

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

John E. Steele,

Appellant,

v.

Case No. 09-REM-03-0162

Greene County Veterans Services Commission,

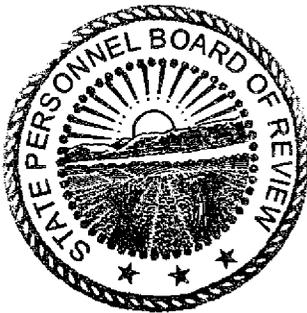
Appellee.

ORDER

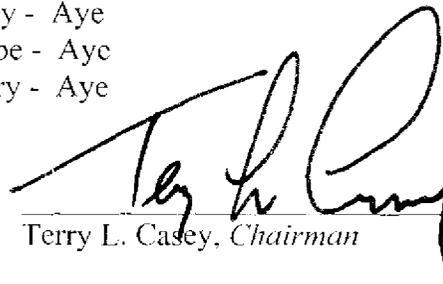
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 effective March 10, 2009 from position of Executive Director/Chief Veteran's Services Officer be **AFFIRMED**, pursuant to Ohio Revised Code Chapter 124.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *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 11, 2011.


Michelle Hursey
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**

John E. Steele,

Case No. 09-REM-03-0162

Appellant

v.

February 24, 2011

Greene Co.,
Veterans Services Commission,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On March 6, 2009, the Greene County Veterans Services Commission (hereinafter VSC) served in Order of Removal, in accordance with Ohio Revised Code section 124.34, upon the Appellant, John E. Steele, the Executive Director of the Greene County VSC. That order alleged the following:

This will notify you that you are removed from your position of Executive Director effective March 10, 2009.

The reason for this action is that you have been guilty of specifically: on March 2, 2009, and a special meeting called by the Veterans' Services Commission (VSC), the Board unanimously voted to accept Hearing Officer Thomas J. Nowel's Report and Recommendation to terminate your employment, as Executive Director, for the reasons set forth below:

- Dishonesty
- Failure of good behavior
- Neglect of duty
- Violations of County and VSC policies and procedures and anti-discrimination laws
- Other acts of nonfeasance, misfeasance and malfeasance

The evidence overwhelmingly demonstrates you engaged in multiple acts of misconduct the most egregious of which involves

dishonesty, deception and unethical behaviors pertaining to the falsification of time and pay records for yourself and others staff. Over an approximate twelve month period, you spent an exorbitant amount of time out of the office conducting personal business related to the construction of a new home. During this time frame, you submitted information for payroll purposes which did not accurately reflect your hours worked. You also failed to appropriately document your actual hours worked by completing weekly timesheets and leave forms as required by County and department policy. You also claimed many hours of compensatory time during weeks you never actually worked a full schedule.

In addition to the discrepancies in your own pay records, you directed a subordinate, Ben Beekman, to falsify his timesheets to include hours he never worked. You also directed another staff member, James Younkin, not to claim sick leave for a doctor's appointment, and to merely include the leave as regular work time. Furthermore, you've knowingly allowed Deborah Crawford to earn compensatory time for no legitimate business purpose.

You are also guilty of using your position for personal gain by adjudicating financial claims in excess of the VSC guidelines for client from whom you purchased a Harley-Davidson motorcycle.

There is sufficient credibility that you arbitrarily and discriminately adjudicated or denied claims for certain clients including a gay couple, a former Veterans' Services Commissioner, and arbitrarily adjudicated or prepared claims for a childhood friend and a family member without obtaining the necessary documentation to properly process the claims.

Of further concern to us is the fact you asked one of your subordinate staff to compose written essays for you, in order to assist you in obtaining your certification as a Certified Veterans Advocate. Such behavior is unethical and in academia is considered cheating.

Your overall behavior portrays a disturbing pattern of unethical and discriminatory behavior and unprofessional management practices. Actions such as keeping a former African-American staff member's County issued retirement gift and using racial epithets about him cannot be tolerated. The testimony of the staff that you engaged in openly discriminatory behavior toward Jim Kelly and made sexually harassing comments about a former female staff member is compelling.

Nor can the Commission overlook the fact that you withheld two recommendations for a board position from the Common Pleas judge, but forwarded the one of your cousin, who was seeking reappointment.

You are also guilty of violating County policies and procedures prohibiting the personal use of County equipment by taking a newly purchased office vacuum cleaner to your home, and making an excessive amount of personal calls on your work cell phone without making restitution to the County. You also failed to fulfill your supervisor responsibility to conduct annual staff performance evaluations and then lied about doing so.

It is imperative for public servants to foster the highest standards of personal integrity in discharging their public duties. Your failure to live up to these duties, enforce and administer County and VSC policies and procedures, and effectively correct staff leaves the Board no choice but to terminate your employment effect of Tuesday, March 10, 2009, at 7:30 a.m.

Thereafter, on March 13, 2010, the Appellant, John E. Steele, timely filed appeal from the above noted order. Although there was no stipulation as to the timeliness of the Appellant's appeal, the undersigned made an initial finding that the appeal was timely filed, and ordered that the hearing proceed to be heard on its merits. The record hearing in this case was held on November 1 and 2, 2010, and concluded upon the simultaneous filing of post hearing briefs on January 7, 2011. The Appellant, John E. Steele, appeared at the record hearing and was represented by Mr. Jeffrey M. Silverstein, Attorney at Law. The Appellee, the Greene County

Veterans Service Commission, was present through its designee, Lance Woodward, the Executive Director, and was represented by Mr. Marc Fishel, Attorney at Law.

This hearing was conducted by the State Personnel Board of Review in accordance with the 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 have received the same with the State Personnel Board or Review.

STATEMENT OF CASE

The record hearing in this matter took place over two days and had various witnesses including, the Appellant, John E. Steele, as if on cross-examination and direct examination, Steve Lorenzo, a Greene County veteran services officer, Ms. Deborah Crawford, a Greene County veteran service office Administrative Assistant, James Younkin, a prior Greene County veteran service officer, Chris Chrystal, the Greene County veteran service office's Deputy Director, Melvin Dulin, a Greene County veteran service office's Financial Assistant Investigator and Lance Woodward, the current Greene County veteran service office's Executive Director.

As was revealed by the Appellee's response to the Appellant's motion for definite and certain there were fourteen (14) different charges leveled against the Appellant in the case before the undersigned, those being: (1) failure of the Appellant to work and account for his time, (2) the Appellant instructing Mr. Ben Beekman to falsify his work hours, (3) the Appellant permitting an employee to work overtime without justification, (4) the Appellant instructing employees not to use sick leave for medical appointments, (5) the Appellant requesting another employee to complete a portion of a Certified Veterans Advocate exam, (6) the Appellant's failure to provide a courthouse replica to an intended recipient, (7) the Appellant's use of a racially inappropriate term when referring to a former employee, (8) the Appellant's granting of excessive benefits to a veteran, (9) the Appellant's improperly denying benefits to a veteran, (10) the Appellant's approving benefits for a known drug user, (11) the Appellant's improperly denying benefits to a former commission member, (12) the Appellant's working on a claim for his uncle, (13) the Appellant's personal use of a vacuum cleaner that was bought for the Veteran Service's Office and (14) the Appellant's withholding of various applications for Commission positions from the Greene County Common Pleas Court.

Appellee's first witness was the Appellant, John E. Steele, as called as if on cross examination. When questioned, the witness testified that he began his employment with the Greene County Veteran's Services Commission (VSC) in 1995. Further, the witness testified that he served as the Executive Director/Chief Veteran's Services Officer for the Greene County Veteran's Services Commission from 2005 until his termination in March 2009. It should be noted that prior to the hearing commencing it was discussed that the Appellant as an Executive Director for the Greene County Veteran's Services Commission was serving in that position as a classified civil servant pursuant to Ohio Revised Code Section 5901.07. Moreover, the testimony revealed that prior to becoming an Executive Director, the Appellant served in several positions, including acting director, wherein he replaced his father who it previously served as Executive Director from 1996 through 2003. The VSC is established by statute to provide services and advocate on behalf of veterans who reside in Greene County. As part of these responsibilities, the VSC processed various claims for financial assistance for veterans.

As an Executive Director, the Appellant was responsible for the day to day operations of the VSC. The testimony revealed that the Appellant reported to a five-member commission which met twice a month and that he provided supervision over eight other employees. When questioned, the witness agreed that all of the employees are to follow the rules that are in place and that he was expected to be familiar with and enforce the applicable work rules, and that the Commission trusted him to properly run the VSC operations. The witness also testified that the VSC's annual budget was approximately \$700,000 and that he had the authority to approve expenses within the amount budgeted by the Commission. Mr. Steele, when questioned, also testified that he also reviewed applications for financial assistance and had the sole authority to adjudicate and approve request under \$2000.00, without the Commission's prior approval.

The witness then identified Appellee's Exhibit 18 as a variety of policies which he issued when he began his term as Executive Director on or about January 26, 2006, that included among other things, a leave policy. Moreover, the VSC had numerous rules and guidelines in place while the Appellant served as its Executive Director. The testimony bore out that in February 2005 the Commission adopted a policy manual promulgated by the Greene County Board of Commissioners regarding all personnel issues. See Appellee's Exhibit 11. The witness also identified Appellee's Exhibit 3 as the VSC's written guidelines concerning the review

and approval of financial assistance applications, which included among other things, that financial assistance to veterans will only be allowed three times in a 12 month period. See enumerated paragraph 25, on Appellee's Exhibit 3. When questioned regarding the financial assistance part of the functions of the office, the witness testified that all employees were trained to do this, but that in actuality only one employee did this, namely Mr. Dulin. The witness explained that Mr. Dulin would process the claim form and that he would adjudicate and/or approve or deny the request, usually under \$2000 without Commission approval. Within this context, again the witness reiterated that the Commission trusted him perform his job. The witness also agreed that the Judge who appointed him, also trusted him as well, as he had substantially authority in exercising his discretion as he had a significant role in the hiring process of the employees of the office.

The testimony of the Appellant, as well as the testimony of Mr. Chris Chrystal revealed that in 2008 and 2009 the VSC's office hours were 8 AM until 4:30 PM, with the exception of one other employee who worked from 8:30 AM until 5:00 PM. Additionally, the testimony the Appellant revealed that all the employees earn vacation leave, sick leave and compensatory time and that Mr. Chrystal was responsible for completing payroll for all of the employees. Further, the testimony revealed that in order to prepare the payroll, Mr. Chrystal received timesheets from all of the VSC employees on a bi-weekly basis with the exception of the Appellant. Further, evidence was introduced that when employees were absent from work they all indicated the leave which they took on timesheets, again with the exception of the Appellant. The procedures utilized by the employees were consistent with the hours of work policy as evidenced as Appellee's Exhibit 1, although with the exception of the Appellant. Moreover, evidence was introduced at the record hearing that the timesheets and leave slips were maintained by the VSC by Mr. Chrystal and that the Appellant had told him not to keep the timesheets and leave slips for more than a one-year period of time, wherein Mr. Chrystal destroyed the same at the Appellant's direction.

As admitted to on cross-examination the Appellant did not maintain timesheets or complete leave slips, nor did he record his work hours in accordance with the work policy. However, the testimony of the Appellant he simply testified that he self-reported his work hours to Mr. Chrystal on a bi-weekly basis, wherein he kept track of his hours on a pocket calendar, which he did not produce at the record hearing, nor did he submit any documentation concerning his work hours or leave usage to the VSC. The testimony of the Appellant in this regard ranged from that he

was not expected to fill out leave forms, to that he was expected to fill them out, along with the noting that if you worked over 40 hours he would receive compensatory time at a rate of one and a half hours past the 40 hours in which he worked. Along this line of questioning, the witness admitted that the VSC was utilizing the Greene County Board of Commissioners personnel handbook, wherein the hours of work, leaves and compensatory time were outlined therein for all employees to follow, and that there was no documentation showing that this policy had ever been rescinded prior to the Appellant's removal. The witness then identified Appellee's Exhibit 2 as series of Mr. Ben Beekman's timesheets and affirmed when questioned that he rarely, if at all, filled timesheets out like these.

Upon questioning, Mr. Steele testified that he began building a new home in the fall of 2007 and worked on this up until March 2008, where it then sat empty for a number months, before beginning work back up on it, and that the home was still not completed in November 2008. The witness explained that he did discuss his house project with several of VSC's employees, as was revealed by the testimony of Mr. Melvin Dulin, but that he never admitted that he actually performed work at the house during his normal work hours. However, the testimony as revealed by Mr. Lorenzo, Ms. Crawford, Mr. Younkin, Mr. Dulin, Mr. Chrystal and Mr. Woodward all revealed that between the fall of 2007 and November 2008 the Appellant was absent office during regular work hours between 70% to 80% of the time and that there was no documentation that could be found which indicated that the Appellant took leave, or accrued leave, when he was out of the office for non-work related reasons. The evidence also revealed that because the Appellant was absent so much during the normal work hours they often had to contact him on his cell phone. In addition, the evidence indicated that when he received these phone calls he often indicated at the he was at the site of his new home and sometimes showed up at work in messy clothes and would remark that he had been working on his house.

When questioned, the witness re-identified Appellee's Exhibit 1 and agreed that he was an exempt employee and that under the rules that were formally adopted in February of 2005, by the VSC, as noted on page 2 of said exhibit, that all exempt employees are required to complete a record of their hours work and leave forms for paid and unpaid absences, something which he admitted that he did not do, and was in violation of the same.

Next, the testimony revealed that as part of its services, the VSC transported veterans to various appointments and that Mr. Ben Beekman was employed as a

part-time employee to drive these veterans. The testimony revealed that Mr. Beekman eventually became a transportation coordinator which required him to schedule himself, as well as other part-time drivers during the week. As part of his duties Mr. Beekman filled out timesheets and leave slips in the performance of his job. However, the Appellant's testimony revealed that he told Mr. Beekman that during non-driving days wherein he made calls or received phone calls he did not have to come to the office and that he should put two hours onto his time sheet, and to add four hours to this time sheet when he completed work in the office, regardless of the hours that he actually worked. Additionally, the testimony revealed that Mr. Beekman was the only employee treated in this manner, and that has a result of the Appellant's instructions Mr. Beekman's timesheets did not accurately reflect his actual hours of work.

The testimony of the Appellant revealed that all VSC employees earn sick leave, as well as all employees were veterans which some had disability cases being processed at various times through the VA. The testimony revealed that both Mr. Chris Chrystal and Jim Younkin had claims with the VA and that the Appellant informed of both of these individuals on separate occasions that they did not have to use sick leave for their own medical appointments at the VA for these claims. However, the testimony also revealed that County policy requires employees to use sick leave when they attend their own medical appointments and that there is no special exemption or VSC policy to exempt these appointments from sick leave usage.

In 2008, the Appellant testified that he was pursuing a certification as a Certified Veterans Advocate, a certification for a higher level of competency so that he could handle a greater variety of cases on behalf of veterans. Mr. Steele explained that as part of this process, he had to complete a written exam that included essays and short answer questions. However, the testimony of Mr. Jim Younkin revealed that the Appellant had asked him to complete four questions on the exam for him, something that he refused to do.

Additionally, the testimony of Mr. Younkin, Mr. Lorenzo, Ms. Crawford and Mr. Chrystal revealed that in 2007, Jim Kelly, an African American, retired from his position with the VSC after several years of service, and that the VSC arranged for Mr. Kelly to receive a replica of the Greene County Courthouse as a retirement gift. However, even though Mr. Chrystal had picked up the courthouse in order to give it and have it presented to Mr. Kelly at his retirement, Mr. Kelly never received the

courthouse, instead Mr. Steele kept it for himself, as was explained by Mr. Chrystal. Further, all of the witnesses explained that on various occasions in 2008 that the Appellant had told them that he had kept Mr. Kelly's courthouse, while telling them that, "that nigger was not going to get the courthouse." However, the Appellant testified that he is in possession of a replica courthouse, but that it was his father's.

The testimonial evidence of the Appellant also revealed that in 2006, the Appellant purchased a Harley-Davidson motorcycle from Mr. Rodney Perander for approximately \$13,500.00. See Appellee's Exhibit 6. However, evidence revealed that the Appellant reported that condition of the motorcycle as poor and that it cost only \$1000 for purposes of paying state sales tax. Subsequently, the Appellant was compelled to report the actual purchase price and pay the appropriate sales tax in 2009, as taxes on the proper amount because of this discrepancy was discovered during the investigation of the present case into Mr. Steele's actions at the VSC. See Appellee's Exhibit 20.

Additionally, in 2007, Mr. Perander applied for, and was awarded, financial assistance from the Greene County VSC on five separate occasions. Mr. Perander received payments from the VSC as follows: 1/18/07 - \$1479.29; 2/12/07 - \$1998.57; 3/9/07 - \$1988.56; 5/22/07 - \$1832.66; 9 /13/07 - \$473.99, in one year wherein it was noted that both the February and March assistance payments were paid directly to Mr. Perander. The testimony of Mr. Melvin Dulin explained that he initially processed these applications for financial assistance, and that he reviewed these applications with the Appellant. Moreover, since all of these applications were for less than \$2000, the Appellant had the sole authority to adjudicate these applications, effectively bypassing the Board's input or review. Furthermore, the evidence revealed that the Appellant approved all five of these applications and waived guideline 24 for the last two requests, a guideline that limits financial assistance to only three times in a 12 month period. See Appellee's Exhibit 3.

Further, despite Mr. Dulin's concerns, the Appellant approved the above mention requests although Mr. Dulin had been informed by Mr. Perander that the Appellant had been at his home before the February application and had instructed him to keep the requests for less than \$2000. Mr. Dulin testified that when he approached the Appellant about this concern he did not deny that he had been at Mr. Perander's home. Moreover, Mr. Dulin was also concerned that both the February and March payments were made directly to the veteran instead of a vendor which was contrary to normal practice, as well, and that there was no

indication that the assistance was used for its intended purpose. Lastly, Mr. Dulin testified that he did not believe that the guideline 24 should have been waived, as well.

Mr. Dulin, when questioned, testified that he also processed applications for financial assistance for the Greene County VSC for Brian Scott Oakley, a veteran on October 8, 2007 and December 8, 2007. Mr. Dulin testified that he met with Mr. Oakley in January 2008, to process a further application, and that he recommended that the request be approved, only to have the request be rejected once Mr. Steele discovered that Mr. Oakley had a sex change operation from a female to male and had subsequently married a woman. The testimony of both Ms. Crawford and Mr. Chrystal revealed that the Appellant, Mr. Steele, had contacted the Greene County Probate Court to express his concerns that this was a marriage between two women in violation of Ohio law, and that he utilized guideline 23 which provides assistance is supposed to address temporary needs only, as a basis for Mr. Steele's denial. See Appellee's Exhibit 28.

Further, testimony revealed that guideline 18 provides applicants who were known to be drug or alcohol abusers will not be given assistance, but will be referred to the appropriate agency for treatment. See Appellee's Exhibit 3. In this regard, Mr. Dulin testified that he had met with an applicant, namely William Brockman, who fell asleep during a meeting, who also acknowledged that he was a user of cocaine. Mr. Dulin testified that he recommended that the financial assistance request be denied based on guideline 18. However, the witness testified that Mr. Steele rejected his recommendation and noted that Mr. Brockman should be given financial assistance only because it was Christmas.

Moreover, Mr. Dulin testified that a former member of the VSC, Harley Koon, had applied for financial assistance, wherein the witness noted that Mr. Steele had told him just to go through the motions, and to deny his application, since Mr. Koon had tried to get his father, Bob Steele, removed from the Commission in the past.

Additionally, Mr. Dulin testified that in 2008, Kenneth Steele, John Steele's uncle, applied for benefits through the Greene County VSC from the Chase-Stewart fund, a fund available for veterans in order to pay certain medical bills. The witness testified that he had met with Mr. Kenneth Steele who at that time, did not bring in the proper documentation, therefore he was unable to process his application. The testimony revealed that all applicants are required to document the need, including

but not limited to the medical bills to be paid, along with the documentation concerning income, expenses and assets. In this case, Mr. Kenneth Steele had documentation concerning his medical bills, but that he did not have any documentation of his income, expenses or assets, and therefore he did not complete his application. However, it was later discovered that the Appellant, John Steele, then assigned Mr. Lorenzo to complete Mr. Kenneth Steele's application, wherein he only processed a portion of the application, and that Mr. Steele sat at Mr. Lorenzo's computer and completed the application, as this was revealed by the testimony of Mr. Lorenzo. Upon review of the application for Mr. Kenneth Steele the evidence revealed that the application contained significant incorrect information including, that Mr. Steele had two dependents, when he did not, and that he did not list all of this property, nor his rental income, see Appellee's Exhibit 12, in violation of the application process. Additionally, the testimony revealed that the Appellant had the Commission President, Kay Crawford, signed off on the approval, see Appellee's Exhibit 15, as the Appellant had represented that he had not to do with the processing of the application since it involved his uncle.

The Appellant, John Steele, testified that he had the authority to make purchases for the VSC. In May 2008, via the testimony of Ms. Deborah Crawford the Appellant had purchased a Dyson vacuum cleaner at a cost of \$400.00 for use by the VSC, as she had accompanied Mr. Steele to Lowe's when he purchased said vacuum cleaner. Ms. Crawford's testimony revealed that the Appellant had told her that he was going to purchase a more expensive vacuum cleaner because he felt justified by the way he had been treated by the Commission, and that he was going to stick it to the Commission, as well. Moreover, after purchasing the vacuum cleaner, the testimony as was revealed by the Appellant, Ms. Crawford and Mr. Chrystal, the vacuum cleaner was taken to Mr. Steele's personal residence, and returned filled with sawdust and dirt.

Lastly, testimony revealed that the Greene County Common Pleas judges are responsible for appointing members of the Veteran's Services Commission. In October 2008, the documentary evidence revealed that the Appellant, John Steele, sent a letter to Judge Campbell recommending the reappointment of John Kyne to the Commission. See Appellee's Exhibit 27. Further, it was also revealed that Mr. Kyne's position was set to expire in January 2009, and that Mr. Kyne was in fact the Appellant's cousin, a fact which he did not disclose in the letter that he sent to the Greene County Common Pleas judges. Moreover, the testimonial evidence of Mr.

Chrystal revealed that the VSC had also received two other applications for the position on the Commission, which the Appellant failed to forward to the judges.

FINDINGS OF FACT

1. The jurisdiction of this Board to conduct this hearing was established by O.R.C. § 124.34.
2. The Appellant, John Steele, served as the Greene County Veterans Services Commission's (VSC) Executive Director/ Chief Veteran's Services Officer from 2005 until his termination in March 2009.
3. The Appellant, John Steele, as the Greene County Veterans Services Commission's (VSC) Executive Director/ Chief Veteran's Services, was removed from his position with the Greene County Veterans Services Commission for violating the O.R.C. § 124.34 for dishonesty, failure of good behavior, neglect of duty, for violations of County and VSC policies and procedures and anti-discrimination laws and other acts of nonfeasance, misfeasance and malfeasance
4. On March 3, 2009, the Greene County Veterans Services Commission served Mr. Steele an O.R.C. § 124.34 Order of Removal which removed Mr. Steele from his position effective March 10, 2009.
5. The Appellant, John Steele, timely filed his appeal to this Board on March 13, 2009.
6. The Appellant, Mr. Steele, in his four plus years of service with the Greene County Veterans Services Commission had no prior discipline and did not submit any evidence of disparate treatment in the presentation of his case.
7. The Appellee did prove by a preponderance of the evidence that Mr. Steele received his procedural due process rights through a pre-disciplinary hearing.

8. The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Mr. Steele regarding the Greene County and VSC policies and procedures as he was the author of many of them, as well the VSC had adopted the Greene County's Personnel Policy and Procedures which covered among other things; timesheet completion; documentation for absences, and following the directives contained therein. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant:
 - a. failed to work and account for his time by using timesheets and leave forms that he filled out as required;
 - b. instructed Mr. Ben Beekman to falsify his work hours;
 - c. permitted an employee to work overtime without justification;
 - d. instructed employees not to use sick leave for medical appointments;
 - e. requested another employee to complete a portion of a Certified Veterans Advocate exam;
 - f. failed to provide a courthouse replica to an intended recipient;
 - g. used a racially inappropriate term when referring to a former employee, Mr. Jim Kelly;
 - h. granted excessive benefits to a veteran, namely Mr. Jim Perander;
 - i. improperly denied benefits to a veteran, namely Mr. Brian Scott Oakley;
 - j. approved benefits for a known drug user, namely Mr. William Brockman;
 - k. improperly denied benefits to a former commission member, namely Mr. Harley Koon;

- l. improperly worked on a claim for his uncle, namely Mr. Kenneth Steele, while telling a Commission member that he had not;
- m. improper personal use of a vacuum cleaner that was bought for the Veteran Service's Office;
- n. improperly withheld various applications for Commission positions from the Greene County Common Pleas Court.

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 O.R.C. § 124.34 and 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 O.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 an opportunity to participate in a pre-disciplinary hearing. The

Appellant also had notice of the charges against him and an opportunity to respond to those charges. Accordingly, the undersigned Administrative Law Judge finds 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. According to the O.R.C. § 124.34 Order, Appellant's removal was based upon his for dishonesty, failure of good behavior, neglect of duty, for violations of County and VSC policies and procedures and anti-discrimination laws and other acts of nonfeasance, misfeasance and malfeasance.

Dishonesty

Ohio Revised Code Chapter 124. nowhere defines "dishonesty." However, Black's Law Dictionary does define "dishonesty" to mean:

. . . disposition to lie, cheat, deceive or defraud; untrustworthiness, lack of integrity. Lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Further citations omitted) Black's Law Dictionary at page 468 (Deluxe 6th Edition 1990).

Thus, for the Appellee to establish that an employee violated and/or was guilty of dishonesty, it must demonstrate, by a preponderance of the evidence that the Appellant's behavior was untrustworthy or lacked straightforwardness, or was deceitful, just to name a few.

As was revealed by the testimonies, whether it was from the Appellee's witnesses or the Appellant's witnesses or the Appellant himself, the Appellee did prove by a preponderance of the evidence, that the Appellant was guilty of being dishonest and for violating County and VSC policies and procedures and anti-discrimination laws and other acts of nonfeasance, misfeasance and malfeasance. First, the evidence revealed through the Appellant's own testimony at record hearing that he never really filled out any timesheets or leave slips as required, wherein he was absent from work approximately 70% to 80% of the time between the fall of 2007 and the fall of 2008. Although the Appellant simply denied this allegation, only

to have all of the other witnesses corroborate the fact that he was absent from work, usually working on a house that he was building during that time frame. Additionally, the Appellant was deceitful in telling others not to fully account for their time actually worked and in allowing an employee to work overtime without justification. Further, the evidence revealed that the Appellant told a couple of employees not to use their sick leave when required, as well. The evidence also revealed that the Appellant worked on a claim for his uncle, Mr. Kenneth Steele, who did not have all of his required documentation, and then told one of the Commissioners when seeking her signature to sign off on the claim, that he had not worked on the claim. Furthermore, the evidence revealed that the Appellant was deceitful when he withheld various applications for Commission position appointments from the Greene County Common Pleas Court. Moreover, the evidence revealed that the Appellant also was deceitful in granting excess benefits to an applicant, Mr. Perander. The evidence showed that Mr. Steele granted Mr. Perander benefits five times in one year, all under the \$2,000.00 limit that can be done without Commission approval, where one can only receive benefits three times in a year's period according to the VSC's policies. Additionally, the evidence at the record hearing revealed that Mr. Steele had purchased a Harley Davidson motorcycle from Mr. Perander wherein he had stated for tax purposes that he only spent \$1,000.00, when in fact the purchase price was \$13,500.00, only to be forced to make restitution to the State of Ohio. Although the above noted motorcycle purchase was not a charge filed against the Appellant, it certainly showed the Appellant's lack of credibility, and that it related to a claim that he had been working on. Lastly, the testimonial evidence revealed that the Appellant was deceitful when he had requested another employee to help him complete a portion of a Certified Veterans Advocate exam he was taking, not that the employee actually performed the act of cheating.

Failure of Good Behavior

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

. . . Behavior contrary to recognized standards of propriety, 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 or was guilty of failure of good behavior, the Appellee must demonstrate that the behavior in question was contrary to the recognized standards of propriety and morality or that the employee demonstrated or participated in wrong conduct. In determining whether the Appellant violated or was guilty of failure of good behavior, the Appellee established that the Appellant did, in fact, understand the VSC's work rules and regulations. Thus, the Appellant knew of the standards, which the Appellee required its employees to adhere to in the performance of their respective job. The Appellant was an employee of the Commission, and as such was required to follow VSC's work rules and regulations

As was revealed by the testimonies, whether it was from the Appellee's witnesses or the Appellant's witnesses or the Appellant himself, the Appellee did prove by a preponderance of the evidence, that the Appellant was guilty of failure of good behavior and for violating County and VSC policies and procedures and anti-discrimination laws and other acts of nonfeasance, misfeasance and malfeasance. While most of the enumerated charges listed in the dishonesty heading would also fall into the failure of good behavior category as well, only a few will be discussed herein. The most significant violation of the work rules in the Appellee's presentation of their case was the Appellant not accounting for his actual work/time he spent at work, as he never filled out any timesheets or leave slips as required, wherein the testimonial evidence revealed that he was absent from work approximately 70% to 80% of the time between the fall of 2007 and the fall of 2008. These acts alone most likely merit the removal of the Appellant and violates the standards of propriety and morality, as the tax paying citizens of the County expect its government employees to account for their time worked, and to do otherwise is tantamount to fraud. Another instance were the Appellee proved that the Appellant was guilty of a failure of good behavior occurred when Mr. Steele did not give Mr. Kelly, an African-American, a retired Veterans Services Officer a courthouse replica, and had in the office in the presence of others had stated that, "that nigger was not going to get the courthouse." Clearly, this form of behavior is not called for, let alone in an office setting. Thus, the Appellant was guilty of a failure of good behavior

Neglect of Duty

Appellee proved by a preponderance of the evidence that Mr. Steele was guilty of neglect of duty. Ohio Revised Code Chapter 124 does not define "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 doing or omission of a given act. And it may mean a designed refusal, indifference or unwillingness to perform one's duty. Black's Law Dictionary 1031 (Deluxe 6th Ed. 1990).

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 testimonies, whether it was from the Appellee's witnesses or the Appellant's witnesses or the Appellant himself, the Appellee did prove by a preponderance of the evidence, that the Appellant was guilty of neglect of duty and for violating County and VSC policies and procedures and anti-discrimination laws and other acts of nonfeasance, misfeasance and malfeasance. While most of the enumerated charges listed in the dishonesty and failure of good behavior headings would also fall into the neglect of duty category as well, only a few will be discussed herein.

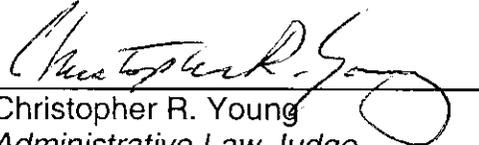
The documentary and testimonial evidence revealed that the Appellant improperly denied benefits to a veteran, namely Mr. Brian Scott Oakley; approved benefits for a known drug user, namely Mr. William Brockman and improperly denied benefits to a former commission member, namely Mr. Harley Koon all in violation of omitting or failing to something that needed to be done, something that was required to be done or something that was a designed refusal to do something that needed to be done.

The question still remains 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 removal of the Appellant. In this case the evidence revealed that the Appellant, John Steele, was guilty of all of the charges leveled against him and that he simply acted as though he was above the Commission's rules and regulations. Therefore, the undersigned Administrative Law Judge concurs with the Appellee's decision to remove the Appellant.

RECOMMENDATION

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that the instant order of removal issued to Appellant, effective March 10, 2009, removing the Appellant from the position of Executive Director/Chief Veteran's Services Officer for the Greene County Veteran's Services Commission be **AFFIRMED**, and the Appellant's appeal be **DENIED**.


Christopher R. Young
Administrative Law Judge

CRY: