

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

VALORIE MORELAND-HARRIS,

Appellant,

v.

Case No. 06-REM-03-0053

MONTGOMERY COUNTY,
BOARD OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES,

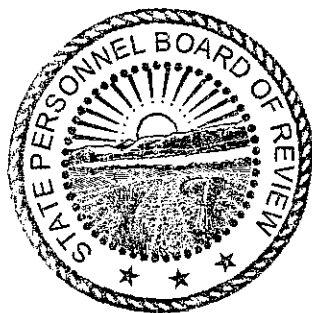
Appellee.

ORDER

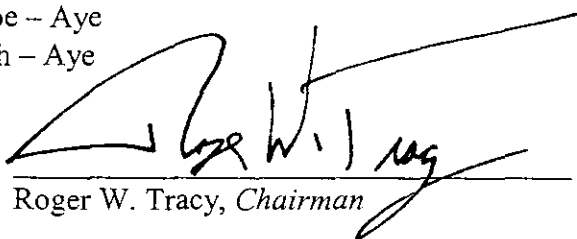
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 that Appellant's **REMOVAL** be **MODIFIED** to a thirty-day suspension. Appellant is to receive all back pay and emoluments due to her, minus the thirty working day suspension and any other offset, from the date of her removal to the date of her reinstatement. It is further **ORDERED** that Appellant completes the Anger Management Counseling, if she has not done so already. Appellant must present a letter of completion from her counselor to the appointing authority within six months of the effective date of her reinstatement. Appellant's counselor must indicate in the letter whether or not the courses already taken are sufficient relative to the needs of the Appellant.



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, November 7, 2006.


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**

Valorie Moreland-Harris

Case No. 06-REM-03-0053

Appellant

v.

September 6, 2006

Montgomery County Board of Mental Retardation
and Developmental Disabilities

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on August 8, 2006. Present at the hearing were the Appellant, Valorie Moreland-Harris, represented by Lucas Wilder, Attorney at Law and Appellee Montgomery County Board of Mental Retardation and Developmental Disabilities (MRDD) designee Timothy Klagge, Human Resources Director, represented by Laura G. Mariani, Assistant Prosecuting Attorney.

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

Appellant Moreland-Harris was removed from her position of Adult Services Worker effective February 24, 2006. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of Neglect of duty and failure of good behavior in that you committed an act of insubordination by refusing to honor a direct written order to complete a counseling program as a condition of previous disciplinary action. This is in violation of Section 124.34 of the Ohio Revised Code.

Appellant Moreland-Harris filed a timely appeal of her removal.

STATEMENT OF THE CASE

Appellee's first witness was Timothy Klagge, Director of Human Resources with Appellee for approximately seven years. As such, he is responsible for maintaining the records of Appellee and for coordinating all discipline.

Mr. Klagge testified Appellant Moreland-Harris was hired in 1985 and at the time of her termination in February 2006, she was a Program Support Assistant at the adult center. He stated Appellant Moreland-Harris had been disciplined in August 2005 for workplace violence and as a result of that, she received a ten day unpaid suspension and an order to complete a course in anger management. He identified Appellee's Exhibit 1 as a memorandum from Superintendent Gerhardtstein to Appellant Moreland-Harris, dated August 2, 2005 notifying her of the suspension and mandatory counseling. Appellee's Exhibit 2 was identified as memorandum to Appellant Moreland-Harris, dated September 6, 2005, from Mr. Klagge, notifying her of her first appointment with a counselor and telling her she is to schedule the remainder of the appointments herself and also that proof of her completion will be a letter from the counselor to him. Mr. Klagge testified this is the normal practice when an employee is sent to mandatory counseling. He stated there is no set number of sessions, as each employee is different and it is between the counselor and the employee to decide when the counseling can stop.

Mr. Klagge testified it is normal for him to schedule the first appointment for the employee and then it is the responsibility of the employee to schedule the rest of the appointments. He testified that he does not normally hear from the counselor until he receives the final letter of completion, but in this case, he received an email from Appellant Moreland-Harris' counselor on September 22, 2005, notifying him that Appellant Moreland-Harris attended her first session, cancelled her second session, rescheduled the second session and then did not show up for it. Mr. Klagge identified Appellee's Exhibit 3 as the email from the counselor.

Upon receiving counselor Wean's email, Mr. Klagge testified he prepared Appellee's Exhibit 4, which was an email to Appellant Moreland-Harris directing her, within the next twenty-four hours, to schedule an appointment with counselor Wean. He also directed her to comply with all future appointments and reminded her that failure to do so would result in insubordination. Mr. Klagge testified he emailed the memo to Appellant Moreland-Harris' supervisor, Holli Key, and directed Ms. Key to print the memo and give it to Appellant Moreland-Harris. He explained that he did

this because he works in a separate building, approximately nine miles from the building Appellant Moreland-Harris works in.

Mr. Klagge testified that Appellant Moreland-Harris complied with the memo to the extent that she did schedule her next session as directed and did attend. He stated he only knew this because on January 6, 2006, he received another email from counselor Wean stating that Appellant Moreland-Harris attended a session on October 14, 2005 and scheduled another one for November, which she did not attend. On January 6, 2006, Appellant Moreland-Harris showed up without an appointment at counselor's Wean's office to talk about her status. She did not make another appointment at that time. Mr. Klagge identified Appellee's Exhibit 5 as the January 6, 2006 email.

Since he did not receive a letter of completion from counselor Wean, Mr. Klagge testified that he began to institute disciplinary proceedings for insubordination on the part of Appellant Moreland-Harris. He stated Appellant Moreland-Harris was notified of a pre-disciplinary hearing, which she attended. Appellee's Exhibit 6 was identified as a letter from Superintendent Gerhardstein to Appellant Moreland-Harris notifying her that after reading the pre-disciplinary report, he found the allegation of insubordination to be substantiated and he was terminating her employment effective February 24, 2006. Appellee's Exhibit 7 was identified as the order of removal and Appellant Moreland-Harris' signed receipt of delivery, dated February 24, 2006.

Appellee's Exhibit 10 was identified by Mr. Klagge as a memorandum dated January 23, 2004 from Superintendent Gerhardstein to Appellant Moreland-Harris notifying her that she was being suspended for one day without pay due to violating the Appellee's Workplace Violence Policy. Appellee's Exhibit 9 was identified as a written reprimand given to Appellant Moreland-Harris from her supervisor, dated July 20, 2005, for excessive absenteeism. Appellee's Exhibit 8 was identified as an order of suspension for ten days without pay, effective September 12, 2005, for again violating the Appellees' Workplace Violence Policy.

On cross examination Mr. Klagge testified that, to his knowledge, Appellant Moreland-Harris did not have any discipline taken against her prior to 2004. He stated he was not aware of any counseling sessions with Appellant Moreland-Harris and counselor Wean in January or February 2006. Mr. Klagge testified he did not receive any information from counselor Wean that Appellant-Moreland-Harris was

making good progress or that the sessions had been completed. He stated he did not ask counselor Wean why Appellant Moreland-Harris did not keep her appointments, as he felt that would be a breach of the patient-counselor confidentiality if counselor Wean were to tell him. Mr. Klagge testified he felt the letters and memoranda to Appellant Moreland-Harris made it clear that she was to attend and complete counseling. He also stated he did not notify counselor Wean when Appellant Moreland-Harris was terminated as he felt no obligation to do so.

Appellant Moreland-Harris testified she has been employed by Appellee for approximately twenty-three years, as she worked there as a substitute before becoming a full-time employee. She stated she had been at the adult center for approximately four years. Appellant Moreland-Harris testified that prior to 2004, when a new administrator came in, she did not have any disciplinary problems.

Appellant Moreland-Harris testified she served her ten day suspension in September 2005 and then went to the counselor she was told to see. She met with him two times in September, once in October, twice in January 2006 and once in February. She testified her mother was very ill and she was busy taking care of her between October and January and it was hard to take time off work to care for her mother and attend the counseling sessions.

In looking at Appellee's Exhibit 4, Appellant Moreland-Harris testified she did not receive that memorandum and that her supervisor, Ms. Key, did not give it to her. Appellant Moreland-Harris testified she was confused as to how many counseling sessions she had to go to and she stated she felt as if she was terminated before she had a chance to complete the sessions. She testified she was seeing the counselor and talked to him about personal things, such as her mother's illness, her divorce and the foreclosure on her house. Appellant Moreland-Harris testified she also talked extensively with her supervisor, Ms. Key, about her counseling.

When she was removed, Appellant Moreland-Harris testified she was devastated. She did not think she was going to be removed because of her long years of service and the love of her job. She stated Ms. Key was aware that she was still going to counselor Wean and that she had seen him in January and February. Appellant Moreland-Harris testified she was so upset and completely devastated at the pre-disciplinary hearing she didn't mention the appointments with counselor Wean in January and February. She reiterated that she felt that she was

not given a chance to complete her counseling sessions, as she was still attending them when she was removed. Appellant Moreland-Harris then identified Appellant's Exhibit A as a letter from counselor Wean regarding her status with him in February 2006.

On cross examination Appellant Moreland-Harris testified she understood that she had to go to the counseling, but was confused as to how many times she had to attend. She stated she was trying to complete the counseling and had talked to her counselor about the completion date, but felt she was not given a chance to finish the counseling.

Appellant Moreland-Harris testified her supervisor was the one she talked to about still going to the counselor as she felt she should communicate with her immediate supervisor and not Mr. Klagge. She also stated she talked to the Adult Services Director, Linda Klug, about her counseling and that her attorney notified Mr. Klagge that she was still attending the counseling sessions. Appellant Moreland-Harris clarified that she did not talk to Ms. Key about her progress in the counseling but talked with her about some exercises that her counselor told her to try. She testified that on December 7, 2005, she talked with Ms. Key about her status, telling her she thought she had completed the counseling or had one more session to go and she was waiting for the letter of completion.

Appellee recalled Mr. Klagge as a rebuttal witness. He testified that he never saw Appellant's Exhibit A, the letter from counselor Wean regarding Appellant Moreland-Harris' sessions in January and February, before today. Mr. Klagge testified he was not aware that Appellant Moreland-Harris had gone to the counselor in January, as counselor Wean never notified him of that and Appellant Moreland-Harris also never told him. He confirmed that at the pre-disciplinary hearing for her removal, Appellant Moreland-Harris was quite upset and did not say that she was back in counseling.

In reviewing Appellant's Exhibit A, Mr. Klagge testified that this was not typical of the letter of completion which he normally receives. He stated this letter contained much more detailed personal and confidential information than he is used to seeing.

On cross examination Mr. Klagge testified that after seeing Appellant's Exhibit A, nothing has changed in his mind since Appellant Moreland-Harris was

given an order in September 2005 to attend counseling and there was a period of time when she did not comply with that order. In looking at Appellee's Exhibit 2, Mr. Klagge confirmed that his letter to Appellant Moreland-Harris states that the letter of completion is to contain information on how she is to deal with anger issues in the future and not just a statement that she has completed her counseling. Mr. Klagge testified Appellant Moreland-Harris was the first employee that he had to send to counseling for anger management issues.

Appellee then called Holli Key as a rebuttal witness. Ms. Key testified that as a Program Services Supervisor she was the direct supervisor of Appellant Moreland-Harris. She testified she was aware that Appellant Moreland-Harris had been directed to attend counseling and that she had been suspended for ten days. She also stated she was aware that Appellant Moreland-Harris attended one appointment and then missed one.

Ms. Key testified Mr. Klagge had emailed Appellee's Exhibit 4 to her to give to Appellant Moreland-Harris. She testified she met with Appellant Moreland-Harris on September 26, 2005, and gave her the email which directed Appellant Moreland-Harris to reschedule her missed appointment within twenty-four hours of receiving the email.

On December 7, 2005, Ms. Key stated she talked to Appellant-Moreland Harris about her counseling. Appellant Moreland-Harris told her she had one more counseling session, to which she was voluntarily going to and then she would get her letter of completion.

On cross examination, Ms. Key confirmed that Appellee's Exhibit 4 was an attachment to an email she received from Mr. Klagge. She also testified that Appellant Moreland-Harris would stop in her office after December 2005 and tell her counseling was going well and that she liked the counselor. Ms. Key testified she met again with Appellant Moreland-Harris in January 2006 and Appellant Moreland-Harris told her she was going to the counselor and Ms. Key talked with him in January also. Counselor Wean asked her how Appellant Moreland-Harris was doing and if there had been any other problems. Ms. Key testified she did not talk to the counselor anymore after the conversation in January 2006.

FINDINGS OF FACT

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

1. Appellant Moreland-Harris had been employed with Appellee for approximately twenty-three years at the time of her removal. She was classified as an Adult Services Worker.
2. Prior to 2004, Appellant Moreland-Harris did not have any discipline levied against her. In January 2004, she received a one day suspension for violating the Workplace Violence Policy; in July 2005, she received a written reprimand for excessive absenteeism and in September 2005, she received a ten day suspension for violating the Workplace Violence Policy.
3. As part of her discipline in September 2005, she was ordered to attend counseling sessions for anger management and to present the Appellee with a letter of completion from her counselor.
4. Appellant Moreland-Harris attended her first counseling session on September 12, 2005. She cancelled her second session on September 19, 2005, rescheduled it for September 22, 2005 and did not show up for the appointment.
5. Mr. Klagge then directed Appellant Moreland-Harris to schedule another session within twenty-four hours of him directing her to do so. Appellant Moreland-Harris complied and attended a session on September 27 and on October 14, 2005. She scheduled a session for November 17, 2005 and failed to appear for it.
6. On January 6, 2006, Appellant Moreland-Harris visited her counselor and questioned him regarding her status. She then attended counseling sessions on January 20 and February 2, 10, and 28, 2006.
7. Holli Key, Appellant Moreland-Harris' supervisor, knew that Appellant Moreland-Harris had seen her counselor in January 2006, as she talked

to the counselor on the telephone and Appellant Moreland-Harris told her she was going to the counselor.

8. A pre-disciplinary conference was held and a report was written, dated February 8, 2006. At the pre-disciplinary conference, Appellant Moreland-Harris was quite upset and did not state that she was still attending counseling sessions. Ms. Key was also present at the pre-disciplinary conference, but did not state at the conference that Appellant Moreland-Harris attended counseling in January 2006.

CONCLUSIONS OF LAW

In order for Appellant Moreland-Harris' removal to be upheld, the Appellee must prove by a preponderance of the evidence the allegations in the removal order. Appellee has failed to meet its burden, but Appellant Moreland-Harris is not without fault in this matter, as she did not keep appointments, did not schedule appointments and did not apprise her appointing authority that she was still attending counseling sessions when she had her pre-disciplinary conference.

The facts in this case are relatively undisputed. Appellant Moreland-Harris is a long term employee (approximately twenty-three years) with no discipline in her record until 2004, when she alleges new management came in. After violating the Appellee's workplace violence policy, Appellant Moreland-Harris was suspended for ten days in August, 2005 and was also directed to attend counseling for anger management. She was to attend counseling until her counselor presented her and the appointing authority with a letter of completion and "techniques or methods you will use to resolve similar workplace issues in the future." (Appellee's Exhibit 2).

Appellant Moreland-Harris attended counseling sessions in September and October 2005. After going to the first counseling session, she did not keep her appointments for subsequent ones until she was directed to make another appointment. Although Appellant Moreland-Harris testified she did not receive the email from Mr. Klagge, dated September 23, 2005, directing her to make another appointment within twenty-four hours of receipt of the email, her testimony on that issue was not credible as the facts show she did reschedule an appointment within twenty-four hours of the date of that memo. There was no other explanation offered

as to why she would have rescheduled her appointment on that particular date unless she received the memo.

Appellant Moreland-Harris, by her own testimony, only attended one counseling session in October and did not attend nor make any appointments to attend counseling sessions in November and December 2005. She testified this was because she was caring for her ill mother, going through a divorce and dealing with the foreclosure of her house at this time. There was no evidence presented by the Appellee to contradict Appellant Moreland-Harris' assertions.

Appellant Moreland-Harris went to counseling again in January 2006. At first she went to inquire when she would be done with the counseling as she testified she was confused as to when her counseling sessions were going to end. She then continued going to counseling in January and February 2006. Therefore, at the time of her removal, she was still attending counseling sessions and had not received her letter of completion from the counselor. The removal order states that Appellant Moreland-Harris "refused to honor a direct written order to complete a counseling program". That is not true.

Mr. Klagge testified that no one other than the counselor could determine when Appellant Moreland-Harris' counseling sessions would be completed. Because she missed some sessions and did not schedule sessions during the months of November and December, Appellee assumed she had stopped going to counseling and therefore did not comply with the directive given to her. Appellant Moreland-Harris' direct supervisor, Ms. Key, however, had knowledge that Appellant Moreland-Harris was still going to counseling in January, as she was told that by both Appellant Moreland-Harris and the counselor. Appellant Moreland-Harris testified she only communicated that information to her direct supervisor, as she was following the chain of command. Inasmuch as Mr. Klagge did not communicate directly with Appellant Moreland-Harris, but sent Ms. Key an email to deliver to Appellant Moreland-Harris, Appellant Moreland-Harris cannot be faulted for not communicating with Mr. Klagge.

At the pre-disciplinary conference, Appellant Moreland-Harris should have notified the persons present that she was still attending counseling and had not yet completed her sessions. While the evidence established that she was quite upset, she was wrong not to notify the Appellee of her continuing counseling.

The argument of Appellant Moreland-Harris that she was not given a chance to complete her counseling is not without merit. The directive given to her did not state that she had to complete the counseling within a set time frame, nor did it direct that she had to have an appointment every week or month. The directive given her was open ended and Mr. Klagge testified several times that he regarded the counseling sessions to be something confidential between the patient and the counselor. The evidence established that in January and February 2006, immediately prior to being removed, Appellant Moreland-Harris was still attending counseling sessions and her direct supervisor knew she had attended a session in January 2006.

It is apparent Appellant Moreland-Harris did not grasp the necessity of attending the counseling sessions in the beginning. In fact, she testified that she thought she would not be removed given her years of service and relatively good work record. She stated that when she was notified she was being considered for removal, she was "devastated". Even though she was going through some personal problems in October through December 2005, she should have made more of an effort to attend her counseling sessions and not have the attitude that nothing was going to happen to her because of her years of service. When the reality finally seemed to hit her in late January (which was prior to her receiving the pre-disciplinary notice for her removal) and she completed her assignment to get feedback from her supervisor, she did start and continue her counseling and was attending counseling at the time of her removal.

Since Appellant Moreland-Harris was removed for not "completing a counseling program" the removal should be disaffirmed. It is clear that Appellant Moreland-Harris was not given the chance to complete the counseling as directed, as she was still attending counseling at the time of her removal. However, she is not without fault in this matter and therefore she should receive some discipline for not following through with the counseling sessions as she should have from first being directed to attend the sessions. She also needs to realize that while she is a long-tenured employee, she does have a some discipline in her record, with two of those infractions involving workplace violence.

While there may have been some mitigating circumstances present in Appellant Moreland-Harris' personal life that signaled a change in her behavior beginning in 2004, she must realize that she cannot carry those into the workplace and let them affect her behavior at work and toward her fellow employees and/or

clients. When she was directed to attend anger management counseling sessions, she should have immediately followed through and continued to follow through by scheduling and attending the sessions. Eventually Appellant Moreland-Harris did start to regularly schedule and attend sessions, but she was slow to start. Hopefully Appellant Moreland-Harris has realized her mistakes and given a second chance she will do everything within her power to comply with the work rules and to complete her counseling, if she has not done so already.

Based on the fact that Appellant Moreland-Harris was still attending the counseling sessions at the time of her removal, it is my **RECOMMENDATION** that her removal be **MODIFIED** to a thirty day suspension and that she receive all back pay and emoluments due her, minus the thirty working day suspension and any other offset, from the date of her removal to the date of her reinstatement. It is also further **RECOMMENDED** that she complete the anger management counseling, if she has not done so already, and present a letter of completion from her counselor to the appointing authority within six months of the effective date of her reinstatement.



Marcie M. Scholl
Administrative Law Judge

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