time and distance are expertly designed and must be followed to preserve the overall health and safety of staff and youth. Maroney ignored these policies at worst and misapplied them at best.

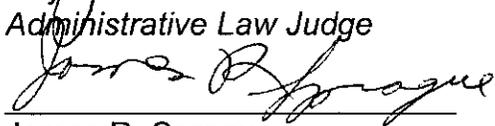
Testimony by Tucker and Ast established that the OM is the crisis manager who organizes, directs, monitors, and redirects staff in compliance with policy. An OM must model obedience to policy and enforce it. Trim testified that it is essential for supervisors to carry out policy correctly in order to preserve the safety and health of youth and employees.

Though we note Maroney had no prior discipline, his relatively short tenure with DYS began only in 2011. On the whole, we think the discipline of demotion (reduction) to the non-supervisory position of Youth Specialist is reasonable.

RECOMMENDATION

Therefore, we respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellant's **REDUCTION** to Youth Specialist, pursuant to R.C. 124.03 and R.C. 124.34.


Raymond M. Geis
Administrative Law Judge


James R. Sprague
Chief Administrative Law Judge