

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

Gregory Griffin,

Appellant,

v.

Case No. 09-RED-03-0168

Department of Rehabilitation and Correction,
Chillicothe Correctional Institution,

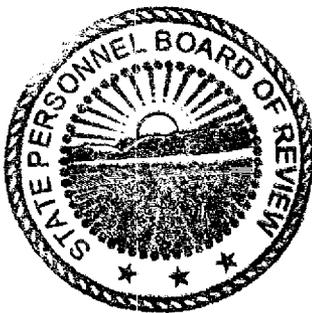
Appellee.

ORDER

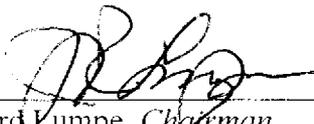
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the order of reduction effective March 29, 2009, reducing the Appellant from the position of Correction Lieutenant to the position of Correction office, **AFFIRMED**, pursuant to O.R.C. § 124.34.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

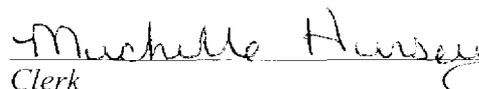


J. Richard Lumpe, *Chairman*

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, April 1, 2010.



Clerk

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

A.L.C. 2/14

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

Gregory Griffin,

Case No. 09-RED-03-0168

Appellant

v.

March 1, 2010

Dept. of Rehab. & Corr.,
Chillicothe Corr. Institution,

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On March 18, 2009, the Ohio Department of Rehabilitation and Correction, Chillicothe Correctional Institution (CCI), Appellee herein, served an order of reduction, in accordance with Ohio Revised Code section 124.34, upon the Appellant, Gregory Griffin, a Correction Lieutenant at CCI. That order alleged the following:

This will notify you that you are reduced in pay, from the position of Lieutenant and/or reduced to the new position of Correction Officer effective 3-29-09.

The reason for this action is that you have been guilty of specifically: any violation of ORC 124.34 and Standards of Employee conduct Rule #1,#2, #49, #8, and #27 (inefficiency, dishonesty, malfeasance and nonfeasance: Tardiness: Failure to report for duty at schedule starting time. Poor judgment: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment. Failure to supervise: Failure of a supervisor to properly supervise or enforce work rules.) On January 7, 2009, you clocked in at 5:01 AM making you one minute late reporting for duty. You waived your Pre-Disciplinary hearing for this attendance issue, therefore you offered no mitigation. October 10, 2008, you admit that as the site supervisor you failed to gather all relevant information pertaining to an incident with inmate, Mintlow. As the site supervisor you did not know that a staff member had

been assaulted and one was spit on. You then assisted in escorting the inmate from the Residential Treatment Unit, to the transportation van with a spit sock on, you allowed the inmate to board the van with this device on knowing it would be a three hour trip for the inmate. You knew the inmate had been given an ordered shot from the Psychologist, but you used poor judgment by not waiting for the shot to take affect. After the incident you even failed to review the incident reports by the staff members in the area to find out what happened and you failed to properly notify the Shift Captain. You failed to supervise the situation properly and what actions you did take were in poor judgment.

Thereafter, on March 19, 2009, a timely appeal from this order was filed by the Appellant. The record hearing in this case was held on January 27, 2010, beginning at 10:30 a.m. The Appellant, Gregory Griffin, appeared at the record hearing and was represented by Byron L. Potts, Attorney at Law. The Appellee, CCI, was present through its designee Bobby Johnson, a former Labor Relations Officer 2 for CCI, and was represented by Timothy A. Lecklider, Principal 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 been served with such an order with the State Personnel Board of Review. The Appellant timely filed his appeal and the jurisdiction of this Board was stipulated to prior to going onto the record.

STATEMENT OF THE CASE

The Appellee called as its first witness Mr. Gregory Griffin, as if on cross examination. The witness testified that he is presently employed as a Correction Officer at the Chillicothe Correctional Institution, working second shift since his demotion from Lieutenant. The witness then identified Appellee's Exhibit 1 as his employment history on computer wherein it was noted that he began employment with the department in June 1992, and it was noted that he had various suspensions, working suspensions, promotions and demotions, during his tenure. The witness identified Appellee's Exhibit 48 as a position description of a Correction Lieutenant, the position he held prior to his demotion and agreed that the duties

contained within said position description were duties which he performed as a Correction Lieutenant. Further, the witness identified Appellee's Exhibit 2 as a disciplinary history of him and agreed to its accuracy with the exception of the December 2005 one-day working suspension for his apparently being AWOL. The witness explained that if he, as a Lieutenant, would have not called in, he would have most likely been demoted, not just been given a one-day working suspension. The witness then identified Appellee's Exhibit 3 as The Ohio Department of Rehabilitation and Correction Standards of Employee Conduct which he received and is familiar with, along with evidencing Appellee's Exhibit 4 as his certificate of information received regarding the standards of employee conduct.

The witness then identified Appellee's Exhibit 6 as his pre-disciplinary notice regarding the rule 1 and rule 2 violations regarding the tardiness issue. Mr. Griffin attested that he did receive the above notice and signed a waiver of pre-disciplinary conference evidence as Appellee's Exhibit 7. The witness then identified Appellee's Exhibit 8 as the computer screen of the Kronos timekeeper system depicting that on January 7, 2009, he clocked in at 5:01 a.m. when his scheduled shift began at 5 a.m., thus reporting for duty one minute late.

Next, when questioned, the witness identified Appellee's Exhibit 5 as a memorandum authored by Major Clever dated April 2, 2008 regarding the use of spit socks/hoods and OC. The witness testified that he did receive this memorandum in e-mail form, but did not attest to exactly when. The witness then identified Appellee's Exhibit 21 as his initial incident report regarding the incident which took place on October 10, 2008. The witness noted on said exhibit that, "because of the inmate's behavior a spit sock was placed on him to prevent further behavior he then began to comply with all orders. There was no further incident with this inmate.", and agreed that that is what he put down regarding the incident at question. The witness identified Appellee's Exhibit 42 as his investigatory interview, and agreed that accurately depicted what he was asked, and his answers, and agreed that when he placed the spit sock on the inmate it was never removed after the inmate got in the van or at any time until he got to the Oakwood facility located in Lima, Ohio some 2 1/2 to 3 hours away.

The witness then identified Appellee's Exhibit 10 as the pre-disciplinary conference notice which he received regarding rule #49, #8 and #27 violations regarding the spit sock incident. The witness agreed when questioned that he received and/or signed off on the acknowledgement of the pre-disciplinary hearing

conference on or about to January 7, 2009, as evidenced by Appellee's Exhibit 11. The witness then identified Appellee's Exhibit 47 as the instant order of reduction which he also received.

The Appellee's next witness was Mr. Dwayne Ison, a Correctional Officer who has worked for CCI for the last six years. When questioned, the witness testified that he did recall the incident regarding inmate Mintlow with a spit sock on October 10, 2008. The witness identified Appellee's Exhibit 24 as his incident report which he filled out. The witness testified that the inmate was combative and that he was spitting on people and he kicked Dr. Briggs, but with the help of two other corrections officers and Dr. Adams they subdued the inmate and eventually handcuffed the inmate, and the nurse administered a shot to calm him down. The witness testified that his role in subduing the inmate was that he grabbed a hold of his legs while on the ground and that he did not witness who in fact put the spit sock on the inmate. However, the witness testified that when the inmate was stood up, he in fact had on the spit sock. Further, when questioned, the witness testified that he did not see Mr. Griffin escort the inmate out to the van, as he went back to his previous assignment. It should be noted that in Mr. Ison's incident report he specifically mentioned that Dr. Briggs was "mule kicked". The witness also identified Appellee's Exhibit 31 as his medical exam report wherein it was noted that he did not receive any injuries.

On cross-examination, the witness testified that he was uncertain when Mr. Griffin actually came on to the scene. Further, the witness testified that Dr. Briggs was kicked after the inmate was spitting, but that Mr. Griffin was not there when the spitting and/or kicking took place. Moreover, when questioned, the witness testified that he did not hear an order to place the spit sock on the inmate, as well. The witness testified that he has never been trained to use a spit sock, but that he is aware of the policy, although he cannot place one on an inmate. Additionally, the witness testified that the inmate was given a shot by Nurse Good after he was handcuffed, but was unaware that Mr. Griffin was there to personally observe the shot.

On redirect examination, the witness when questioned if Mr. Griffin asked for a briefing about the incident surrounding the inmate explained that Mr. Griffin simply asked if everyone was all right.

On re-cross-examination the witness testified that he turned in his incident report to another Correction Officer, who eventually to the best of his knowledge put it on the Captain's desk.

Appellee's third witness to testify was Lieutenant Neil Glendening, another employee with CCI. The witness testified that although he is a Lieutenant, he only recently become became a Lieutenant in January 2009, and that he was a Corrections Officer at the time of the incident in question on October 10, 2008. The witness identified Appellee's Exhibit 16 as his witness interview that he gave in connection to the above noted incident. Mr. Glendening explained that on the day in question he was working transport and that he was the person that actually drove, and that Corrections Officer Tim Boring accompanied him from CCI to the Oakwood facility, some two and a half to three hours away. The witness explained that inmate Mintlow was coming out of the B-1 unit, the Residential Treatment Unit, specifically in the mental health area. The witness testified when questioned, that Mr. Griffin was with a couple of people escorting the inmate to the car, and that CO Boring was walking with the inmate, as well.

Specifically, when questioned, the witness testified that he did not see when the spit sock was applied to the inmate, as he answered this question in his investigatory interview, but that it was in fact on inmate when he arrived at the van, and loaded onto the van. Further, the witness testified that CO Boring was assigned the task of watching inmate during the transport, while he drove the van. Moreover, when questioned, the witness testified that he could not recall Mr. Griffin telling him to remove the spit sock when the inmate became compliant. The witness explained that upon their arrival at the Oakwood facility, Captain McKee called to tell them to remove the spit sock when and if the inmate became compliant, and that they removed it at that point.

When asked the question, the witness explained that it is never been customary to transport inmates wearing spit socks, and that this was his first time that he can recall ever transporting an inmate with one. The witness then identified Appellee's Exhibit 5 as a departmental directive regarding the use of spit socks/hoods.

On cross-examination, the witness testified that he first observed the inmate when he was coming down the hall, and that he could not specifically recall if Mr. Griffin was escorting the inmate or walking behind him. The witness testified that he

could not remember who actually loaded the inmate into the van, but did recall that he heard Mr. Griffin say something. When asked, with respect to Appellee's Exhibit 16, Mr. Glendening's investigatory interview when asked if anyone told him to remove the spit sock when the inmate became compliant stated that, "I don't think so it was bang bang let's go, he may have told Tim." Further, the witness testified that the inmate upon entering the van was mouthy and mildly resistant and that they had to coax the inmate into the van. The witness testified that they never transported anyone with this spit sock on before, nor have they received training regarding the use of spit socks. The witness agreed when questioned that Appellee's Exhibit 5, the use of spit socks directive would of have applied in this situation, and that there was no administering any OC as far as he knew.

The witness testified that he had been providing transport for inmates for approximately 14 years or so, although that was his first year at this post providing transport. When questioned, the witness testified that in his opinion the inmate did not suffer any thing or at any time during the transport. Moreover, the witness testified that he's never seen anyone arrive at CCI wearing a spit sock, as well. Additionally, when questioned, the witness explained that between the driver and passenger and back of the van, it is separated by Plexiglas, with a small sliding window door with wire mesh separating the two compartments.

Appellee's next witness to testify was Lieutenant Shane Clark, an employee of CCI for approximately the last 10 years and a lieutenant since January 2007. When questioned, the witness identified Appellee's Exhibit 5, as a spit sock directive and or about the proper use of a spit sock and Appellee's Exhibit 50 as the spit sock policy which was effective October 15, 2009, subsequent to the incident in question, but mirroring the directive regarding the proper use of a spit sock.

The witness identified Appellee's Exhibit 45 as his investigatory interview regarding the incident and his involvement in this process. When questioned, the witness explained that while at the Captain's desk he oversaw certain paperwork regarding an inmate/staff assault had occurred, and more serious in his opinion was that a special incident report was not written by the site officer, Mr. Griffin at that time. The witness then identified Appellee's Exhibit 27 as his special incident report which he authored regarding the incident. Lieutenant Clark explained that when he read the various incident reports regarding the incident that occurred on October 10, 2008, he saw a lot of inconsistencies, and namely that Dr. Briggs, who was assaulted via a "mule-kick", did not have a medical done on him. When questioned,

the witness testified that the site supervisor's responsibilities as a lieutenant are to know the facts and to account for the steps that should be taken with specifically recounting what has happened answering the questions of who, what, where and when. Additionally, the witness commented that it was initially explained to Captain McKee that although incident reports were filled out, it was said it was no big deal. However, the witness explained that anytime there is an inmate/staff assault that is a big deal, as proper steps need to be taken to ensure the safety and security of the institution and its employees. Additionally, the witness testified that it is policy that all incident reports should be turned in before the shifts are over, or immediately after the incident occurred, and more so if an inmate/staff assault occurred. Additionally, the witness testified that when reviewing Lieutenant Griffin's incident report, Appellee's Exhibit 21 there was no mention of any assault occurring whether it was by physically touching or by spiting, along with no mention that the spit sock remained on the inmate up to and during the transport of said inmate to the Oakwood facility. Furthermore, the witness testified that no one should transport any inmate with a spit sock on and that he has never seen it happen before.

On cross-examination, the witness, when questioned, testified that he was not the site supervisor that day, but that he would often help other lieutenants out as they often approach their duties in a "tag-team" fashion. The witness explained that all the CO reports go to the Captain's office, the site supervisors would review and look over these reports, then give these to the captain, although other lieutenants can aid and assist. The witness then identified Appellee's Exhibit 45 as his investigatory interview and/or witness interview and recalled that both he and Captain McKee were looking over the paperwork and realized the incident with the inmate was more serious than Mr. Griffin had indicated which required a special incident report because of the assault on a staff member, which had not been completed at that time. When questioned, the witness testified that he was unaware whether or not Lieutenant Griffin was granted and/or afforded an opportunity to fill out a special instant report. The witness identified Appellee's Exhibit 5 as the directive covering the proper use of spit socks which was disseminated via an e-mail to all lieutenants and captains, which he received.

On redirect examination, the witness explained that the site supervisor's responsibility when incidents occur is that they are to be completed timely, preferably right after the incident, as it is fresher in one's memory. The witness then identified Appellee's Exhibit 13 as Gregory Griffin's investigatory interview and noted

that when and if any Lieutenant gives a packet of incident reports to the Captain, that in itself completes the process.

Appellee's next witness to testify was Bobby Johnson, who is presently employed at the Rehabilitation Services Commission as a Labor Relations Officer 3 for only the last month, but who was a Labor Relations Officer 2 at CCI since 2005, and was also CCI's Personnel Director for the last year and a half prior to his leaving CCI. When questioned, the witness testified that he recalled the Gregory Griffin's investigation into alleged misconduct regarding two areas those being: attendance issues and performance issues. The witness testified that respect to the attendance issue his role was noted as the hearing officer for the institution. However, regarding the performance issues the witness explained that he gathered the information for the Warden in this area.

The witness identified Appellee's Exhibit 1 as an employment history on computer for Mr. Gregory Griffin, along with the Appellee's Exhibit 2 noting Mr. Griffin's disciplinary history wherein it was explained that some of his disciplinary history dates back to 2004 since there were intervening violations which were accumulating for progressive disciplinary purposes. The witness also identified Appellee's Exhibit 3 as the employee standards of conduct and noted that Mr. Griffin had signed off as acknowledging he had received the same.

The witness identified Appellee's Exhibit 6 as Mr. Griffin's pre-disciplinary notice regarding the tardiness issue. The witness identified Appellee's Exhibit 7 as Mr. Griffin's waiver of the pre-disciplinary conference, noting that there was no mitigation offered for this allegation. The witness identified Appellee's Exhibit 8 as the Kronos timekeeping sheet evidencing that Mr. Griffin was tardy and/or late one minute on January 7, 2009. Furthermore, the witness identified Appellee's Exhibit 9 as his hearing officer's report regarding the tardiness issue showing just cause to proceed. The witness then testified that with respect to Mr. Griffin's disciplinary history and when reviewing Appellee's Exhibits 2 and 3 it reveals that rules violations 1 through 4 cover attendance problems and that Mr. Griffin had had five attendance issue violations and that current tardiness issue was the sixth violation, which could result in discipline of up to and including a removal.

The witness then identified Appellee's Exhibit 10 as Mr. Griffin's January 6, 2009, pre-disciplinary notice regarding the performance issue for violating rules 49, 27 and 8, or any violation the ORC 124.34, failure of a supervisor to properly

supervise or workforce work rules and failure to carry out a work assignment or exercise of poor judgment in carrying out an assignment, respectively. The witness identified Appellee's Exhibit 38 as a subsequent pre-disciplinary notice regarding the exact same rules violations that was given to Mr. Griffin on or about February 13, 2009. The witness then identified Appellee's Exhibit 37 as the hearing officer's report dated January 14, 2009 wherein the hearing officer recommended that further investigation be done by the fact finder. Mr. Johnson noted that on said exhibit that after a hearing officer writes a report such as this he then takes the report to the Warden, as in this case for the warden to make her comments, concurring that there need to be additional fact-finding to gather information regarding the incident. The witness identified Appellee's Exhibit 46 as the hearing officer's report dated February 18, 2009, finding that just cause existed for rules violations 49, 8 and 27. The witness then testified that with respect to Mr. Griffin's disciplinary history and when reviewing Appellee's Exhibits 2 and 3 it revealed that the rule violations noted above were the third performance issues related acts of misconduct showing that on the disciplinary grid the appropriate discipline could be a 10 day suspension up to a removal.

On cross-examination, the witness reiterated most of his previous testimony while explaining that the Warden makes the decision regarding the discipline, while the hearing officers only find just cause to proceed. Furthermore, the witness explained that although some discipline after two years falls off, in this case there were intervening additional acts of misconduct which kept the level of progressive discipline active.

Appellee's last witness to testify was Ms. Robin Knab the Warden at CCI for approximately 2 years. The witness when questioned testified that her prior position was that of the Bureau Chief for the Ohio Penal Industries, along with holding various other positions for approximately the last 24 years in the service of the state of Ohio. Further, when questioned, the witness testified that she was aware of the incident that occurred on October 10, 2008, as she reviewed the use of force paperwork, along with the incident reports regarding the matter.

The witness then identified Appellee's Exhibit 12, as the fact-finding investigation report submitted by Ms. Leta Pritchard on or about December 18, 2008, that explained Mr. Griffin as the site supervisor of the incident had a responsibility to get a factual and accurate account of what occurred from those who were involved in the incident, which was not done. The witness then identified

Appellee's Exhibit 19 as the use of force package that was signed off by her referring this for employee discipline. The witness then identified Appellee's Exhibit 37 as the hearing officer's report from the first pre-disciplinary conference that recommended it be sent back for additional fact-finding, to which she concurred. The witness then identified Appellee's Exhibit 41 as an additional fact-finding investigation report submitted on February 11, 2009, describing the incident in question involving Mr. Griffin and his subordinate employees which concluded that Mr. Griffin failed to inform Captain McKee that inmate Mintlow assaulted and spat on Dr. Briggs. The witness identified Appellee's Exhibit 46 as a pre-disciplinary conference hearing officer's report dated February 18, 2009, finding just cause for rules violations 49, 8 and 27. When questioned, the witness testified that after reviewing the above mentioned report she made the decision to demote Mr. Griffin from the position of Lieutenant to Corrections Officer after looking at his prior disciplinary history and the disciplinary grid. The witness testified that Mr. Griffin, as a supervisor and a lieutenant needed to set the example and lead his subordinates which he failed to do.

On cross-examination, the witness testified that she does get involved in making policy and procedure when they are made and/or created. Further, when questioned, the witness testified that every supervisor has a duty to see if the reports which are filled out are clear or need further clarification before turning them in to the Captain, as well.

The Appellant began his case-in-chief by calling Nurse Syvilla Good to the witness stand. The witness testified that she was employed by Wise Medical Staffing Agency as a staff registered nurse and has been for approximately 3 years. However, Ms. Good did note that she used to work for the Department of Rehabilitation the Corrections as a nurse prior to her being employed by Wise Medical Staffing Agency, while being a registered nurse for approximately 22 years. Further, the witness testified that on the day in question on October 10, 2008, she was a nurse assigned to the Residential Treatment Unit wherein she witnessed the incident in question. When questioned, the witness explained that she remembered that the inmate was very agitated and she was located in the pill center adjacent to the room in which he was located, and as she opened the door the inmate was trying to shove a chair into Dr. Briggs. Nurse Good recalled that the inmate was spitting everywhere and the doctor ordered her to get a shot to calm the inmate down. Moreover, when questioned, the witness testified that Dr. Briggs was present, along with several corrections officers, but she didn't recall seeing Lieutenant Griffin

at that point. When questioned as to how long it took the medication to take effect, the witness testified that she really didn't know. Moreover, the witness testified that she did not know whether or not it affected the inmate's breathing, as well.

Furthermore, the witness testified that she did not see any of the corrections officers put the spit hood on the inmate, nor did he see anyone, including Lieutenant Griffin put one on.

On cross-examination the witness explained that it was Dr. Morentz, the contract psychologist who was the person who ordered her to inject the inmate with a drug to calm him down.

The Appellant, Gregory Griffin, then testified as if on direct examination. When questioned, the witness testified that he is currently employed at CCI as a Corrections Officer, but was employed as a Lieutenant from March 2004 through March 2009 when he was demoted regarding the instant infractions. Further, the witness testified that he has been employed with the Department of Rehabilitation and Corrections for approximately 17 years, as well. However, it should be noted that Mr. Griffin had previously been employed as a Lieutenant earlier in his career and was demoted and that instant demotion from Lieutenant to Corrections Officer was in fact the second time that he was demoted. The witness then identified Appellee's Exhibit 2 as his disciplinary history and agreed with everything on the history except the discipline that he purportedly received in December 2005. The witness explained that if he were in fact AWOL for not showing up at work he would not have received a one day suspension, but most likely would have been demoted at that time.

With respect to the tardiness issue and/or infraction he agreed that he was guilty of the misconduct, but explained that he didn't have a history for being late. However, upon questioning, the witness did recall that in May of 2007 he was late at that time and based that lateness on fog and an accident, but could not obtain any accident report to verify his excuse when asked to do so.

With respect to the performance infractions, the witness testified that there has been no formal training that he has received regarding the use of spit hoods, but did recall he had received a memorandum regarding the same. However, contrary to prior testimony on cross, the witness explained that he did not receive the memorandum prior to the incident in question. The witness then went on to state

that the institution has received inmates from other institutions wearing spit hoods probably five or six times in the last couple years, but could not recall who they were or when.

The witness stated that on October 10, 2008, he arrived in the Residential Treatment Unit only to find a couple of Corrections Officers and Dr. Adams rustling around on the floor with the inmate, wherein they placed cuffs on him, and stood him up. The witness testified that Dr. Briggs was not present in the room at that time. Mr. Griffin testified that he placed the spit hood on the inmate after he changed his clothes into the orange jumpsuit, as he began to start "bubbling" like he was going to spit. The witness testified that Corrections Officer Boring and he then walked the inmate to the van. The witness testified that he told Corrections Officer Boring to "take off the spit hood when the inmate calmed down and/or before they arrived at Oakwood." When asked how the inmate was acting in the sally port the witness explained that he was calm although by the time that he got to the van he was mouthy. The witness explained that he was fearful that the inmate was going to spit on other staff, although acknowledging the inmate couldn't spit on anyone in the van, but only upon his arrival at Oakwood. The witness then identified Appellee's Exhibit 19, page 3, the Supervisor's Use of Force Summary Report authored by himself wherein he acknowledged there was nothing that he put in his report regarding the use of the spit hood. The witness explained that after putting the inmate in the van he filled out his reports previously identified as Appellee's exhibits 19 and 21, wherein he made sure that all the corrections officers filled out their reports and that they all had their medical exams completed. Afterwards, the witness testified that he then placed the reports on the captain's desk. The witness testified that he was not there when Dr. Briggs was kicked at, spit at, and not on, a point the witness wanted to make. The witness testified that Captain McKee called him later that morning on the phone and asked him if Dr. Briggs had been kicked and spat on, wherein he told him that he didn't know and that he was not aware that an assault had occurred. The witness agreed that when an assault on the staff takes place an incident report is to be filled out, along with a special incident report that has to be done. The witness explained that the incident reports and special reports were done, but not by himself. Moreover, when questioned, the witness explained that he did not know when the ejection would take effect on the inmate, and/or how long it would take it to calm him down.

On cross-examination, regarding the tardiness issue, in clarifying the witness' testimony regarding the fact that the December 2005 incident never took place, the

witness testified that he was placed in jail in 2005 some time, but could not recall exactly when, but that would have prevented him to come in to work that day. Furthermore, regarding the May 2007 the fog/accident tardiness for work issue, the witness explained upon questioning, that since he was not involved in the accident he could not get an accident report, although it is a public record.

With respect to five or six times inmates with spit hoods that have arrived at CCI over the last five years or so, again the witness could not recall who they were or when. Additionally, the witness testified that he fully intended to have the spit sock remain on the inmate until he arrived at the Oakwood facility some three hours from CCI. However, it was noted in Appellee's Exhibits 19 and 21, reports which he filled out he indicated that the inmate became compliant thereby eliminating the need to have the spit sock remain on the inmate. Further, and most importantly, in reviewing the Correction Officers incident reports Appellee's Exhibits 23, 24 and 25, it clearly indicates that Dr. Briggs was mule kicked and written in Corrections Officer Wolfenbarker's statement and Correction Officer Ison's statement and spat on in Dr. Adams report, something that Mr. Griffin should of picked up on.

FINDINGS OF FACT

1. The Appellant, Gregory Griffin, as a Correctional Lieutenant, was reduced from his position with the Ohio Department of Rehabilitation and Correction, Chillicothe Correctional Institution (CCI), to a Corrections Officer's position for violating the ORC 124.34 and Standards of Employee conduct Rules #1, #2, #49, #8, and #27 (inefficiency, dishonesty, malfeasance and nonfeasance; Tardiness: Failure to report for duty at schedule starting time. Poor judgment: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment. Failure to supervise: Failure of a supervisor to properly supervise or enforce work rules.) Neglect of Duty and Standards of Employee Conduct Rule 43: Abuse of an Inmate/Patient under the supervision of the Department.

2. The Appellant, Gregory Griffin, was served an Ohio Revised Code Section 124.34 Order of Reduction on or about March 18, 2009, and was reduced in his position effective March 29, 2009.

3. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant was the on-site supervisor, or the supervisor in charge/scene supervisor when the inmate in question, Inmate Mintlow, was allowed to board a van with a spit sock covering his head, after having been involved in an incident in the Residential Treatment Unit wherein the inmate had spit on and mule-kicked Dr. Adams, along with various Corrections Officers being involved to subdue the inmate, who was transported from the Chillicothe Correctional Institution to the Oakwood Correctional Facility, a facility located approximately two and one half hours (2 ½) to three (3) hours away.

- a. The Appellee did prove, by a preponderance of the evidence, that the Appellant was guilty of being neglectful in his duty or a rule #8, #27 and #49 violations on October 10, 2008, when he failed to provide the proper supervision since the Appellant as the site supervisor did not know that a staff member had been assaulted and one was spit on. Additionally, the Appellee did prove, by a preponderance of the evidence, that the Appellant was also guilty of being neglectful in his duty when he assisted in escorting the inmate from the Residential Treatment Unit, to the transportation van with a spit sock on, and allowed the inmate to board the van with this device on knowing it would be a three hour trip for the inmate, while knowing that the inmate had been given an ordered shot from a Staff Psychologist, and used poor judgment by not waiting for the shot to take effect, contrary to directive regarding the use of spit socks.
- b. The evidence by a preponderance revealed that the directive regarding the use of spit socks authored by Major Clever issued and disseminated on or about April 2, 2008, to all Shift Supervisors, including the Appellant herein, it is stated in pertinent part, "**that after a move is completed and the inmate is restrained and there is no danger the inmate can spit on staff, the spit sock/hood shall be removed.** (Emphasis added) Every effort should be made by the on site supervisor to protect any staff member from being spit on however, when the situation becomes controlled and the inmate no longer has the ability to spit on any staff member the spit sock shall be removed." Further, the evidence revealed that Appellee's Exhibit 21, the Appellant's initial

incident report regarding the incident which took place on October 10, 2008, the Appellant noted on said exhibit that, "because of the inmate's behavior a spit sock was placed on him to prevent further behavior **he then began to comply with all orders.** (Emphasis added) There was no further incident with this inmate.", and agreed that that is what he put down regarding the incident at question. The witness identified Appellee's Exhibit 42 as his investigatory interview, and agreed that it accurately depicted what he was asked, and his answers, and agreed that when he placed the spit sock on the inmate it was never removed after the inmate got in the van or at any time until he got to the Oakwood facility located in Lima, Ohio some 2 1/2 to 3 hours away. Thus, the evidence revealed that the Appellant was guilty of rule # 8 violation for failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment, and a rule #27 violation failure of a supervisor to properly supervise or enforce work rules, along with a rule #49 violation for neglect of duty.

- c. The evidence revealed that Corrections Officer Ison's incident report (see Appellee's Exhibit 24) clearly noted that inmate Mintlow had mule kicked Dr. Adams. Further, it was noted that other incident reports revealed that Dr. Adams had been spit on, as well as having been kicked. The evidence revealed that the Appellant did not send in to the captain's office a special incident report as required when a staff member had been assaulted, nor did he notify the captain that this had occurred. However, the Appellant explained that he was not present during the incident initially, that within itself does not excuse the fact that he failed to properly review the incident reports before turning those reports over to the Captain. Thus, the evidence revealed that the Appellant was guilty of rule # 8 violation for failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment and a rule #49 violation for neglect of duty.
- d. While the evidence revealed that the Appellant testified on direct examination, in his case in chief, that he had not seen Major Clever's directive regarding spit socks, he offered testimony contrary to that position, as if on cross examination, in the

Appellee's case in chief. Thus, the undersigned found that the Appellant's testimony in this regard was not deemed credible.

4. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant was guilty of violating rule # 1 for neglect of duty and rule # 2 for failure to report to work for duty at schedule starting time and or being tardy. The evidence revealed, by a preponderance, that the Appellant on January 7, 2009, clocked in at 5:01 a.m. making the Appellant one minute late reporting for duty. The evidence revealed that the Appellant waived his pre-disciplinary hearing for this attendance issue/and or problem and did not offer any mitigation in this regard. At the record hearing the Appellant again, admitted that he was one minute late for reporting the duty on the day in question. Further, the evidence revealed by a preponderance that this was in fact the Appellant's seventh issue regarding tardiness. Thus, the undersigned finds that the Appellant was guilty of violating rule # 1 for neglect of duty and rule # 2 for failure to report to work for duty at schedule starting time and or being tardy.
5. The Appellee, by a preponderance of the evidence, established a standard of conduct required by the Appellant, Gregory Griffin, as a Correctional Lieutenant, and that he had knowledge of the proper procedures and regulations utilized by the Ohio Department of Rehabilitation and Correction.
6. The Appellant, Gregory Griffin, in his 17 plus years, having previously been employed as a Corrections Lieutenant, only to be demoted in 2001 to a Corrections Officer, then promoted to a Corrections Lieutenant in 2004, has had ten previous rule violations and/or for prior suspensions similar to the instant violations since that time.
7. The Appellant did not offer any evidence with regard to disparate treatment.
8. The Jurisdiction of this Board to conduct this hearing was established by Ohio Revised Code Section 124.34.

CONCLUSIONS OF LAW

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, and that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one or more of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee 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 will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that Appellant was notified of and had a couple different opportunities to participate in pre-disciplinary hearings. Appellant had notice of the charges against him and an opportunity to respond to those charges. Accordingly, I find that Appellant's pre-disciplinary due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellee established by a preponderance of the evidence that it had established standards of conduct and that such standards had been communicated to Appellant. Appellant's reduction from Correctional Lieutenant to Corrections Officer was based upon five rule violations, specifically: 1) Rule 1: any violation of ORC 124.34 following the absenteeism track; 2) Rule 2: tardiness, failure to report for duty at schedule starting time; 3) Rule 8: failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment; 4) Rule 27: failure of a supervisor to properly supervise or enforce work rules; 5) Rule 49: any violation of ORC 124.34 following the performance track. Each rule violation shall be herein addressed separately.

The issues before this Board of Review are whether the Appellant violated or was guilty of neglect of duty for being tardy, as well as being neglectful in his duties by failing to carry out a work assignment or the exercising of poor judgment in carrying out an assignment and by failing to properly supervise or enforce work rules. Further, this Board must also consider whether the Appellant's reduction in rank was too harsh considering the circumstances and/or constituted disparate treatment. The Appellee believes that the Appellant's reduction was appropriate considering that the Appellant as the site supervisor just was not getting it by coming to work late and by not properly supervising his subordinate employees, performing his assigned tasks in a substandard manner and/or not leading by example, coupled with his checkered disciplinary history. However, the Appellant believes that his reduction was too harsh since he was not allowed to correct his oversights and belief that there had not been an assault or that someone actually spat on.

The Appellee, in its Revised Code Section 124.34 Order of Reduction charged the Appellant with neglect of duty and/or five different rule violations.

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

As was revealed by the testimony, by a preponderance of the evidence, the Appellant was guilty of being neglectful in his duty or a rule #8, #27 and #49 violations on October 10, 2008, when he failed to provide the proper supervision since the Appellant as the site supervisor did not know that a staff member had been assaulted and one was spit on. Additionally, the Appellee did prove, by a

preponderance of the evidence, that the Appellant was also guilty of being neglectful in his duty when he assisted in escorting the inmate from the Residential Treatment Unit, to the transportation van with a spit sock on, and allowed the inmate to board the van with this device on knowing it would be a three hour trip for the inmate, while knowing that the inmate had been given an ordered shot from a Staff Psychologist, and used poor judgment by not waiting for the shot to take effect, contrary to directive regarding the use of spit socks. Further, it should be noted that at the record hearing the Appellant asserted that people were only spat at, not on and kicked at, not actually kicked, as his excuse. However, the Appellant's testimony in this regard lacked credibility since why did he then leave the inmate with the spit sock on for a three hour trip, wherein in his own incident report it states that the inmate had become compliant.

As was revealed by the testimony, by a preponderance of the evidence, the Appellant was guilty of being neglectful in his duty of violating rule # 1 for neglect of duty and rule # 2 for failure to report to work for duty at schedule starting time and or being tardy. The evidence revealed, by a preponderance, that the Appellant on January 7, 2009, clocked in at 5:01 a.m. making the Appellant one minute late reporting for duty. The evidence revealed that the Appellant waived his pre-disciplinary hearing for this attendance issue/and or problem and did not offer any mitigation in this regard. At the record hearing the Appellant again, admitted that he was one minute late for reporting the duty on the day in question. Further, the evidence revealed by a preponderance that this was in fact the Appellant's seventh issue regarding tardiness.

If the Order of Reduction 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 employed to disaffirm or modify the disciplinary action imposed. The intention of the Appellant, however, in participating in the misconduct alleged within an Order of Removal is not the issue upon which this removal rests. In this reduction 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 "neglect of duty." However, Black's Law Dictionary does define "neglect" to mean:

. . . to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. And it may mean a designed refusal, indifference, or unwillingness to perform one's duty. (Further citations omitted) Black's Law Dictionary at page 1031 (Deluxe 6th Edition 1990).

Further, for the Appellee to establish that an employee committed neglect of duty, the Appellee must demonstrate that a duty upon the part of the employee existed, the employee knew of that duty, and that knowing of that duty, the employee breached that duty.

As was revealed by the testimony the Appellee did prove by a preponderance of the evidence, that the Appellant was neglectful in his duties as mentioned above.

In the instant appeal, the documentary evidence and testimonial evidence revealed that the Appellant knew of the established standard of conduct which he was required to maintain in the performance of his job as a Corrections Lieutenant. Consequently, I conclude that the Appellant's actions, or inactions as the case may be, did violate and constitute an actual violation under Ohio Revised Code Section 124.34 for neglect of duty.

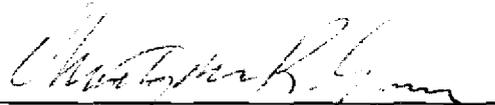
However, there remains a question of whether the discipline imposed should be sustained. The undersigned Administrative Law Judge recommends that the evidence presented at the record hearing, taking the totality of the circumstances into account is sufficient to support the reduction of the Appellant. In this case the evidence revealed that the Appellant, Gregory Griffin, had worked for approximately seventeen years having previously been employed as a Corrections Lieutenant, only to be demoted in 2001 to a Corrections Officer, then promoted to a Corrections Lieutenant in 2004, and since that time has had ten previous rule violations and/or four prior suspensions similar to the instant violations. It appeared to the undersigned Administrative Law Judge that the Appellant simply was not getting what it takes to be a supervisor and concurs with Appellee's decision to reduce the Appellant, while considering his disciplinary history, and not remove him. This recommendation as to reduction is made in the hope that such disciplinary action

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will impress upon the Appellant, and others, the necessity of complying with the violated rule(s) and that such future misconduct in this area will not occur.

RECOMMENDATION

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that the instant order of reduction issued to the Appellant, effective March 29, 2009, reducing the Appellant from the position of Correction Lieutenant to the position of Correction Officer be **AFFIRMED**, and that the Appellant's appeal be **DENIED**.


Christopher R. Young
Administrative Law Judge

CRY: