

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Roscoe Gatewood Jr,

Appellant,

v.

Case No. 07-SUS-01-0006

Department of Mental Health
Summit Behavioral Healthcare,

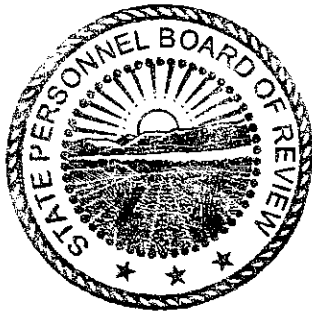
Appellee.

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 suspension, effective January 5, 2007, be **AFFIRMED**, pursuant to O.R.C. § 124.34.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

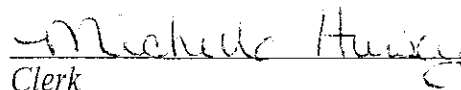


J. Richard Lumpe, *Chairman*

CERTIFICATION

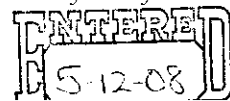
The State of Ohio, State Personnel Board of Review, ss:

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, May 12, 2008.



Michelle Huxley
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**

Roscoe Gatewood, Jr.,

Case No. 07-SUS-01-0006

Appellant

v.

April 9, 2008

Ohio Department of Mental Health,
Summit Behavioral Healthcare,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On or about January 5, 2007, the Ohio Department of Mental Health, Summit Behavioral Healthcare, Appellee herein, served an order of suspension, in accordance with Ohio Revised Code Section 124.34, upon Roscoe Gatewood, Jr., Commissary Manager, and Appellant herein. That order alleged the following:

This will notify you that you are suspended (working) from your position of Commissary Manager at Summit Behavioral Healthcare effective January 8 – 12, 2006.

The reason for this action is that you have been guilty of Failure of Good Behavior (Use of abusive, insulting language or gestures. Being disrespectful).

Specifically: On or about November 28, 2006 you were disrespectful to your co-worker in the presence of others.

Thereafter, on January 9, 2007, a timely appeal from this order was filed by the Appellant. Further, prior to going on the record, the jurisdiction of this Board was established and stipulated to. The record hearing in this case was held on September 10, 2007. The Appellant, Roscoe Gatewood, Jr., appeared at the record



hearing, *pro se*. The Appellee, the Ohio Department of Mental Health, Summit Behavioral Healthcare, was present through its designee Stan Temple, Mental Health Administrator 4, also known as a Business Manager, and was represented by Megan H. Boiarsky, an Assistant Attorney General.

This hearing was conducted by the State Personnel Board of Review in accordance with Ohio Revised Code Section 124.34, which specifically provides that an employee may file an appeal of any order filed under Ohio Revised Code Section 124.34, within ten (10) days after having received the same with the State Personnel Board of Review.

STATEMENT OF THE CASE

Appellee's first witness to testify was Mr. Roscoe Gatewood, Jr., as called as if on cross-examination. Mr. Gatewood testified he is employed with the Ohio Department of Health, Summit Behavioral Healthcare (SBHC hereafter) as a Commissary Manager and has been so since November 2002. The witness stated at that point he was the supervisor of Ms. Wanda Walker, and that sometime in 2003 his supervisory duties had been taken away, even though he still carries the title of Commissary Manager. The witness then identified Appellee's Exhibit 2 as his OAKS employee history report and agreed to its authenticity, as well as its accuracy. The witness identified Appellee's Exhibit 1 as his position description, which again he described as being accurate as of February 24, 2006.

Next, Mr. Gatewood identified Appellee's Exhibit 6 as Summit Behavioral Healthcare's Policy HR-101, which outlines guidelines and suggested disciplinary actions for all employees and that it was his understanding that Summit Behavioral Healthcare adheres to a progressive disciplinary standard. Specifically, when referred to page 6 of said exhibit, the witness agreed that these are in fact the disciplinary guidelines in effect at Summit Behavior Healthcare and that he knew of these. When referring to page 8 of said exhibit, the witness noted under failure of good behavior under Section 2, the use of obscene, abusive or insulting language or gestures, being disrespectful and/or engaging in heated arguments is an offense which one can be charged with at the agency, and that he understands that is the part of the disciplinary grid which he has been charged with, and which is at issue for today's hearing.

Mr. Gatewood then identified Appellee's Exhibit 5 as a request for disciplinary action which apparently had been authored by Rick Erb, a Fiscal Director of the agency that was signed off by his supervisor, Stan Temple. The witness testified he

understood what had took place and when given the same he disagreed with it, but he did receive it. The witness identified Appellee's Exhibit 3 as his pre-disciplinary conference notice which he received on or about December 19, 2006, and that he was given an opportunity to explain his side of the story at the conference that was held. Mr. Gatewood identified Appellee's Exhibit 4 as the instant 124.34 order of suspension which he received by hand delivery on January 5, 2007. The witness was in fact given a working suspension from January 8 through January 12, 2006, and that he was not out any money as a result of being issued a working suspension. When questioned as to if he had any active disciplines on his personnel record, he answered in the affirmative. The witness identified Appellee's Exhibit 7, the first page thereof, as a May 10, 2006, written reprimand which he received for failure of good behavior for being argumentative and disrespectful, as well as noting that his behavior during the interaction at the incident was unprofessional and unacceptable. The witness testified he did receive it, but again, he refused to sign off on it. With respect to the second page of Appellee's Exhibit 7, again he identified a 124.34 order of suspension that was issued to him on or about and/or effective August 16, 2006, for failure of good behavior, being disrespectful towards co-workers, as well.

With respect to the November 28, 2006, incident in question, the witness agreed that Ms. Wanda Walker returned from vacation after Thanksgiving holiday and this is when the alleged incident was to have taken place. Mr. Gatewood testified that Matthew Rucker, a close friend and co-worker of Ms. Walker had been present sometime during the day, but did not recall speaking to him. The witness testified he did not call Ms. Walker "that" or did he refer to her at anytime to anybody that she was "lazy", as well. The witness stated he also did not tell Ms. Walker, after she came back from vacation that she could not take anymore time off or vacation. The witness denied he did not tell Ms. Walker she was going to do all the work that day and was not disrespectful to her anytime during the day.

The Appellee's next witness to testify was Ms. Wanda Walker, an employee of the Summit Behavioral Healthcare and co-worker of the Appellant herein. Ms. Walker testified she has been an employee with the Summit Behavioral Healthcare for approximately the last twenty-eight and one-half years, spending the last fourteen-years or so as a Commissary Clerk or Worker 1. The witness explained her duties included, but were not limited to, serving clients, taking money, running the cash register, preparing food and cleaning up when needed.

Ms. Walker testified she does know Roscoe Gatewood and has known him for approximately five years, as that is how long Mr. Gatewood has been employed with

the agency. The witness explained Mr. Gatewood was in fact her supervisor from 2002-2003, when his supervisory duties were taken away, but that he still remained employed as the Commissary Manager. When asked to describe Mr. Gatewood's personality, she testified that his personality is "Jekyle and Hyde" like and is very volatile and emotional.

When questioned as to the November 28, 2006, incident, Ms. Walker testified she had just come back from vacation and that first thing in the morning Mr. Gatewood got into it with her as he told her that she could not take anymore vacation, in a very loud and nasty tone towards herself. As explained by the witness Mr. Gatewood at that time, told her that in fact she was "lazy", as well. Further, even later that afternoon Matthew Rucker and Mr. Gatewood got into an argument and that she overheard Mr. Gatewood say, "every time you get with that", referring to herself, and she did not like being referred to in that manner. There were others in the commissary when that conversation took place and she reported all this to Rick Erb, Stan Temple's direct supervisor as Mr. Temple, who was her supervisor, was out on vacation that day. At that time Mr. Erb told her to write out a statement, identified as Appellee's Exhibit 8. The witness then explained she in fact wrote this statement out on or about November 28, 2006, and it is a true and accurate copy of her statement. This has not been the first time she has experienced this form of abusive language from Mr. Gatewood and at this point she had just had enough. Although the statement was not read into the record, it reads as follows:

On Nov. 28, 2006

When I returned from my vacation Roscoe told me I better not take another day off because I have been off enough. He was saying it in a nasty way so I told her. I am not on your mess today, but he kept mumbling about me being lazy I told him that in 2 ½ years he could have this commissary, because he thinks the commissary belongs to him. He told me I wouldn't last that long. He kept talking to the patient about me so I just informed him. The later I heard him and Matthew Rucker out front and they were getting loud, then I heard him say to Matthew that every time you get around that you do something, I don't recall what it was but I assumed he was talking about me so I went out front and asked him who are you calling a that, he told me you know who you are. At that point I was tired of his abuse so I went to talk to Rick Erb.

On cross-examination, Ms. Walker reiterated what her duties were at the agency. The witness testified she has known Matthew Rucker for approximately the last twenty-five years and that she has known Dorothy Holderfield for a long time, as well. The witness stated that she does in fact from time to time, maybe once every week or so, eats lunch with Mr. Holderfield and that she has never been disciplined for this. It should be noted that Ms. Holderfield is an employee who works in the bank area, which is across from the commissary, her lunch was from 12:00 to 1:00 and Ms. Walker's lunch was from 1:00 to 2:00 p.m. Ms. Walker explained she did in fact give her statement to Mr. Rick Erb, Stan Temple's direct supervisor, when requested to do so. Further, the witness testified she did come back to the same work environment in the commissary that same day, as she finished the day. The following day, the witness did in fact talk to Mr. Temple. Ms. Walker explained her work hours would start at approximately 7:00 a.m. and she would start the cash count and help stock up during that period of time.

Appellee's third witness to testify was Dorothy Holderfield, an employee at Summit Behavioral Healthcare, who has been there for approximately twenty-years holding the position of Account Clerk 2. When questioned as to her duties, she explained she basically handles the patient's bank and handles their phones for them. The witness stated her office is located behind the commissary and they have doors adjoining each other, but their office door is usually closed throughout the day. However, the witness stated she couldn't hear the contents of a normal conversation through the door, when asked.

The witness then testified she does know Mr. Roscoe Gatewood, and has known him since he began employment back in 2002. The witness explained her work hours are approximately 8:00 a.m. to 4:30 p.m. each day and she had overheard the conversation between Mr. Gatewood and Ms. Walker on November 28, 2006. Ms. Holderfield stated she overheard an argument between Mr. Gatewood and Ms. Walker which she described as Mr. Gatewood was berating Ms. Walker, as he was loud when he was speaking to her. The witness explained the commissary opens at 8:30 a.m. and is usually open until 1:00 p.m. Ms. Holderfield in fact wrote up a statement when asked to do so by Mr. Stan Temple. The witness identified Appellee's Exhibit 10 as her witness statement, which reads as follows:

December 8, 2006

To Whom It May Concern:

On Tuesday November 28, 2006 I overheard a conversation between Roscoe Gatewood and Wanda Walker. This was Wanda's first day back from vacation. Roscoe told Wanda, in a very loud voice, that she wasn't allowed to take off any more vacation days. He also told her that she was going to do the work that day. This conversation lasted for several minutes. In the past, I have overheard several conversations very similar to this one.

Dorothy Holderfield

Patient Bank

When asked if Mr. Temple ever asked her to look in or spy or listen into conversations between Ms. Walker and Mr. Gatewood, the witness testified in the negative.

On cross-examination, the witness testified Mr. Gatewood and Ms. Walker usually get in around 8:30 a.m. and that Wanda and herself sometimes eat together. When asked if she had overheard the conversation whether the door was closed or open, Ms. Holderfield explained the door was in fact closed, but she could hear the conversation, since it was loud. When asked why she did not open the door, she said because of past knowledge if she were to get involved he would have probably yelled at her and she did not want this to happen. When asked how Mr. Gatewood is with her, she responded by saying she just does not want Mr. Gatewood to yell at her.

On re-direct examination, she reiterated that she felt Mr. Gatewood's tone was inappropriate, but that she did not say anything to anybody until maybe the next day, when questioned by Mr. Temple.

The last witness to testify was Mr. Stan Temple, the Mental Health Administrator 4 and/or Business Manager for the Summit Behavioral Healthcare Facility. The witness testified he has held his present position for approximately the last six and one-half years, although he has had prior experience with the Department of Mental Health in a variety of different positions. Mr. Temple testified his duties included, but were not limited to, supervising all the fiscal and payroll departments as well as the commissary employees. Along this line of questioning, the witness testified he does in fact know Roscoe Gatewood, as he began back in 2001 and he has been his supervisor since that time. When asked what Mr.

Gatewood's duties were, the witness explained Mr. Gatewood was responsible for preparing food, cleaning, counting cash, and filling out A2 forms for any spoilage that had occurred. The witness explained at first Mr. Gatewood was a supervisor, but he lost his duties and explained that part of the problem was due to the fact that Mr. Gatewood has had an abusive personality since he began working at the agency. The witness stated that he has had a number of complaints from various personnel and as a result, removed Mr. Gatewood from his supervisory responsibilities and/or duties in the commissary, but he did not take away his pay.

The witness identified Appellee's Exhibit 6 as HR101 and/or the Summit Behavioral Healthcare's Policy on Progressive Discipline and Discipline in General, which was to serve as a guideline for the staff regarding issues of human resources and discipline and the like. All employees receive one of these policies when they are first hired, but he could not specifically state with any specificity that Mr. Gatewood actually had one in his possession. Mr. Temple then identified Appellee's Exhibit 7 as the two prior incidents in 2006 which Mr. Gatewood was given a written reprimand and a two-day suspension for essentially the same thing for failure of good behavior and being disrespectful to co-workers. The witness affirmed he has talked to Mr. Gatewood both informally and formally about his disruptive behavior and abusive style in trying to get him to cease this behavior. Moreover, the witness explained when he had issued these prior disciplines back earlier in 2006, Mr. Gatewood although he could not specifically state that he received the disciplinary grids contained within HR101, he was familiar with the paperwork and/or progressive disciplinary policy. The witness then identified Appellee's Exhibit 11 as a running form of notes dating back to 2003 with respect to any issues which came up with Mr. Gatewood, which he kept on his computer in the ordinary course of business. The witness stated he has all these type of things on every employee that he supervises and that they are just notes for him which he keeps at work so he can keep apprised of the situations at hand.

The witness then identified Appellee's Exhibit 4 as Mr. Gatewood's 124.34 order of suspension that Mr. Gatewood received on or about January 5, 2007. The witness identified Appellee's Exhibit 9 as his memorandum he wrote to Rick Erb, his supervisor, requesting disciplinary action and noted he was assigned by Mr. Erb to investigate the complaints made by Ms. Walker. Appellee's Exhibit 5 is his request for disciplinary action and explained when he handed this to Mr. Gatewood he refused to sign off on receiving this. When questioned as to why this request for disciplinary action was sought, he testified it was a result of his investigation there was just cause to go forward with the discipline.

On cross-examination, Mr. Temple testified it is true that he was not present at SBHC that day, as he was off on vacation. The witness testified Ms. Walker came to him first thing when he came to work. When questioned if two people were arguing why would he not come and talk to both himself, as well as Ms. Walker, testified his instructions were from his direct supervisor, Mr. Erb to investigate the witnesses who had overheard this incident, not necessarily Mr. Gatewood or Ms. Walker. The witness stated he was simply told to gather the facts from the witnesses.

FINDINGS OF FACT

1. The Appellant, Roscoe Gatewood, Jr., as a Commissary Manager was issued a working suspension with the Ohio Department of Mental Health, Summit Behavioral Healthcare for failure of good behavior, use of abusive language, insulting language and/or gestures and being disrespectful.

2. The Appellant, Roscoe Gatewood, Jr., was served an Ohio Revised Code Section 124.34 order of suspension on or about January 5, 2007, and was issued a working suspension from employment effective January 8 through the 12, 2006, for five (5) days. It should be noted that as a working suspension the Appellant did not lose any money, but that the five-day suspension would go on the record as a five-day suspension with no loss in pay.

3. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant did in fact use abusive and/or insulting language and was being disrespectful to Ms. Walker, his co-worker in the presence of others, namely Dorothy Holderfield.

A) The Appellee did prove, by a preponderance of the evidence that the Appellant was guilty of failing to use good behavior when he used abusive and/or insulting language and/or was being disrespectful in raising his voice to the level to which he did, as Ms. Holderfield confirmed this action by Mr. Gatewood.

B) The Appellee did prove, by a preponderance of the evidence, the Appellant was guilty of being or using failure of good behavior in that he had referred to Ms. Walker as "that" and "lazy" in a disrespectful manner.

4. The Appellee, by a preponderance of the evidence, established the standard of conduct required by the Appellant, Roscoe Gatewood, Jr., as a Commissary Manager, and that he had knowledge of the proper procedures and

regulations utilized by the Ohio Department of Mental Health, Summit Behavioral Healthcare.

5. The Appellant, Roscoe Gatewood, Jr., in his previous five-years of employment, has had one written reprimand and one two-day suspension issued to him in the last year previous to the issuance of the instant discipline.

6. The jurisdiction of this Board to conduct this hearing was established by Ohio Revised Code Section 124.34

CONCLUSIONS OF LAW

The issues before this Board of Review are whether the Appellant violated or was guilty of failure of good behavior and whether the punishment that was meted out was too harsh considering the circumstances and/or constituted disparate treatment. The Appellee believes the Appellant's issuance of a five-day working suspension was necessary and appropriate considering that the Appellant, Roscoe Gatewood, Jr., has continually been using abusive and/or insulting language and being disrespectful to his co-workers and they are simply trying to impress upon the Appellant not to do this and/or refrain from the same. However, the Appellant believes the issuance of the five-day working suspension was too harsh, as he does not believe that he had done anything wrong and/or that management is not backing up his side of the story.

The Appellee, in its Ohio Revised Code Section 124.34 order of suspension, charged the Appellant with failure of good behavior for use of abusive, insulting and/or language or gestures and/or being disrespectful.

In the instant appeal, the Appellee did prove, by a preponderance of the evidence, the charges set forth in the Appellant's order of suspension.

As was revealed by the testimony, by a preponderance of the evidence, the Appellant did engage in an argument with Ms. Wanda Walker at the start of her workday on or about November 28, 2006, which deemed by others, in a very loud voice that Ms. Walker was not allowed to take anymore vacation or days off. The evidence revealed that Mr. Gatewood did not have the authority as her supervisor to tell or direct Ms. Walker in that manner. Thus, the Appellee did prove, by a preponderance of the evidence, the Appellant was guilty of failing to use good behavior when he used abusive and/or insulting language and/or was being disrespectful in raising his voice to the level to which he did, as Ms. Holderfield

confirmed this action by Mr. Gatewood. Further, the Appellee did prove, by a preponderance of the evidence, the Appellant was guilty of failure of good behavior when he referred to Ms. Walker as "that" and "lazy" in a disrespectful manner, as well.

If the order of suspension issued to the Appellant in this proceeding could be decided based upon the intentions of the Appellant, and if the Appellant's testimony about a lack of culpable intent were to be believed, such a defense could be used to disaffirm or modify the disciplinary action imposed. The intention of the Appellant, however, in participating in the alleged misconduct within the order of suspension is not the issue upon which this suspension order rests. In this suspension action, as well as in all disciplinary cases, the finder of fact is less concerned with the intention of the accused and more concerned with whether the alleged misconduct occurred and, if so, what disciplinary action reasonably attaches to the proven misconduct.

Ohio Revised Code Chapter 124. nowhere defines "failure of good behavior". However, Black's Law Dictionary defines "failure of good behavior" to mean:

. . . Behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. (Further citations omitted). Black's Law Dictionary at page 594 (Deluxe 6th Edition 1990).

Therefore for the Appellee to establish that an employee violated and/or was guilty of failure of good behavior, the Appellee must demonstrate that the behavior in question was contrary to the recognized standard of propriety and morality.

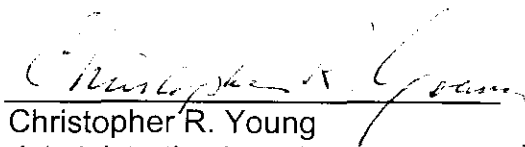
In the instant appeal, the documentary and testimonial evidence revealed that the Appellant knew of established standard of conduct which he was required to maintain in the performance of his job as Commissary Manager. Further, as was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant was guilty of failure of good behavior by using abusive and/or loud and disrespectful language to his fellow co-worker in the performance of his job. Therefore, I consequently conclude that the Appellant's actions did violate and constitute an actual violation under Ohio Revised Code Section 124.34 for failure of good behavior.

However, there remains a question of whether the discipline imposed should be sustained. The undersigned recommends that the evidence presented at the record hearing, taking the totality of circumstances into account, is sufficient to

support the suspension of the Appellant. In this case the evidence revealed that the Appellant, Roscoe Gatewood, has worked for approximately five years and that he has had a couple of disciplines issued to him in a not so recent past, essentially for the same type of behavior, and the Appellant, although having being issued a written reprimand and a two-day suspension, it appears this has not made an impression on him as to the agency wanting his loud, abusive and disrespectful language to his fellow co-workers to cease. If this were to be a first offense, the five-day working suspension would undoubtedly have been modified but due to the recent notification of two previous disciplines for essentially the same thing, the undersigned in good consciousness cannot modify the Appellee's decision to impress upon the Appellant of wanting this activity to cease. Therefore, it would be the undersigned's recommendation to affirm the issuance of the five-day working suspension to the Appellant be affirmed. However, the undersigned would also suggest to the Appellee agency in addition to having issued Mr. Gatewood this discipline, to send Mr. Gatewood out for additional training in anger management to realize that he needs to better communicate with his fellow employees.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the instant order of suspension issued to the Appellant, effective January 5, 2007, pursuant to Ohio Revised Code Section 124.34 be **AFFIRMED**.



Christopher R. Young
Administrative Law Judge

CRY:dIm