

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

ANGELIKA L. MANZ,

*Appellant*

v.

Case No. 05-SUS-02-0060

DEPARTMENT OF REHABILITATION AND CORRECTION,  
PAROLE AND COMMUNITY 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 record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to this 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 suspension be **AFFIRMED**, pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.



Tracy – Aye  
Lumpe – Aye  
Booth – Aye

  
\_\_\_\_\_  
Roger W. Tracy, *Chairman*

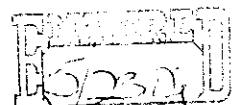
**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(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, May 23, 2006.

  
\_\_\_\_\_  
Dawn Mills  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.



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

Angelika L. Manz,

Case No. 05-SUS-02-0060

*Appellant*

v.

March 24, 2006

Department of Rehabilitation and Correction,  
Parole and Community Services,

Elaine K. Stevenson  
*Hearing Officer*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's timely appeal from her five-day suspension. A record hearing was held in this matter on October 21, 2005. Appellant was present at record hearing and appeared *pro se*. Appellee was present through its designee, David Lomax, Coordinator of the Audits and Investigations Section in the Division of Parole and Community Services. Appellee was represented by Assistant Attorneys General Patrick J. Mehan and Pooja A. Bird.

The jurisdiction of this Board over the subject matter of this proceeding was established pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

The particulars of the O.R.C. 124.34 Order of Suspension issued to Appellant are as follows:

Rule #49 (ORC 124.34) Inefficiency

Rule #7 Failure to follow post orders, administrative regulations, policies or directives.

During an unannounced firearm inspection conducted at the Columbus Regional Office. Your state issued firearm was holstered with a missing chambered round. The single round was located in your purse. You were found in violation of the inspection process at that time.

## STATEMENT OF THE CASE

Appellant testified as if on cross-examination that she has been employed by Appellee for approximately seventeen years. Appellant indicated that she has been a unit supervisor in the Division of Parole and Community Services, Adult Parole Authority, for approximately three years. Appellant stated that she is responsible for supervising five parole officers. Appellant indicated that her job duties include reviewing pre-sentence reports and staffing cases.

Appellant confirmed that, as an employee of Appellee, she was issued a Glock 23 semiautomatic pistol in 2002. Appellant acknowledged that Appellee's APA Firearms Policy requires that she carry a fully loaded semiautomatic pistol, pepper spray, handcuffs, state identification, and an additional two fully loaded magazines. Appellant indicated that a "fully loaded" semiautomatic pistol requires that the employee have a fully loaded magazine inserted in the pistol and one chambered round. Appellant confirmed that she successfully completed weapons training and that she is required to undergo approximately twenty-four hours of continual weapons training each year.

Appellant identified Appellee's Exhibit 16 as a copy of Appellee's Standards of Employee Conduct, effective October 17, 2004, and a copy of her acknowledgment of receipt of those standards. Appellant identified Appellee's Exhibit 17 as a copy of Appellee's Standards of Employee Conduct, effective October 1, 2001, and a copy of her acknowledgment of receipt of those standards.

Upon further cross-examination, Appellant confirmed that during an unannounced firearm inspection conducted in November 2004, Appellee discovered that she did not have a fully loaded weapon. Appellant stated that Appellee discovered that she had one round in her gun bag rather than chambered, as required by Appellee's APA Firearms Policy. Appellant confirmed that her failure to carry a fully loaded weapon was a violation of Appellee's Firearms Policy and therefore a violation of Appellee's Standards of Employee Conduct Rule #7.

Appellant confirmed that she received an oral reprimand in March 2004 for violating Appellee's Standards of Employee Conduct Rule #7. Appellant explained that her March 2004 firearm policy violation was different than the present case because on February 4, 2004 she was not carrying her weapon. Appellant identified Appellee's Exhibit 12 as copy of the oral reprimand she received for violating Rule #7. Appellant noted that the handwritten notation on this document regarding a Rule #49 violation was added after she signed the document.

Appellant confirmed that she received a written reprimand in July 2004 for violation of Standards of Employee Conduct Rules 12, 21, and 49. Appellant identified Appellee's Exhibit 11 as a copy of her letter of written reprimand, dated July 27, 2004.

Appellant identified Appellee's Exhibit 8 as a copy of the Notice of Pre-Disciplinary Meeting she received on December 30, 2004. Appellant identified Appellee's Exhibit 7 as a copy of her signed receipt for the Notice of Pre-Disciplinary Meeting. Appellant identified Appellee's Exhibit 6 as her acknowledgment of notice of waiver of pre-disciplinary hearing. Appellant confirmed that she attended her pre-disciplinary hearing on January 5, 2005, and that she was given an opportunity to respond to the charges made against her concerning her violation of Appellee's Firearms Policy.

David S. Lomax testified that he has been employed by Appellee for approximately eleven years and that he has held his current position of Coordinator of the Audits and Investigations Section for approximately three years. Mr. Lomax stated that he is responsible for conducting internal management audits and internal investigations concerning employee misconduct. Mr. Lomax confirmed that he is familiar with Appellee's policies and procedures.

Mr. Lomax identified Appellee's Exhibit 15 as a copy of the APA Firearms Policy. Mr. Lomax testified that Appellee's Firearms Policy requires all employees authorized to carry a firearm to carry a fully loaded weapon and a minimum of two additional fully loaded revolver speedloaders or pistol magazines. Mr. Lomax indicated that in addition to the weapon and ammunition requirements, Appellee requires authorized employees to carry handcuffs, an employee identification card, pepper spray, and an APA Authorization Card. Mr. Lomax stated that employees who are authorized to carry weapons receive forty hours of introductory weapons training, which includes instruction on how to fully load their weapons. He explained that the term "fully loaded" means that speedloaders and magazines are fully loaded, the weapon is loaded, and a round is chambered in the weapon. Mr. Lomax noted that, in addition to initial weapons training, employees are required to complete continual re-certification training. He confirmed that employees also receive copy of Appellee's Firearms Policy during training.

Mr. Lomax testified that Appellee's Firearm Policy provides for unannounced firearm inspections. Mr. Lomax stated that an unannounced firearm inspection involves checking employees authorized to carry a firearm to determine if they have one of the fully loaded firearms they are authorized to carry, a minimum of two additional fully loaded revolver speedloaders or semiautomatic pistol magazines, handcuffs, employee identification card, pepper spray, and the APA Authorization Card.

Mr. Lomax identified Appellee's Exhibit 10 as a copy of an email concerning the notice and results of an unannounced firearm inspection conducted on November 16, 2004 for the Columbus Region staff. Mr. Lomax noted that Appellant failed this firearm inspection because she did not have a fully loaded weapon. Mr. Lomax stated that he conducted an investigation concerning Appellant's failure to pass the November 16, 2004 announced firearm inspection.

Mr. Lomax confirmed that Appellant's pre-disciplinary hearing was held on January 21, 2005, and that Appellant had an opportunity to respond to the charges made against her. Mr. Lomax noted that Appellant's failure to pass the November 16, 2004 firearm inspection is Appellant's third performance-related violation of Appellee's Standards of Employee Conduct. Upon further questioning, Mr. Lomax explained that Appellee's disciplinary grid does not require the same rule violation to progress through the disciplinary grid. He also noted that Appellee's Rule #49 covers exempt employees, who are required to be disciplined in accordance with section 124.34 of the Ohio Revised Code.

On cross-examination, Mr. Lomax stated that it is inefficient conduct for an employee to fail to properly load his or her weapon, in that the employee would not be properly armed and prepared to respond to an emergency situation. Mr. Lomax noted that Appellee's employees deal with dangerous clientele, and it is for that reason Appellee authorizes employees to carry weapons. Mr. Lomax also noted that employees authorized to carry firearms are compensated for this duty. Mr. Lomax indicated that Appellee emphasizes firearm safety by training employees to carry their weapons fully loaded and operational so that they are prepared to respond to a potentially dangerous situation. Mr. Lomax stated that Appellant's position as a APA unit supervisor requires that she be prepared to respond to any potentially dangerous situation and that she set an example for her subordinates.

On further cross-examination, Mr. Lomax noted that Appellant failed two weapon inspections in 2004. Upon further questioning, Mr. Lomax stated that all levels of staff authorized to carry weapons are required to carry their weapons in accordance with Appellee's Firearms Policy.

On further cross-examination, Mr. Lomax explained that Appellee's disciplinary grid does not require that the same rule violation occur in order to advance in the disciplinary grid. Mr. Lomax indicated that Appellee considers an employee's disciplinary history and whether that history included performance and/or attendance related issues. Mr. Lomax noted that this is Appellant's third performance-related offense.

On re-direct examination, Mr. Lomax identified Appellee's Exhibit 3 as a copy of the position description for Unit Supervisor. Mr. Lomax identified Appellee's Exhibit 4 as the Employee History for Appellant. Mr. Lomax identified Appellee's Exhibit 5 as a copy of the Table of Organization for the Division of Parole and Community Services, revised January 1, 2005.

Dennis Lee Tenwalde testified that he is employed by Appellee in its Division of Adult Parole and Community Services, Training Section. Mr. Tenwalde indicated that his current position is Staff Development Specialist. He stated that his job duties include

monitoring, developing, designing, and coordinating Appellee's forty-hour mandated firearm training. Mr. Tenwalde stated that he conducts unannounced firearm inspections for Appellee's Lima Region and its Columbus Region.

Mr. Tenwalde identified Appellee's Exhibit 15 as a copy of the APA Firearms Policy. Mr. Tenwalde stated that the APA Firearms Policy requires all employees authorized to carry a firearm to carry a fully loaded weapon, two additional fully loaded pistol magazines or revolver speedloaders, pepper spray, employee identification card, and safety card.

Mr. Tenwalde identified Appellee's Exhibit 9 as a copy of the inspection report for the November 16, 2004 unannounced firearm inspection that he and Training Officer Rick Binegar conducted on the Columbus Region staff. Mr. Tenwalde identified Appellee's Exhibit 10 as a copy of his e-mail concerning the results of the November 16, 2004 unannounced firearm inspection. Mr. Tenwalde confirmed that Appellant failed the November 16, 2004 unannounced firearm inspection because she did not have a chambered round as required by Appellee's Firearms Policy.

Richard R. Binegar Sr. testified that he is employed by Appellee as the Training Officer for its South Region. Mr. Binegar indicated that he is responsible for conducting employee training, including weapons training, unarmed defense, and the use of pepper spray. Mr. Binegar confirmed that he also assists in conducting unannounced firearm inspections. Mr. Binegar stated that Appellee requires its employees to receive approximately twenty-four hours of introductory training, and that employees receive approximately sixteen to twenty-four hours of continual firearms training each year. Mr. Binegar stated that Appellee's Firearms Policy requires all employees authorized to carry a firearm to carry a fully loaded firearm.

Mr. Binegar recalled that Appellee began issuing the Glock 23 pistol, caliber: .40, to its employees in 2002. Mr. Binegar confirmed that he conducts training in the use of the Glock 23 pistol. Mr. Binegar stated that the Glock 23 pistol holds thirteen rounds and the magazine for this pistol holds thirteen rounds. Mr. Binegar stated that fully loading the Glock pistol requires the employee to insert a loaded magazine and pull the slide to the rear and forward to chamber a round. Mr. Binegar stated that the absence of a chambered round causes a delay in the employee's response time in the event the employee needs to fire his or her weapon. Mr. Binegar explained that Appellee's training statistics indicate that it takes approximately three to ten seconds for an employee to discover that his or her pistol does not have a chambered round and to then chamber the round and fire the weapon. Mr. Binegar stated that this delay in response time is the reason that employees are required to carry a fully loaded weapon.

## FINDINGS OF FACT

Based on the testimony presented and evidence admitted at record hearing, and the entirety of the record, I make the following findings of fact:

1. Appellant is employed by Appellee in its Division of Parole and Community Services, Adult Parole Authority. Appellant is a unit supervisor responsible for supervising five parole officers. Appellant's job duties include assigning and reviewing work, reviewing pre-sentencing reports, completing performance evaluations, and initiating disciplinary action. Appellee has authorized Appellant to carry a Glock 23 pistol, caliber: .40.
2. Appellee's APA Firearms Policy requires all employees authorized to carry a firearm to carry a fully loaded firearm and a minimum of two additional fully loaded pistol magazines or fully loaded revolver speedloaders.
3. All employees authorized to carry a firearm undergo initial firearm training and complete approximately sixteen hours of continual weapons training each year.
4. Appellant was trained in the use of the Glock 23 pistol, caliber: .40. Appellant was trained to fully load the Glock 23 pistol and to carry her weapon, fully loaded.
5. Employees who carry the Glock 23 pistol are trained to insert a fully loaded magazine and pull the slide to the rear and forward to chamber a round. The employee then tops off the magazine by adding a round.
6. Without a chambered round, the Glock 23 pistol is not fully loaded and it would take an employee attempting to fire the weapon approximately three to ten seconds to discover the problem. This delay in firing the weapon compromises the employee's ability to respond to a potentially dangerous situation.
7. During an unannounced firearm inspection conducted on November 16, 2004, Appellee discovered that Appellant was not carrying a fully loaded pistol. Appellant did not have a chambered round. The missing round was discovered in Appellant's bag.
8. Appellant's previous discipline includes an oral reprimand for failing an unannounced firearm inspection conducted on February 5, 2004, and a written reprimand for violating Employee Standards of Conduct Rules 12 and 21, effective July 27, 2004.

## CONCLUSIONS OF LAW

O.R.C. 124.34(A) provides that the tenure of every employee in the classified civil service of the state shall be during good behavior and efficient service, and no such employee shall be reduced in pay or position, fined, suspended or removed, except for one or more of the enumerated grounds listed in this statute, grounds that include incompetency, inefficiency, insubordination, dishonesty, neglect of duty, and any other failure of good behavior. In an appeal of a disciplinary action taken pursuant to O.R.C. 124.34, this Board may affirm, disaffirm, or modify the judgment of the appointing authority.

\* \* \* \*

The testimony presented and evidence admitted at record hearing established that Appellant is employed by Appellee in its Division of Parole and Community Services, Adult Parole Authority. Appellant is a unit supervisor responsible for supervising five parole officers. Appellant's job duties include assigning and reviewing work, reviewing presentencing reports, completing performance evaluations, initiating disciplinary action. Appellee has authorized Appellant to carry a Glock 23 pistol, caliber: .40.

The record established that Appellee's APA Firearms Policy requires all employees authorized to carry a firearm to carry a fully loaded firearm and a minimum of two additional fully loaded pistol magazines or fully loaded revolver speedloaders. Appellee requires firearm training for all employees authorized to carry a firearm. Employees undergo initial firearm training and complete approximately sixteen hours of continual weapons training each year. Appellant is trained in the use of the Glock 23 pistol, caliber: .40. Specifically, Appellant was trained to fully load the Glock 23 pistol and to carry her weapon, fully loaded. The Glock 23 pistol utilizes a thirteen round magazine. Employees who carry this firearm are trained to insert a fully loaded magazine and pull the slide to the rear and forward to chamber a round. The employee then tops off the magazine by adding a round. Without a chambered round, the pistol is not fully loaded. The testimony established that it takes an employee attempting to fire the pistol without a chambered round approximately three to ten seconds to discover the problem. This three to ten second delay in firing the weapon compromises the employee's ability to respond to a potentially dangerous situation.

In the present case, Appellant received a five-day suspension for violating Appellee's Standards of Employee Conduct Rule #7. Specifically, during an unannounced firearm inspection conducted on November 16, 2004, Appellee discovered that Appellant was not carrying a fully loaded pistol. Appellant did not have a chambered round. The missing round was discovered in Appellant's bag. At record hearing, Appellant admitted to not having her weapon properly loaded as charged in Appellant's O.R.C. 124.34 Order of Suspension. Accordingly, Appellee has met its burden of proof with respect to the allegations contained in Appellant's O.R.C. 124.34 Order of Suspension.

The information contained in the record shows that Appellant's previous discipline includes an oral reprimand for failing an unannounced firearm inspection conducted on February 5, 2004, and a written reprimand for violating Employee Standards of Conduct Rules 12 and 21, effective July 27, 2004.

In reviewing the level of discipline imposed in this case, it is important to note that Appellee's employees interact with dangerous individuals on daily basis and, therefore, Appellee has authorized many of its employees to carry firearms. Appellee has established extensive standards, rules, and procedures concerning the training, issuance, carrying, use, and safety of firearms. Appellee stresses the importance of firearm safety and preparedness through training and unannounced firearm inspections. Clearly, the conduct of employees authorized to carry weapons is critical to the safety and security of Appellee's facilities and offices. Appellant's failure to have a fully loaded firearm on November 16, 2004 compromised her ability to respond to any potentially dangerous situation that might have required the use of her weapon on that day. Because Appellee has a duty to maintain the safety and security of its employees and the clients it serves, failure of an employee to carry a fully loaded weapon severely compromises the ability of Appellee to carry out that duty. Moreover, Appellant's position as a unit supervisor imposes the duty upon Appellant to demonstrate a high-level of responsibility and to set a good example for her subordinates by following all of Appellee's policies, rules, and procedures.

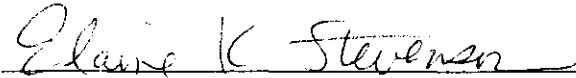
Based on the foregoing, I find Appellant's failure to have a fully loaded firearm on November 16, 2004 to be a serious violation of Appellee's Firearms Policy, a violation that constitutes inefficiency within the meaning of O.R.C. 124.34.

Appellant argues, however, that based upon Appellee's disciplinary grid, a five-day suspension is too harsh of a disciplinary response to her conduct. In reviewing Appellee's policies concerning rule violations and penalties, it is noted that Appellee has the discretion to consider the nature of an employee's misconduct and any circumstances which may mitigate or aggravate a penalty. Such circumstances include considering the similarity and close proximity of occurrence of an employee's prior offenses. It is further noted that progressive discipline does not require that Appellee administer the exact same level of disciplinary action in every instance.

Considering the serious nature of Appellant's violation of Appellee's Firearms Policy and the fact that this was the second firearm inspection that Appellant failed in 2004, I find that a five-day suspension is appropriate discipline.

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Therefore, I respectfully **RECOMMEND** that Appellant's five-day suspension be **AFFIRMED**, pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

  
Elaine K. Stevenson  
Hearing Officer

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