

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

Edith E. Faulkner,

Appellant,

v.

Case No. 09-REM-02-0042

Cuyahoga County Board of Commissioners,

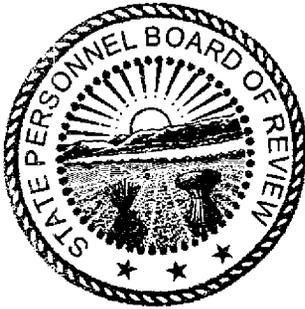
Appellee.

ORDER

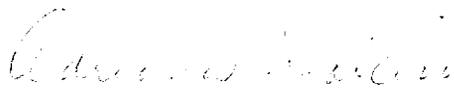
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 from her Office Manager position be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe - Aye
Sfalcin - Aye
Tillery - Not Participating



Adriana Sfalcin, *Vice 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, June 8, 2010.



Diana Mills
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**

EDITH E. FAULKNER,

Case No. 09-REM-02-0042

Appellant

v.

April 26, 2010

CUYAHOGA COUNTY BOARD OF COMMISSIONERS,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on January 25, 2010 and January 26, 2010. Present at the hearing was Appellant, who was represented by Marc E. Myers, Attorney at Law. Appellee, Cuyahoga County Board of Commissioners (BOC), was present through its designee, Matthew Hawes, Employee Relations Manager, and was represented by Dale F. Pelsozy, Assistant Prosecuting Attorney. By agreement of the parties, a post-hearing briefing schedule was established and the parties timely filed their respective briefs on or before April 16, 2010, after which the record was closed.

This cause comes on due to Appellant's timely filing of an appeal from her removal from the position of Office Manager with the Optical Imaging Department (OID), a unit of the Cuyahoga County Department of Employment and Family Services (DEFS), which is itself a division of the Cuyahoga County Department of Job and Family Services (DJFS). Appellant received notice of her removal on January 26, 2009 *via* hand delivery. That removal was effective on January 26, 2009 and was effectuated through a January 22, 2009 dated BOC Resolution.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.34.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant was removed *via* a BOC resolution and an R.C. 124.34 Order of Removal.

Paragraph three and paragraph four of the Order contain what are essentially the allegations set forth against Appellant and those two paragraphs read:

Following the filing of complaints by multiple employees an investigation was conducted concerning discriminatory treatment, creating a hostile work environment, harassment, verbal abuse and intimidation of your subordinate staff and behavior unbecoming a supervisor. The investigation concluded that “ .. there was sufficient evidence to substantiate that you may have engaged in conduct that constitutes a violation of Sections 1.02 (Affirmative Action Policy) or 1.06 (Harassment Policy) of the BOCC Policies and Procedures Manual” You referred to three of your white female subordinates as “the three white bitches, F*****g Bitches, those white folk, the Pink Island, etc” You referred to one of the white females as a “dyke” You made comments indicating that a white female subordinate would “pull her whip out on you like slavery”. You instructed your staff to slow down daily production in order to continue working overtime. You borrowed over \$600.00 from one of your staff members. You circulated a flyer during work hours announcing a private party. This flyer contained profanity and inappropriate language. You met with a white male subordinate and stated to him that, “no one will be able to say I’m prejudiced if I bring in a white man,” referring to your selection of him for a vacant position in your unit.

You were given notice of, and attended a pre-disciplinary conference on November 25, 2008. During the conference, you asserted that you had not engaged in any of the referenced behaviors. You contended that the allegations were the result of personality conflicts and that possibly your own serious health issues and the loss of your mother may have contributed to some of the concerns raised in the investigation of misconduct. These assertions were not persuasive especially in light of the fact that you are a supervisor and held to a higher level of conduct. Your conduct, as described above, constitutes Failure of Good Behavior. This is a removable offense.

At hearing, six witnesses were called by Appellee, three witnesses were called by Appellant, and one witness was called by Appellee on rebuttal.

As its first witness, Appellee called **Terrance Michel**, a Clerical Specialist in the OID, who also serves as a union representative for various of Appellee's bargaining unit employees.

As its second witness, Appellee called **Kathleen Dinger**, a client support worker in the OID.

As its third witness, Appellee called **Linda Zabka**, a client support worker in the OID.

As its fourth witness, Appellee called **Alexandra Shea-Workman**, a client support worker in the OID who retired from DJFS on July 31, 2008 and who works part-time when the Cleveland Indians are in town (*i.e.* playing in Cleveland).

As its fifth witness, Appellee called **Ethyl Goulde**, a Clerical Specialist with OID.

As its sixth witness, Appellee called **Yvonne Thompson**, a Records Management Administrator, who oversees OID and a second department and who served as Appellant's supervisor prior to and at the time of Appellant's removal.

As her first witness, Appellant called **Destiny Faulkner**, Appellant's daughter.

As her second witness, Appellant called **John Homenko**, an Applications and Data Base Manager with DEFS.

As her third witness, Appellant called herself, **Edith E. Faulkner**, to testify.

As its rebuttal witness, Appellee recalled **Yvonne Thompson**.

Compilation of witness testimony and examination of specific allegations

Appellant served as the supervisor and Office Manager of the Optical Imaging Department under the Cuyahoga County Department of Employment and Family

Services, one of the four divisions of Appellee, Cuyahoga County Department of Job and Family Services. Appellant came to this position through a lateral transfer from another of Appellee's divisions in 2004. Appellant served with Cuyahoga County from December 17, 1984 until the time of her removal.

All of Appellee's witnesses (except Appellant) characterized the OID office environment over which Appellant had immediate control as fraught with tension, as inequitable, and as divisive. A distillation of this testimony strongly suggests that Appellant's supervisory presence over the OID created this environment. A distillation of this testimony also strongly suggests that, with Appellant's removal, the OID was transformed into a well-functioning unit where employees get along and where work is performed timely and satisfactorily. None of Appellant's witnesses, including Appellant, herself, offered sufficient testimony to overcome the overwhelming evidence offered by Appellant's witnesses, noted above.

Findings of Fact

Based upon the testimony presented and evidence admitted at hearing and upon the post hearing briefs submitted by the parties, I make the following Findings:

Specific allegations in the R.C. 124.34 Order of Removal that were proven:

Appellee demonstrated the validity of all of the following allegations in Appellant's instant R.C. 124.34 Order of Removal.

Appellee demonstrated that Appellant utilized the phrase "the three white bitches".

Appellee demonstrated that Appellant utilized the phrase "F*****g Bitches".

Appellee demonstrated that Appellant utilized the phrase "pink island" and that the connotation of that phrase is offensive and/or derogatory.

Appellee demonstrated that Appellant utilized the phrase "dyke".

Appellee demonstrated that Appellant purposely engineered OID workflow to create situations necessitating the utilization of overtime for her staff.

Appellee demonstrated that Appellant borrowed several hundred dollars from a subordinate and also demonstrated that, at one point, Appellant had failed to pay back this loan.

Appellee demonstrated that Appellant widely distributed to her subordinates an inappropriate flyer that invited recipients to an after-hours birthday party for Appellant's daughter and others in Appellant's family also celebrating April birthdays.

Appellee demonstrated that Appellant referred to one of her subordinates as a "white nigger" and as her "white nigger" and announced that she had hired a white man into the department.

Specific allegations in the R.C. 124.34 Order of Removal that were not proven:

Appellee was unable to demonstrate that Appellant utilized the phrase "those white folk".

Appellee was unable to demonstrate the underlying meaning of the phrases "the pink island" and "pink island".

Appellee was unable to demonstrate that Appellant utilized the phrase "Pull her whip out on you like slavery".

Appellee was unable to demonstrate the exact amount that Appellant borrowed from one of her subordinates or demonstrate that Appellant failed to finally pay back this loan.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether an Office Manager with a county Department of Job and Family Services who utilized racist, sexist, and other offensive and incendiary language, who borrowed hundreds of dollars from a subordinate and then failed to timely repay that loan, who distributed a flyer to her staff containing inappropriate language, and who engineered workflow to necessitate otherwise unneeded overtime should be removed from her position?

Based on the Findings set forth, above, and for the reasons set forth, below, this Board should answer that Appellee's removal of Appellant from her position of Office Manager should be affirmed.

Appellee has alleged that Appellant's offenses constituted failure of good behavior. Black's Law Dictionary defines "failure of good behavior" as follows:

As enumerated in statute as ground for removal of a civil service employee, means behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. State ex rel. Ashbaugh v. Bahr 68 Ohio App. 308, 40 N.E.2d 677, 680, 682. (Black's Law Dictionary Deluxe 6th Ed., p. 594)

In the instant appeal, Appellant's behavior falls well below the expectations and recognized standards of conduct for any government employee, no less a manager. Thus, it is easy to state that Appellant's behavior represents numerous instances of failure of good behavior.

More than a few of Appellant's offenses could arguably stand by themselves as removable offenses. Taken together, they constitute behavior that cannot be tolerated in any modern civil service office setting. Accordingly, Appellee was justified in removing Appellant from her management position with DJFS.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellee's removal of Appellant from her Office Manager position, pursuant to R.C. 124.03 and R.C. 124.34.



JAMES R. SPRAGUE
Administrative Law Judge