

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

Jennifer L. Adams,

Appellant,

v.

Case No. 07-REM-02-0062

Crawford County Board of Commissioners,

Appellee.

ORDER

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

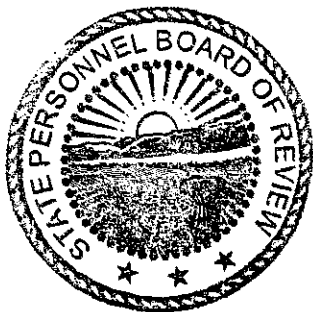
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

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

Sfalcin - Aye



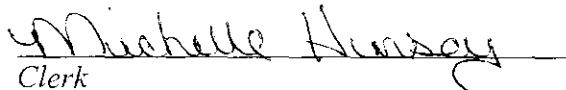


J. Richard Lumpe, *Chairman*

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, November 5, 2008.



Michelle Hunsley
Clerk

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

11-5-08

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

Jennifer L. Adams

Case No. 07-REM-02-0062

Appellant

v.

September 16, 2008

Crawford County Board of Commissioners

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 October 23, 2007. The record was held open until November 20, 2007 for the submission of closing arguments. Present at the hearing were the Appellant, Jennifer L. Adams, represented by John W. Herbert, Attorney at Law and Appellee Crawford County Board of Commissioners designee Linda Zellner, Administrator of Childrens' Services and Assistant Director of Job & Family Services, represented by Marc A. Fishel, 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 Adams made a Motion to Substitute Corrected Closing Argument on November 20, 2007. That Motion is **GRANTED**.

Appellant Adams was removed from her position of Case Manager – Job & Family Services, effective February 19, 2007. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of Specifically: On or about August 11, 2006, a urine drug test was administered and returned with positive use of Benzodiazepines and positive use of Cannabinoids (Marijuana). This is a violation of the County's Drug Free Workplace Policy; a Group III Offense. On or about October 16, 2006, in the Crawford County Common Pleas Court, you did enter a plea of Guilty to one count of Possession of Drugs, in violation of

ORC Sec. 2925.11.(C)(4)(a), a felony of the fifth degree. Said plea of Guilty was accepted by the Court after your legal counsel presented a motion to the Court for Intervention in Lieu of Conviction pursuant to ORC 2951.041. As part of the proceeding statements were mad (sic) on your behalf and you were advised of your rights and the consequences of the motion and the plea of Guilty was held by the Court and the proceedings stayed and the case continued pending further hearing upon the successful or unsuccessful completion of the period of rehabilitation. You failed to follow directives given to you when the County placed you on administrative leave with pay. Specifically, on or about September 14 and 15, 2006, you were not at home and failed to notify designated Job & Family employees of your location during normal working hours.

Appellant Adams filed a timely appeal of her removal.

STATEMENT OF THE CASE

Prior to the taking of any evidence, the parties stated they had a set of stipulations. Those stipulations are as follows:

1. With regard to Appellee's Exhibit 17:
 - a. Lab procedures conformed to all mandated protocols regarding chain of custody and laboratory methodology.
 - b. The analysis is accurate and Exhibit 17 accurately reflects the lab's findings.
 - c. Appellant denies she was under the influence of any drug on the morning of August 11, 2006.
 - d. Appellee does not claim Exhibit 17 is evidence that Appellant was under the influence of any drug on the morning of August 11, 2006.
2. Exhibit 18 reflects that the Crawford County sheriff attempted and failed to serve the Section 124.34 Order on Appellant on September 14, 15, 16, and 17, 2006 as follows:
 - a. Appellant's working hours were Monday through Friday, 8:00 a.m. to 4:30 p.m.

- b. The sheriff made only one attempt to serve the Section 124.34 Order during Appellant's working hours: Friday, September 15, 2006 at 13:03 (1:03 p.m.).
 - c. All other attempts to serve the Section 124.34 Order were made outside of working hours or on non-working days.
3. Appellant denies she was not at home at 1:03 p.m., September 15, 2006.
4. Appellee hired Appellant effective July 5, 1998.

Appellee's first witness was Appellant Adams, as if on cross examination. Appellant Adams testified she began her employ with Appellee in 1998 and was a Case Manager at the time of her termination. As such, she collected child support payments, testified in court, worked on paternity issues and interviewed clients. She was responsible for enforcing child support orders, court orders and for enforcing the child support regulations. In her position of Case Manager, she had access to social security numbers and bank information of clients. In court, she testified on behalf of the Appellee in front of a judge or magistrate and her credibility was an important aspect of her job.

Appellant Adams testified she was aware of the personnel handbook and she identified Appellee's Exhibit 3 as her signature on the acknowledgement form for receiving the handbook on December 31, 2003. She identified Appellee's Exhibit 1 as the drug and alcohol policy out of the handbook and identified Appellee's Exhibit 2 as the employee conduct policy contained within the handbook.

Appellant Adams identified Appellee's Exhibits 4, 5, 6, and 15 as her previous disciplines, consisting of a written oral reprimand in February 2003, a warning in September 2004, a verbal warning in September 2005 and another verbal warning in February 2005. Appellant Adams confirmed that there was a search of her home, pursuant to a search warrant, in August 2006. Drugs and drug paraphernalia were found in her home and she was indicted on felony drug charges. Appellee's Exhibit 9 was identified as a written order for Appellant Adams to take a drug test on August 11, 2006, which she signed. She was taken to the Sheriff's office for a drug test and was placed on administrative leave with pay, as identified in Appellee's Exhibit 10. Appellant Adams confirmed that the drug test came back with a positive result for marijuana and benzodiazepines.

Appellant Adams testified she does not dispute the results of the drug test. She also testified that while she was on administrative leave with pay, she called Appellee and notified them when she stayed with her sister, when she went to Columbus to meet with her attorney and when she went to her husband's trial. Appellant Adams testified she called in most days as required. On September 14, 2006, Appellant Adams testified she does not believe that she called into the office on that day. She stated a co-worker had told her on September 12, 2006 that her office had been cleaned out so she felt she had been fired or would be. She testified, however, that no one told her on either September 12 or 13, 2006 that she had been fired. Appellant Adams testified she also did not call into the office on September 15, 2006 since she was under the impression that her firing was a done deal.

Appellant Adams testified she was at home on September 14 and 15, 2006. She stated she has telephone records to show that someone made a phone call from her home on September 15, 2006.

Appellee's Exhibit 12 was identified as the order from the Court of Common Pleas in Crawford County pertaining to Appellant Adams. Appellant Adams identified Appellee's Exhibit 13 as the report of the pre-disciplinary hearing which she waived. Appellee's Exhibit 14 was identified as the order of removal, which she received.

Appellee's next witness was Linda Zellner, Child Support Administrator and an employee of Appellee for approximately sixteen years. Ms. Zellner identified Appellee's Exhibit 11 as her notes she kept regarding the times and dates Appellant Adams called in while on administrative leave. Her notes reflect that Appellant Adams called in on August 28, 2006 and did not call in on September 13, 14, and 15th, 2006. She testified she was concerned about Appellant Adams' credibility since she plead guilty to a crime. The prosecutors that Appellant Adams has to testify in front of for her position are the same prosecutors that prosecuted her. Ms. Zellner also stated she had concerns about the sensitive client information that Appellant Adams has access to in her position.

On cross examination Ms. Zellner confirmed that Appellant Adams was rated well on her performance evaluations in Appellant's Exhibit A and that she was a better than average employee at collecting money for the agency some months, as

exhibited in Appellant's Exhibit B. Appellant's Exhibit E was identified by Ms. Zellner as notes dated July 11, 2006 regarding the drug testing of Appellant Adams, although Ms. Zellner testified the date was incorrect, as it should have read August 11, 2006. She stated the document was contained in Appellant Adams' personnel file and that she did not prepare the document. She did not know whose handwriting appeared at the top of the document.

Appellee's next witness was Stephanie Miller, Human Resources Manager with the Board of County Commissioners for approximately four and one-half years. Ms. Miller testified she knows Appellant Adams, as she scheduled two pre-disciplinary hearings for her but neither one was held, as Appellant Adams waived her right to attend both of them. Ms. Miller identified Appellee's Exhibit 13 as the pre-disciplinary report she prepared, dated February 9, 2007.

Ms. Miller identified Appellee's Exhibit 18 as a document from the Sheriff's office indicating they attempted service of the removal order on Appellant Adams on September 15, 2006 at her home. They were not successful. Ms. Miller testified Appellant Adams did not provide her with any information as to her whereabouts on September 14 and 15, 2006. She then identified Appellee's Exhibit 1 as the county drug and alcohol policy and Appellee's Exhibit 2 as the employee conduct policy. Appellee's Exhibit 17 was identified by Ms. Miller as the report from the Sheriff's office regarding the drug screening of Appellant Adams. She testified Appellant Adams did not dispute the results and offered no explanation for the results.

Appellee's next witness was Carl Watt, a Commissioner with Crawford County for approximately eleven years. Mr. Watt testified that he and the other commissioners in August 2006, reviewed the investigation that was conducted regarding Appellant Adams and the recommendation that she be terminated. He testified that the Commissioners upheld the recommendation of termination due to Appellant Adams' violation of the drug policy and the notoriety of the newspaper article regarding the same.

On cross examination Mr. Watt stated the commissioners were aware that the indictment had been dismissed but because Appellant Adams pled guilty and the negative publicity that it generated for the agency, they felt it was in the best interest of the agency to remove her.

Appellant's first witness was Sharon Doddroe, a retired supervisor of Child Support. Ms. Doddroe stated Appellant Adams used to work for her as a Case Manager. She testified Appellant Adams was a great employee, as she supervised her for approximately seven years. She stated Appellant Adams did good quality work.

On cross examination Ms. Doddroe identified Appellee's Exhibit 16 as an incident report that she wrote in May 2005. She explained Appellant Adams went to court to give emotional support to someone, which did not show good judgment. Ms. Doddroe also testified Appellant Adams did have attendance problems, as she used a lot of sick leave.

Appellant's next witness was Anna Rothhaar, a co-worker of Appellant Adams who took over her caseload in August 2006. Ms. Rothhaar testified that when she took over Appellant Adams' caseload, the files were in good shape.

Appellant Adams testified she was a Case Manager for approximately eight and one-half years at the time of her removal. She admitted that she used marijuana in August 2006 and stated she never used drugs nor alcohol at work. Appellant Adams testified she completed a diversion program and has not taken any drugs since. She was tested every thirty days for six months for drug usage and all the tests were negative. Appellant Adams testified the reason she used a lot of sick leave is that she had had three surgeries in two years' time along with headaches and back problems.

Appellant Adams testified she was at home on September 14 and 15, 2006. She stated she knows she was at her sister's house on September 13, 2006 and spoke to her attorney that morning. She left her sister's house and went home. Appellant Adams testified she lives in a very large house and she cannot hear if someone is at the door if she is in one part of the house. She identified Appellant's Exhibits C and D as pictures and a plat of her house, respectively. Appellant's Exhibit G was identified as her telephone bill showing that two calls were made at night from her home on September 15, 2006. Appellant Adams testified her cell phone bill shows that calls were made from her property during the day of September 15, 2006.

On cross examination Appellant Adams testified she pled guilty as she thought of her parents' feelings and she did not want a jury trial.

FINDINGS OF FACT

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

1. Appellant Adams had been employed with Appellee for approximately eight and one-half years at the time of her removal from her Case Manager position on February 19, 2007.
2. Appellant Adams had been previously disciplined with verbal and written warnings.
3. As a Case Manager, Appellant Adams was responsible for collecting child support payments, interviewing clients, testifying on behalf of the agency in court and had access to clients' social security numbers and bank information.
4. Appellant Adams received a copy of the Appellee's policies and procedures and was aware of them.
5. Appellee's Drug and Alcohol Policy prohibits an employee from reporting for duty or remaining on duty while under the influence of alcohol or any controlled substance, except when the use is prescribed by a physician. The Employee Conduct policy provides for discipline of any employee who is in violation of the drug policy.
6. On August 11, 2006 Appellant Adams submitted to a drug test and tested positive for marijuana and benzodiazepines. She was placed on administrative leave with pay that same day. The notification that Appellant Adams received of her administrative leave with pay stated "During this Administrative Leave, between your normal work hours of 8:00 AM until 4:30 PM, if you are not at home, you must personally notify Carol Bell or Linda Zellner of your whereabouts."
7. On Friday, September 15, 2006, the Sheriff made an attempt to serve Appellant Adams with an order of removal at her home, at approximately 1:03 p.m. No one answered the door.

8. Appellant Adams did not call into work on September 14 or 15, 2006.
9. On October 16, 2006, Appellant Adams plead Guilty to one count of Possession of Drugs, a felony of the fifth degree.

CONCLUSIONS OF LAW

In order for Appellant Adams' removal to be affirmed, Appellee has the burden of proving by a preponderance of the evidence the allegations contained in the removal order. Appellee has met its burden.

It is uncontroverted that Appellant Adams voluntarily agreed to submit to a drug test and that the drug test showed she had marijuana and benzodiazepines in her system, as she tested positive for those drugs. It is also uncontroverted that Appellant Adams pled guilty to cocaine possession on October 16, 2006.

Appellant Adams argued that the county's drug policy was not administered properly because there was no reasonable suspicion of drug or alcohol use as defined in the Appellee's policy. While Appellee's policy does give examples of "reasonable suspicion", the definition cannot be all inclusive. The term "reasonable suspicion" has been used many times over in cases to include factors not listed in Appellee's policies. See *Pernell v. Montgomery County Board of Commissioners*, (1996), 1996 Ohio App. LEXIS 4954 (2nd Appellate Dist.). The fact that on August 8, 2006, a search was conducted of Appellant Adams' house and on August 9, 2006, she was arraigned on a charge of a fifth degree felony for possession of drugs, is enough "reasonable suspicion" for Appellee to have Appellant Adams submit to a drug test on August 11, 2006. The facts established that Appellant Adams was given time to confer with her attorney prior to agreeing to the drug test. She could have refused the drug test and been left to defend the insubordination charge of not taking the test. Instead she agreed to submit to the test and tested positive for the two aforementioned drugs. Since she tested positive for those drugs on August 11, 2006, she arrived at work that morning under the influence of drugs, as they were still in her system.

It is not unreasonable for the Appellee to have acted upon the knowledge that they had as of August 11, 2006. They had a reasonable suspicion of drug use by Appellant Adams based on the fact that drugs had been found in the home that she lived in and that she had been arraigned on drug charges. "Reasonable suspicion" is a different standard than that of "probable cause". Appellant Adams argued that she could not be subjected to a search and seizure without probable cause; however, Appellee was not searching nor seizing anything from Appellant Adams. Appellee was not seeking to criminally charge Appellant Adams with any crime. They were only acting to have her submit to a drug test in order to determine if she was violating the drug and alcohol policy. Appellee's Exhibit 1 is a copy of the policy and it states that its purpose is

. . .to ensure that its **employees are free from the effects of alcohol and/or illegal drugs at all times while on duty.** The County/Employer's goal is to reduce accidents, injuries and fatalities resulting from drug and alcohol abuse and **to ensure that employees are drug free while serving the needs of the County/Employer.** (Emphasis added).

Even though Appellant Adams may not have been observed to have been under the influence of drugs or alcohol on August 11, 2006, the Appellee had a reasonable suspicion that she may not have been drug free when she reported for work that morning. The Appellee did not abuse its discretion when asking Appellant Adams to submit to a drug test on the morning of August 11, 2006.

Appellant Adams also argued that Appellee violated the sunshine law by meeting on August 11, 2006, and therefore their order for Appellant Adams to submit to drug testing was void. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Nowhere in the statutes which grant jurisdiction to this Board is the Board given any authority to make a determination as to a public body's compliance or non-compliance with the sunshine law. Therefore, Appellant Adams' argument on that subject will not be addressed as this Board is without subject matter jurisdiction to review that argument.

Appellant Adams also argued that because Appellant Adams pled guilty to a felony but was not convicted of such felony, due to her plea and subsequent participation in a diversion program, the guilty plea cannot be used as a basis of her

termination. Appellant's argument has merit, but Appellant Adams was not terminated solely on the basis that she pled guilty to a felony. She was terminated because she failed a drug test and was therefore in violation of the Appellee's drug policy and because she did not report into work as required.


When Appellant Adams was placed on administrative leave with pay, effective August 11, 2006, she was notified, in writing, that "During this Administrative Leave, between your normal work hours of 8:00 AM until 4:30 PM, if you are not at home, you must personally notify Carol Bell or Linda Zellner of your whereabouts."

Appellant Adams testified that she did not call into the office on September 14th nor 15th. She stated she was under the impression that she had been terminated as of September 12th, although no one specifically told her that she had been fired. When the Sheriff attempted to serve the order of removal on Appellant Adams on September 15th, no one answered the door at her residence. Appellant Adams testified she was at home, but did not hear the door bell or anyone knocking. Appellee cannot prove that Appellant Adams was not at home and Appellant Adams cannot prove that she was. Appellant Adams offered evidence that the phone records show that a call was made by someone from her home on September 15, 2006, but that is not proof that she made the call and was at home.

The only evidence that is available is that the Sheriff was at the residence of Appellant Adams on September 15, 2006 and no one answered the door. Appellant Adams was notified that she must be available during her normal working hours while on administrative leave or to inform Appellee of her whereabouts. The evidence established that the Sheriff was at Appellant Adams' residence during normal working hours and she was not available and did not call into Appellee's offices to inform them of her whereabouts. Appellee did not abuse its discretion in disciplining Appellant Adams for not being available during her normal working hours on September 15, 2006.

Jennifer Adams
Case No. 07-REM-02-0062
Page 11

Therefore, since Appellant Adams admitted to using illegal drugs and her drug test came back positive for benzodiazepines and marijuana, in violation of the Appellee's drug policy, as well not being available during her normal working hours on September 15, 2006, it is my **RECOMMENDATION** that Appellee's removal of Appellant Adams be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge

:mms