

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

Cecily A. Johnson,

Appellant,

v.

Case No. 07-REM-01-0035

Ohio State University,

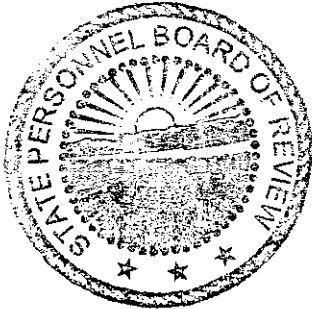
Appellee.

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 removal be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe – Aye

Booth – 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 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, October 29, 2007.



Michelle Hunsay
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**

Cecily A. Johnson,

Case No. 07-REM-01-0035

Appellant

v.

October 9, 2007

Ohio State University,

Elaine K. Stevenson

Appellee

Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her removal from employment with Appellee. A record hearing was held in this matter on September 4, 2007. Appellant was present at the record hearing and appeared *pro se*. Appellee was present through its designee, Kristi Darr, Human Resources Consultant, and was represented by Assistant Attorneys General Drew C. Piersall and Megan H. Boiarsky.

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

The O.R.C. § 124.34 Order of Removal issued to Appellant specifies as grounds for her removal:

Neglect of duty:

On May 11, 2005, you received a written reprimand for neglect of duty. On September 9, 2005, you received a minor suspension for neglect of duty in the form of excessive tardiness and for non-compliance with the department productivity standards. On August 28, 2006, you received a major suspension for neglect of duty in the form of excessive tardiness and for not meeting the departmental productivity standard of 90%. Since that date, you have been tardy on twenty-four (24) occasions and your productivity level remains below the department standard of 90%.

STATEMENT OF THE CASE

Cecily A. Johnson (Appellant) testified as if on cross-examination that she was employed by Appellee and held an Office Assistant position in the Medical Management Department of the Ohio State University Medical Center. Appellant confirmed that her immediate supervisor was Charissa Johnson. Appellant identified Appellee's Exhibit 2 as a copy of the position description for her Office Assistant position. Appellant confirmed that she signed that document. Appellant further confirmed that her primary job duties included filing patient medical records and loose materials, answering the telephone, updating medical records, and providing coverage for the front desk. Appellant also confirmed that her regular work hours were from 8:00 a.m. to 4:30 p.m., with one-half hour for lunch.

Appellant testified that she is familiar with Appellee's 90% productivity standard. Appellant identified Appellee's Exhibit 3 as a copy of University Hospitals' Attendance Records and Compliance Policy and Procedure contained in the University Hospital's Policy and Procedure Manual. Appellant confirmed that she understood that she was required to report to work on time and that problems with attendance and tardiness would be corrected through constructive discipline.

Appellant confirmed that her disciplinary record included prior disciplinary actions for tardiness and non-compliance with the department's productivity standard. Appellant identified Appellee's Exhibit 4 as a copy of Appellee's May 11, 2005 Disciplinary Report, notifying her that she was receiving a written reprimand for excessive tardiness. Appellant identified Appellee's Exhibit 5 as a copy of Appellee's November 2, 2005 letter, notifying her that she was being suspended for one day for excessive tardiness. Appellant identified Appellee's Exhibit 6 as a copy of her O.R.C. § 124.34 Order of Suspension, dated August 14, 2006. Appellant confirmed that she was suspended for five days for excessive tardiness and low work productivity.

Appellant identified Appellee's Exhibit 1 as a copy of her O.R.C. § 124.34 Order of Removal, effective January 13, 2007. Appellant identified Appellee's Exhibit 7 as a copy of Appellee's December 19, 2006 letter, notifying her of her pre-disciplinary hearing. Appellant confirmed that she attended the pre-disciplinary hearing on December 21, 2006.

Upon further questioning, Appellant confirmed that her immediate supervisor met with her formally on a monthly basis to discuss issues regarding her tardiness and work productivity. She confirmed that her immediate supervisor also met with her informally to discuss those work issues. Appellant further confirmed that she received annual performance evaluations, and she indicated that the issues regarding her tardiness and low work productivity were noted and discussed during these annual evaluations. Appellant identified Appellee's Exhibit 13 as a copy of her annual performance evaluation

for the review period of April 8, 2003 to April 8, 2004. Appellant identified Appellee's Exhibit 14 as a copy of her annual performance evaluation for the review period of April 8, 2004 to April 8, 2005. Appellant identified Appellee's Exhibit 15 as a copy of her annual performance evaluation for the review period of April 8, 2005 to March 8, 2006. Appellant confirmed that she received counseling regarding the importance of improving her timekeeping principles and meeting Appellee's productivity standards. Appellant confirmed that she attended a "corrective action" hearing in October 2006, and she further confirmed that her supervisor counseled her regarding her tardiness and low productivity on several occasions. Appellant identified Appellee's Exhibit 11 as a copy of her productivity averages for the pay periods beginning April 3, 2005 and ending January 6, 2007. Appellant confirmed that page 2 of Appellee's Exhibit 11 shows her productivity levels below 90% for the pay periods beginning April 16, 2006 and ending January 6, 2007.

Appellant offered the following testimony at the conclusion of Appellee's cross examination: Appellant stated that she always provided Appellee with documentation regarding doctor visits for herself and her children. Appellant stated that there were changes made to her annual performance evaluation identified as Appellee's Exhibit 15. Appellant further stated that she asked her immediate supervisor if she could change her work hours because she was having issues at home. She recalled asking to have her work hours changed to 8:30 a.m. to 5:00 p.m., and she noted that she had worked these hours for a period of time prior to her pregnancy. Appellant indicated that her immediate supervisor did not change her work hours. Appellant recalled that her immediate supervisor suggested that she seek help through the Employee Assistance Program. Appellant stated that she thought the assistance program would help her save her job and help her with her problems at home and at work. Appellant stated that she knew the job duties of every employee in the department, and she indicated that she felt that she was pushed overboard. Appellant stated that she had many problems and she did her best. Appellant stated that she always called when she was going to be late. Appellant further stated that she covered for other employees when they were absent, and she averred that it was not fair to be required to perform her job duties and the job duties of other employees. Appellant stated that during her pregnancy it was difficult for her to perform her job duties.

Appellant stated that she has three children. Appellant further stated that her daughter is three years old and her son was born in January 2004. Appellant indicated that she had to take her children to the doctor, and she noted that she had approved leave to take her children to the doctor. Appellant explained that she asked for assistance to help her in improving her productivity but was not given any such assistance. Appellant indicated that she was supposed to turn in productivity sheets at the end of each work week. Appellant recalled that she performed her job duties and the job duties of another employee for a long period of time in November 2006.

Charissa Johnson testified that she has been employed by Appellee since March 2005. Ms. Johnson stated that she holds the position of Electronic Health Records Planning Analyst in the Medical Information Management Department at the OSU Medical Center. Ms. Johnson noted that, previously, she held the position of Medical Information Manager in the James Outpatient Medical Center, which operates four outpatient clinics. Ms. Johnson indicated that she oversees the operations of two sites that are responsible for pulling medical records, preparing these records for clinic appointments, coding and filing medical records, and filing loose documents, such as information from labs and from physicians. Ms. Johnson confirmed that she was Appellant's immediate supervisor.

Ms. Johnson testified that Appellee's Exhibit 2 is a copy of Appellant's Office Assistant position description. Ms. Johnson stated that the job duties listed in that position description are consistent with a level-one Office Assistant position. Ms. Johnson stated that Appellant was responsible for filing loose materials into the patient charts, pulling charts for off-site locations, assisting with filing "perm" charts, and covering for coworkers in their absence. Ms. Johnson stated that Appellant was not required to perform a coworker's job duties and her own job duties.

Ms. Johnson testified that Appellant was aware that she was required to adhere to Appellee's attendance policy. She noted that the Medical Information Management Department has a lenient attendance policy, which allows employees to arrive between their 8:00 a.m. and 8:06 a.m. Ms. Johnson identified Appellee's Exhibit 3 as a copy of the University Hospitals' attendance policy, and she confirmed that the University's attendance policy is stricter than the Medical Information Management Department's attendance policy.

Ms. Johnson identified Appellee's Exhibit 4 as a copy of Appellee's May 11, 2005 Disciplinary Report, notifying Appellant of her written reprimand for excessive tardiness that totaled 3.5 hours of absent time in 16 days. Ms. Johnson confirmed that she initiated that discipline, and she indicated that Appellant previously received an oral warning for tardiness. Ms. Johnson explained that it is important for employees in the Medical Information Management Department to report to work on time because there is a significant amount of work that must be completed each day. She noted that reporting to work at the required time is important not only for office workflow but also for morale.

Ms. Johnson identified Appellee's Exhibit 5 as a copy of the November 2, 2005 letter issued to Appellant for a one-day suspension for excessive tardiness without approval on 58 occasions. Ms. Johnson testified that she counseled Appellant regarding her tardiness during monthly meetings with Appellant, and, informally, as situations occurred. Ms. Johnson explained that she continually brought the problem of tardiness to Appellant's attention and she encouraged her to seek out the services of the Employee Assistance Program.

Ms. Johnson identified Appellee's Exhibit 6 as a copy of Appellant's O.R.C. § 124.34 Order of Suspension for her five-day suspension, with an attached letter from the Vice President of the Office of Human Resources. She confirmed that both of those documents were dated August 14, 2006. She further confirmed that Appellant received a five-day suspension due to tardiness on 40 occasions and for productivity below the department standard of 90%. Ms. Johnson indicated that she signed page 2 of Appellee's Exhibit 6, and she indicated that she hand-delivered both pages of this exhibit to Appellant. Ms. Johnson further confirmed that her August 14, 2006 letter regarding Appellant's five-day suspension also contained a warning to Appellant regarding further disciplinary action, up to and including dismissal.

Upon further questioning, Ms. Johnson explained employees are required to submit daily productivity sheets, and she indicated that Appellant failed to comply with this requirement. Ms. Johnson stated that Appellant's failure to submit her productivity sheets on a consistent basis made it difficult to track Appellant's work performance, and she noted that when Appellant failed to submit her productivity sheet she received 0% productivity. Ms. Johnson indicated that Appellant was productive when she covered for other employees, but she was not productive when performing her own job duties.

Ms. Johnson identified Appellee's Exhibit 9 as a copy of a "punch detail" report reflecting Appellant's attendance history. Ms. Johnson identified Appellee's Exhibit 10 as a copy of Appellant's attendance summary for the time period beginning September 5, 2006, and ending December 7, 2006. Ms. Johnson confirmed that the attendance summary reflects Appellant's tardy days after she returned to work from her five-day suspension. Ms. Johnson identified Appellee's Exhibit 11 as a copy of Appellant's Productivity Report, starting with the pay period that began April 3, 2005, through the pay period that ended on January 6, 2007. Ms. Johnson noted that Appellant's work productivity on page 2 of the Productivity Reports shows that Appellant fell below the department standard of 90% on numerous occasions. Ms. Johnson identified Appellee's Exhibit 12 as a copy of her notes regarding her monthly meetings with Appellant. Ms. Johnson indicated that the purpose of those meetings was to discuss work expectations and work performance and to discuss ideas for improvement. Ms. Johnson recalled that she asked Appellant to draft an action plan on how to better manage her time and organize herself in order to eliminate her tardiness problem. Ms. Johnson indicated that Appellant never presented an action plan for managing her time. Ms. Johnson noted that she also met informally with Appellant regarding her work performance. Ms. Johnson further noted that she meets with all of her subordinates to discuss their work performances. Ms. Johnson noted that during her September 12, 2006 meeting and her September 27, 2006 meeting with Appellant, she warned Appellant that if she did not improve her productivity and arrive to work on time she would be terminated. Ms. Johnson stated that she notified Appellant during their November 6, 2006 meeting that the next step in the disciplinary process would be termination.

Ms. Johnson identified Appellee's Exhibit 14 as a copy of Appellant's annual performance evaluation for the period of April 8, 2004 through April 8, 2005. Ms. Johnson confirmed that the performance evaluation indicates that Appellant needed to improve her timekeeping and productivity. Ms. Johnson identified Appellee's Exhibit 15 as a copy of Appellant's annual performance for the period of April 8, 2005 through March 8, 2006. Ms. Johnson confirmed that the performance evaluation indicates that Appellant needed to improve her timekeeping and productivity. Ms. Johnson further confirmed that she established goals for improvement and noted the goals in Appellant's performance evaluations. Ms. Johnson identified Appellee's Exhibit 1 as a copy of Appellant's O.R.C. § 124.34 Order of Removal. Ms. Johnson stated that Appellant's excessive tardiness continued and her productivity did not improve.

Upon further questioning, Ms. Johnson testified that when Appellant was covering for other employees she was not expected to perform the employee's job duties and her own job duties. Ms. Johnson stated that Appellant's approved absences for child care and pregnancy-related issues were not counted against her.

On cross-examination, Ms. Johnson explained that an unauthorized absence is an absence from work that does not involve vacation leave or sick leave. In referring to Appellee's Exhibit 14, page 2, Ms. Johnson explained that the 22 episodes of absence refer to instances where Appellant failed to turn in a leave of absence form. Appellant stated that she was responsible for filing loose materials and charts and that her productivity was focused on these activities. Ms. Johnson stated that Appellant was expected to meet productivity standards by filing a certain volume of loose materials and charts.

Appellant noted that she met or exceeded expectations in many areas of her performance evaluations. Appellant did not have any questions regarding the productivity ratings charted in Appellee's Exhibit 11.

FINDINGS OF FACT

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

1. Immediately prior to her removal on January 13, 2007, Appellant was employed by Appellee as an Office Assistant in the Medical Management Department of the Ohio State University Medical Center. Appellant was responsible for filing patient medical records and loose materials, updating medical records, answering the telephone, and covering for other employees when needed.

2. Appellant's pre-termination due process rights were observed as follows: Appellant was timely served with a notice of pre-disciplinary hearing; Appellant was notified of the charges made against her; and Appellant was given an opportunity to respond. Appellee complied with the procedural requirements in removing Appellant by properly serving her with an O.R.C. § 124.34 Order of Removal.
3. Appellant admitted that she was tardy on the occasions noted in her O.R.C. § 124.34 Order of Removal and that her productivity level fell below the standard set by Appellee. Appellant also admitted that she received prior disciplinary actions as noted in her O.R.C. § 124.34 Order of Removal.
4. Appellant's problem with tardiness was an ongoing problem that began as early as April 8, 2003, as noted in her annual performance evaluation for the period of April 8, 2003 to April 8, 2004. Appellant received annual performance evaluations throughout her employment with Appellee that noted those same problems with tardiness. On May 11, 2005, Appellant received a written reprimand for excessive tardiness. On November 2, 2005, Appellant received a one-day suspension for being tardy on 58 occasions. On August 28, 2006, Appellant received a five-day suspension for being tardy on 40 occasions.
5. Appellant acknowledged that she received and understood Appellee's policies regarding attendance and work productivity. Appellant confirmed that her immediate supervisor met with her formally on a monthly basis to discuss issues regarding her tardiness and work productivity. Appellant also confirmed that her immediate supervisor met with her informally to discuss these work issues as they arose. Appellant confirmed that she received annual performance evaluations that noted the problems regarding her tardiness and work productivity.
6. Appellant's job duties included covering for other employees when needed; however, Appellant was not required to meet Appellee's productivity standard in performing the job duties of her position at the same time she was covering for another employee. Appellant was never penalized or disciplined for absences that were approved through the leave process.

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, 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.

Pursuant to O.A.C. § 124-3-06, the appointing authority is required to prove by a preponderance of the evidence the factual allegations contained in a disciplinary order. Failure to prove all of the allegations contained in an order does not, as a matter of law, require disaffirmance of an order. With regard to each allegation contained in the pertinent O.R.C. § 124.34 disciplinary order, Appellee must demonstrate that it had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board considers the seriousness of Appellant's misconduct, Appellant's prior work record and length of employment, and any evidence of relevant mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

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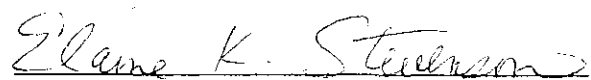
Appellant did not present any evidence which contradicted the facts as alleged in her O.R.C. § 124.34 Order of Removal. Appellant admitted that she was tardy on the occasions noted and that her productivity level fell below the standard set by Appellee. Appellant also admitted that she received prior discipline as noted in her O.R.C. § 124.34 Order of Removal. Accordingly, I find that Appellee has met its burden of proving the allegations contained in Appellant's O.R.C. § 124.34 Order of Removal.

Appellee presented evidence to show that Appellant's problem with tardiness was an ongoing problem that began as early as April 8, 2003, as first noted in her annual performance evaluation for the period of April 8, 2003 to April 8, 2004. Appellant received annual performance evaluations throughout her employment with Appellee that noted the same tardiness problems. On May 11, 2005, Appellant received a written reprimand for excessive tardiness. On November 2, 2005, Appellant received a one-day suspension for being tardy on 58 occasions. On August 28, 2006, Appellant received a five-day suspension for being tardy on 40 occasions.

Appellant argues that she knew the job duties of every employee in the department and that she had many problems but she did her best. While it was unfortunate that Appellant had personal problems that made it difficult for her to report to work on time, Appellee certainly gave Appellant numerous chances to improve in the areas of punctuality and work productivity. Appellee introduced its personnel policies, specifically, its attendance policies and work productivity standards. Appellant acknowledged that she

understood those policies. Appellant confirmed that her immediate supervisor met with her formally on a monthly basis to discuss issues regarding her tardiness and work productivity and she also confirmed that her immediate supervisor met with her informally to discuss these work issues as they arose. Appellant confirmed that she also received annual performance evaluations that noted the problems regarding her tardiness and work productivity. The testimony established that Appellant's immediate supervisor encouraged Appellant to seek help through the Employee Assistance Program and she regularly counseled Appellant on the need to improve her job performance and to manage her time in order to arrive for work on time. Ms. Johnson testified that she warned Appellant that if she did not show improvement by consistently arriving to work on time and meeting the department's productivity standard, the next step in the disciplinary process would be removal. Ms. Johnson also testified that after Appellant received a five-day suspension for excessive tardiness and non-compliance with the department's productivity standard, Appellant still did not improve. Lastly, I note that Appellant was not required to meet Appellee's productivity standard in performing the job duties of her position at the same time she was covering for another employee. I further note that Appellant was never penalized or disciplined for absences that were approved through the leave process.

To summarize, although Appellant had notice that her excessive tardiness and her failure to meet the department's productivity standard were unacceptable behaviors, Appellant continued to have significant problems in these areas. In considering Appellant's disciplinary history, Appellee's extensive efforts to correct Appellant's job performance, and the large number of tardy incidents that resulted in her removal, I find that removal was appropriate discipline. Therefore, I respectfully **RECOMMEND** that Appellant's removal be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.


Elaine K. Stevenson
Hearing Officer

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