

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

William C. Robbins,

Appellant,

v.

Case No. 06-RED-03-0057

Miami County Sheriff,

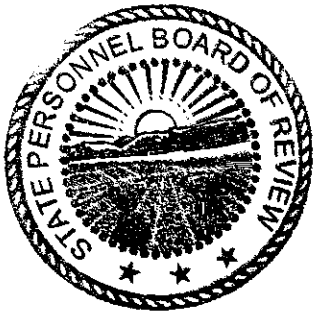
Appellee.

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 record and 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 of position of Sergeant to Deputy Sheriff be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

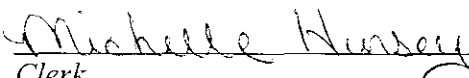


J. Richard Lumpe, *Chairman*

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 constitute ~~(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, June 13, 2008.



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**

William C. Robbins

Case No. 06-RED-03-0057

Appellant

v.

April 1, 2008

Miami County Sheriff

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on February 21, 2007. The record was kept open for the submission of closing briefs until March 28, 2007. Present at the hearing were the Appellant, William C. Robbins, represented by Ronald Snyder, Attorney at Law and Appellee Miami County Sheriff Charles Cox, represented by Eugene P. Nevada, Attorney at Law.

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

Appellant Robbins was reduced from his position of Sergeant to that of Deputy Sheriff, effective March 3, 2006. The pertinent part of the reduction order states as follows:

The reason for this action is that you have been guilty of Failure of good behavior, neglect of duty, misfeasance, and/or malfeasance for engaging in inappropriate discussions and actions with a subordinate in violation of the Employer's sexual harassment and other personnel policies.

Attached to the order of reduction was a memorandum detailing the allegations. Those are as follows:

1. You did initiate and engage in inappropriate discussions with a subordinate employee regarding sexual acts and did question the subordinate regarding his sexual preference regarding "threesomes."
2. You did continue the discussion and questioning of the subordinate regarding sexual preference and/or activities after he indicated such discussions made him uncomfortable and after he indicated twice that he wanted you to stop.
3. You did demean and attempt to humiliate the subordinate by mimicking his stuttering when he became upset by the sexual content and questions being asked during your conversation.
4. You did reveal during the predisciplinary hearing that you and the subordinate had previously engaged in a "lap dance" while on-duty and you failed, as supervisor, to take any corrective action.

Appellant Robbins filed a timely appeal of his reduction.

STATEMENT OF THE CASE

Appellee's first witness was Appellant Robbins, as if on cross examination. Appellant Robbins testified he is currently a Deputy Sheriff and has been employed by Appellee for approximately seventeen years. He stated he suffered a \$5,000 a year reduction in his salary as a result of his demotion from his supervisory position, which he had held for approximately four years. As a supervisor, Appellant Robbins testified he was responsible for maintaining order and enforcing the rules.

Appellee's Exhibit 1 was identified as the pre-disciplinary notice which Appellant Robbins testified he received. Appellee's Exhibit 2 was identified as the pre-disciplinary report and Appellee's Exhibit 3 was identified as the order of reduction which he received. Appellant Robbins testified he admits to allegations one and three and that he was involved in allegation four, but denies doing a lap dance. He testified that he sat while someone did a lap dance on him and he did not write that person up. Appellant Robbins admitted that he jokingly said

something about a tag-team threesome. He stated that Correction Officer Hetzel did comment that the discussion was sick, but he did not tell Appellant Robbins to stop. He testified that he may have said "No greater high for a woman than to engage in sex with two men." Appellant Robbins also testified that he may have said that a friend of his "fucked four women".

Appellant Robbins also testified that he and another Correction Officer laughed and mimicked Officer Hetzel's stutter.

Appellee's Exhibit 11 was identified as the statement of Correction Officer Hetzel, which Appellant Robbins testified he has seen before. Appellant Robbins testified he does not remember Officer Hetzel stating he was uncomfortable with the conversation and asking him to stop. Appellant Robbins testified he is not disputing the part about his wife and sister although he did not specifically remember saying it.

Appellant Robbins testified he knew he was to enforce the work rules and set an example. He stated that he felt, at times, that discussions of a sexual nature were wrong. Appellant Robbins confirmed that he was interviewed by Steve Lord, head of the detective unit. He stated he is aware of the sexual harassment policy, which he identified as Appellee's Exhibit 4, and testified that he enforces it strongly toward females. Appellee's Exhibit 5 was identified as the Code of Ethics and Conduct and Appellant Robbins testified he is aware of conduct unbecoming an officer. He admitted that his conversation was not business related and that it did not reflect favorably on his employer. Appellant Robbins stated he understood that his conversation was not moral but he testified he was outside of the office when this particular conversation took place and that these types of conversations have taken place before, both in and out of the office.

Appellee's Exhibit 6 was identified as the disciplinary policy showing that a violation of work rule nine is a group three offense. Appellant Robbins testified he felt that because of his relationship with Correction Officer Hetzel and his conversations with him in the past, it was alright to mimic his stutter. He stated he did not feel he was in a "professional setting" and that he and Correction Officer Hetzel were friends. Appellant Robbins testified this was not a new conversation as he has said those things to Officer Hetzel before.

Appellant Robbins identified Appellee's Exhibit 7 as a verbal warning he received on April 5, 2005. Appellee's Exhibit 8 was identified as another verbal warning that he received on February 15, 2006. Appellant Robbins stated he did not apologize for his remarks to either the Sheriff or to Officer Hetzel.

Appellee's next witness was Joe Hetzel, a Correction Officer with Appellee for approximately five years. Officer Hetzel testified that on January 28, 2006 at approximately 21:15 hours, he was on duty in the control room, which is located in the middle of the jail. The control room personnel is in charge of opening and closing doors, answering phones and monitoring the cameras and the pods. Officer Hetzel testified he talked to Appellant Robbins, as he was sitting on the filing cabinet. Appellant Robbins asked him if he ever participated in a threesome, which Officer Hetzel took to mean two girls and one guy, and he answered "no". Appellant Robbins then told him how he and a friend had a threesome with another woman and commented that there was no other sexual high for a woman than to be with two men. He then said something about his wife and her sisters. Officer Hetzel testified he became uncomfortable with the conversation as he did not know where Appellant Robbins was going with it. He testified he told Appellant Robbins that it was sick and that he disagreed with that type of sexual activity. Officer Hetzel testified that he told Appellant Robbins at least three times that it was sick. He stated that when he becomes nervous or uncomfortable, he stutters. He began stuttering when Appellant Robbins accused him of engaging in threesomes with strippers. Appellant Robbins mimicked his stuttering and Officer Hetzel testified he felt uncomfortable and uneasy and it bothered him for the rest of his shift. The next day, he wrote down what happened and identified Appellee's Exhibit 11 as his statement.

Officer Hetzel testified he made his statement because he felt very uneasy about the conversation. He stated he did not perceive it as a joke and was not laughing at any time during the whole ordeal. Officer Hetzel testified that if Appellant Robbins were to be his supervisor again, he is fearful of Appellant Robbins' hostility. In September 2006, Appellant Robbins called Officer Hetzel and asked him if another corporal was working and then told him he was going to look at his personnel file. Officer Hetzel testified he felt as if Appellant Robbins was trying to intimidate him.

On cross examination Officer Hetzel testified he wrote his statement on January 29, 2006. He stated he held onto it for a while as he was unsure of what to do. Officer Hetzel confirmed that he and Appellant Robbins had done things socially outside of work and did joke around about things, but stated he was uncomfortable with this particular conversation because he did not know why Appellant Robbins was saying those things and because he accused him and Officer Mullinax of having a threesome. Officer Hetzel testified he participated in the pre-disciplinary conference held by Captain Duchak. Officer Hetzel testified that he may have said at one point during work that his wife's cousin was good looking and he would like to "do her". He testified he does not remember saying that, but agreed that he may have.

Appellant's Exhibit A was identified as the transcript from the pre-disciplinary hearing, which Officer Hetzel testified appeared accurate. He stated he could not remember Appellant Robbins talking about sexual harassment but he admitted that on page eight of the transcript, he says Appellant Robbins talked to him and others about sexual harassment. He stated he has told others during conversations that something "was sick" and did so when he was not offended by the remark, but did it to joke back with them. Officer Hetzel testified that he enjoyed working under Appellant Robbins until this particular conversation then he felt uneasy around him after this. He confirmed that he did say at the pre-disciplinary conference that his job performance was not affected by the conversation.

Officer Hetzel testified that after this incident, he attended a sexual harassment class and he could not remember if he had attended one prior to the incident or not. Officer Hetzel testified he felt Appellant Robbins was searching for information as to what he was doing in his off hours and felt he was probing him for information on his private life that could be used against him later.

Captain Cooper asked him about his statement, as he had told Corporal Mullinax about the conversation. Corporal Mullinax was encouraging him to turn his statement in but he did not do so until Captain Cooper asked him to. Officer Hetzel explained that there was "bad blood" between Appellant Robbins and Corporal Mullinax. Officer Hetzel testified that he did perform a simulated lap dance in front of Appellant Robbins and thinks he did so after hours. He stated no one indicated they were offended by it and he had done it a few time previously. Officer

Hetzel testified that when he did the simulated lap dance, there were no inmates nor females present.

Officer Hetzel testified supervisors do use profanity in conversations and no one seems offended by it. At the time, he believed Appellant Robbins actually thought he and Corporal Mullinax had a threesome with a stripper. Officer Hetzel testified he had to take a half-hour break to compose himself after the conversation in September. Officer Hetzel admitted that when Appellant Robbins would ask him "what's up" he would reply "not my cock".

On redirect examination, Officer Hetzel testified he was "very afraid" of what would happen if he turned his statement in or brought charges against his supervisor.

Appellee's next witness was Sheriff Charles Cox. He testified he has been Sheriff for nineteen years and started his career in law enforcement in 1969. Sheriff Cox testified the incident involving Appellant Robbins was brought to his attention by Captain Cooper. He then ordered an internal investigation, which was done by Detective Lord and the investigation took a couple of days. Sheriff Cox testified that there was no doubt in his mind that Officer Hetzel's story is true. Appellee's Exhibit 3 was identified as the reduction order given to Appellant Robbins by Sheriff Cox.

Sheriff Cox testified supervisors are held to a higher standard than normal deputies or correction officers. He stated Appellant Robbins did nothing to stop the constant sexual conversations and condoned that behavior by letting it go on without addressing it. He did not bring it to the attention of a captain and he did not address it himself. Sheriff Cox testified that sexual harassment is not just between males and females, as his policy applies to everyone. He stated that Officer Hetzel was also disciplined for the sexual conversations that he took part in. Officer Hetzel received a written reprimand, as he could not be demoted because he is a correction officer, which is an entry level classification. Ben Fisher was also demoted for engaging in sexual harassment, as he put a night stick down another officer's pants. Sheriff Cox testified that his first inclination was to remove Appellant Robbins, but because he has such long tenure with the office and was a good road deputy, he instead decided to demote him.

On cross examination Sheriff Cox stated Appellant Robbins violated A(1)(c) of the sexual harassment policy found in Appellee's Exhibit 4. In looking at Appellee's Exhibit 6, the workplace offenses, Sheriff Cox testified Appellant Robbins was guilty of a violating a group one offense, number six, using inappropriate language and disruption of the workplace; group two, number eighteen, willful disregard of employer's rules; and group three, numbers nine and ten, willfully demeaning another and sexual harassment. He testified he felt that Appellant Robbins' entire conversation violated the sexual harassment policy.

Appellant Robbins testified he has been employed with Appellee for approximately seventeen years. He explained that some of the correction officers had been going to strip clubs and he warned them that they were eventually going to get in trouble by going to those clubs. On January 28, 2006, Appellant Robbins stated he walked into the locker room and Corporal Mullinax was there and he asked him what was going on. Corporal Mullinax told Appellant Robbins to ask Correction Officer Hetzel about the ninety-five dollars he spent on a stripper the previous night.

Appellant Robbins walked into the control room and told Officer Hetzel he was giving him a break and asked him what was up with the ninety-five dollar stripper and Officer Hetzel laughed. Appellant Robbins told him he was getting ripped off and told him that if he and Mullinax didn't drag her out to the parking lot and tag team her, he was ripped off. Officer Hetzel told him "you're sick" and Appellant Robbins laughed. Appellant Robbins testified Officer Hetzel did not, at any time during the conversation, tell him to stop nor did he tell him the conversation was inappropriate and he was offended.

Appellant Robbins testified Officer Hetzel, at a different time, asked him if he had ever been to the Hustler shop and told him he and his wife had been there, saying "you wouldn't believe the stuff in there". Appellant Robbins stated that earlier, Officer Hetzel asked him if he knew the blonde in the court house who was good looking. He told Appellant Robbins to check her out sometime, saying it was his wife's cousin and that he would like to "do her sometime". Appellant Robbins replied that "that's close to home" and Officer Hetzel replied with "I wonder if my wife would be interested in some action with her". Appellant Robbins testified that he would not allow this kind of talk to go on if there were women present, as he felt that conversation was not appropriate for mixed company.

There was a female correction officer who complained about the language used during roll call, so Appellant Robbins testified that the next day he told the shift that no inappropriate language would be tolerated when that female officer was present and he stated he was firm about it. Appellant Robbins testified that the correction officers clown around quite a bit. He stated he was sitting in the locker room and heard them talking about going to the Living Room. He looked over at Officer Hetzel and said "I suppose you are going to the Living Room also." Officer Hetzel said yes and started dancing around and then pretended to do a lap dance and was laughing. Appellant Robbins told him to "knock it off". He testified no one ever said they were offended by that or anything else that took place in the locker room. Appellant Robbins stated the above incident occurred at the end of the day and not during work hours.

Appellant Robbins testified he had a conversation in September 2006 with another officer in which he heard that Officer Hetzel had been written up so he went into Officer Hetzel's personnel file and took the document. He then asked Captain Johnson if he would call Officer Hetzel and tell him that he had been into his personnel file in order to give the document to his attorney. Appellant Robbins testified that was the entire conversation. He then received a letter from the Sheriff. Appellant Robbins denied that he was trying to intimidate or threaten Officer Hetzel.

Appellant Robbins admitted that he did mimic Officer Hetzel's stuttering during the conversation of January 28, 2006, but Officer Hetzel never told him he was bothered by it or he would have stopped. Appellant Robbins testified he did not really think his conversation with Officer Hetzel about threesomes was inappropriate since Officer Hetzel had initiated conversations with him about the same thing. Appellant Robbins stated he had been told that Sheriff Cox had said that when the sergeant positions were vacant, he was going to staff the correction officer positions and not replace the sergeant positions. Appellant Robbins reasoned this is why he was demoted. He also stated that after all of this took place, he received training on sexual harassment and it was then that he learned sexual harassment could occur between males.

Appellant's next witness was Jeffrey Walker, a Correction Officer with Appellee for approximately two and one-half years. He stated he has been supervised by Appellant Robbins for approximately one and one-half years, explaining he works six weeks on first shift, then does six weeks on second shift. Officer Walker testified he works exclusively in the jail and stated he has never heard a supervisor talking to any subordinate about sex. Officer Walker testified he never saw Officer Hetzel do a lap dance before a supervisor. He stated Appellant Robbins did tell the officers to watch their language during roll call and confirmed that Mullinax does not like Appellant Robbins.

On cross examination Officer Walker testified he is a good friend of Appellant Robbins and that he does not speak to Officer Hetzel now. He testified Officer Hetzel told him "he was not the one driving this train" and Officer Walker stated he assumed Officer Hetzel was referring to Mullinax.

Appellant's last witness was Timothy L. Kennedy, a Correction Officer with Appellee from August 2006 to January 2007. He stated while he was employed by Appellee he worked under Appellant Robbins and others. Mr. Kennedy testified he saw Officer Hetzel do a lap dance but did not recall if Appellant Robbins was present then or not. He stated Officer Hetzel does the lap dance a lot, as he is a comedy guy. Mr. Kennedy testified no one ever said they were offended when Officer Hetzel did his lap dance. He confirmed that Appellant Robbins talked to all of them about sexual harassment and female correction officers. Mr. Kennedy testified Officer Hetzel told him Mullinax does not talk to him anymore as he was his friend only to get at Appellant Robbins.

FINDINGS OF FACT

After reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. At the time of the reduction, Appellant Robbins had been employed with Appellee for approximately seventeen years. He had been in the position of Sergeant for approximately four years.

2. Appellant Robbins had two previous disciplines. He received a verbal reprimand in April 2005 for failing to timely submit a performance evaluation and in February 2006, Appellant Robbins received a written reprimand for failing to properly report off work.
3. As a Sergeant, Appellant Robbins was aware of the policies and procedures governing the Appellee's employees and knew that as a supervisor, he was to follow and enforce those policies and procedures. He was aware of the Appellee's policy regarding sexual harassment and was always careful to enforce the policy in the presence of a female officer.
4. On January 28, 2006, Appellant Robbins was talking to one of his subordinates, Correction Officer Hetzel in the control room. Appellant Robbins began talking about "threesomes" and asked Officer Hetzel if he ever participated in one. He also told him "there was no greater sexual high for a woman than to participate in a threesome". Officer Hetzel replied several times to Appellant Robbins that "that was sick" and told him he disagreed with that type of sexual activity. Appellant Robbins also accused Officer Hetzel of engaging in a threesome with strippers. At this point, Officer Hetzel became nervous and uncomfortable and began stuttering. Appellant Robbins then began mimicking Officer Hetzel's stuttering.
5. Officer Hetzel was uncomfortable, uneasy and was bothered by the conversation for the remainder of his shift. He wrote out a statement and turned it in the following day to a Captain.
6. Officer Hetzel received a written reprimand for performing simulated "lap dances" in the locker room while off duty and in the presence of Appellant Robbins and other officers.

CONCLUSIONS OF LAW

In order for Appellee's reduction of Appellant Robbins' position from Sergeant to Deputy Sheriff to be affirmed, Appellee must prove by a preponderance of the evidence the allegations contained in the reduction order. Appellee has met its burden.

Appellant Robbins admitted that he initiated and engaged in inappropriate discussions with Officer Hetzel regarding sexual acts and questioned him regarding his sexual preference regarding "threesomes." He also admitted that he mimicked Officer Hetzel's stuttering during that same conversation. Appellant Robbins also admitted that he was present when Officer Hetzel simulated lap dances and that he did not discipline Officer Hetzel for doing so. Appellant Robbins denied the second allegation in the reduction order that Officer Hetzel asked him to stop the conversation regarding "threesomes" and denied that Officer Hetzel told him he was uncomfortable with the conversation.

The Appellee does not have to prove all of the allegations in the reduction order for the reduction to be upheld. This Board's administrative rule 124-3-06 of the Ohio Administrative Code states, in pertinent part, that "Failure to prove all of the allegations contained in an order does not, as a matter of law, require disaffirmance of an order."

Even though Appellant Robbins denied being told by Officer Hetzel that he was uncomfortable with Appellant Robbins' conversation, or that he wanted the conversation to stop, Appellant Robbins should have realized such when Officer Hetzel began stuttering. Appellant Robbins testified he was friends with Officer Hetzel. He stated he has been with Officer Hetzel before when Officer Hetzel stuttered. Appellant Robbins would have known that Officer Hetzel only stutters when he becomes nervous or uncomfortable, therefore he should have realized that their conversation was making Officer Hetzel stutter, especially after Officer Hetzel repeatedly told him the conversation "was sick". Instead of picking up on the clue offered by Officer Hetzel's stuttering and stopping the conversation, Appellant Robbins made it worse by mimicking Officer Hetzel's stutter.

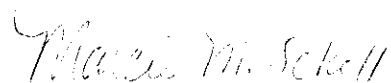
Appellee's Exhibit 4, the Personnel Policy and Procedure Manual of Appellee, defines sexual harassment. One of the definitions given states "When such conduct 'unreasonably interferes' with job performance and creates an 'intimidating, hostile or offensive' working environment." The policy continues to state that a "hostile or offensive" work environment generally involves "workplace conduct such as lewd or explicit sexual remarks, innuendos, jokes, gestures, touching, discussions of sexual activity, or the display of obscene or suggestive pictures or cartoons." This is exactly the type of behavior that Appellant Robbins engaged in and allowed to go on in his presence.

While Appellant Robbins recognized that this type of behavior was not acceptable when females were present, he did not realize that that same behavior was not acceptable, and could be construed as sexual harassment, in the presence of males also. The conversation initiated and perpetuated by Appellant Robbins with Officer Hetzel clearly bothered Officer Hetzel, for whatever reason. It does not matter why the conversation made Officer Hetzel nervous enough to begin stuttering and stayed on his mind for the remainder of the day. He was disturbed enough by the conversation to write a complaint regarding Appellant Robbins. Clearly, Officer Hetzel was bothered by the conversation. Appellant Robbins' created a "hostile and offensive" work environment.

Appellant Robbins testified that he and the other male officers often joked around and the use of profanity is abundant throughout the offices of Appellee. What Appellant Robbins failed to realize, however, is that when he became a supervisor, the rules changed. As a supervisor, he could no longer act as "one of the guys" and continue to joke around with them as he did in the past. Being a supervisor carries with it a duty to enforce the rules against horseplay, joking that involves sexual innuendos and inappropriate conversations in the workplace. It appears that after receiving additional training regarding sexual harassment, Appellant Robbins now understands this. He obviously did not understand it at the time he initiated the conversation with Officer Hetzel in January 2006. That conversation created a "hostile and offensive" work environment, violating Appellee's policies. Thus, Appellee did not abuse its discretion in reducing Appellant Robbins.

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Therefore, it is my **RECOMMENDATION** that Appellee's reduction of Appellant Robbins' position of Sergeant to Deputy Sheriff be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge

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