

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

Patricia L. Kendrick,

Appellant.

v.

Case No. 09-SUS-04-0219

Department of Mental Retardation and Developmental Disabilities,
Warrensville Developmental Center,

Appellee.

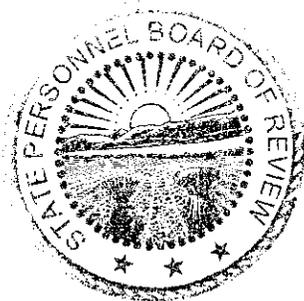
ORDER

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 five (5) day working suspension of Appellant, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



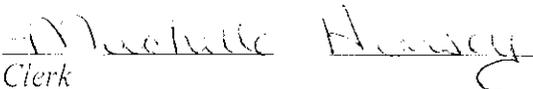


J. Richard Lumpe, *Chairman*

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, July 15, 2010.



Michelle Hensley
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**

Patricia L. Kendrick

Case No. 09-SUS-04-0219

Appellant

v.

May 24, 2010

Department of Developmental Disabilities,
Warrensville Developmental Center

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on February 23, 2010. Present at the hearing were the Appellant, Patricia L. Kendrick, appearing *pro se* and Appellee Department of Developmental Disabilities, Warrensville Developmental Center designee Donna Blakely, Mental Health Administrator 3/Unit Director, represented by Komlavi Atsou, Assistant Attorney General.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

Appellant Kendrick was issued a five (5) day working suspension from her position of Residential Care Supervisor 1, effective April 19, 2009. The pertinent part of the suspension order states as follows:

5-day working suspension for violation of ORC. 124.34 (Failure to Follow Policy Not Pertaining to Individuals with MRDD and Inefficiency), to wit: On 2/16/09 you made an unauthorized purchase with your state credit card. You did not submit a state purchase order for prior approval by the Unit Director and the item you purchased was not an approved item for the house budget. In addition, you failed to meet the deadline of COB 3/5/09, for the completion and submission of a DCMIS access form to the Business Office. Notice was given to you on 2/27/09 to complete the task.

Appellant Kendrick filed a timely appeal of her suspension.

STATEMENT OF THE CASE

Appellee's first witness was Appellant Kendrick, as if on cross examination. Appellant Kendrick testified she has been employed by Appellee as a Residential Care Supervisor since approximately 1988.

Appellant Kendrick identified Appellee's Exhibit 2 as the order of suspension and Appellee's Exhibit 2 was identified as her signed receipt of that order. Appellee's Exhibit 6 was identified as the notice of the pre-disciplinary conference she received and signed for on March 19, 2009 and Appellee's Exhibit 5 was identified as the sign-in sheet with her signature on March 20, 2009. Appellee's Exhibit 1 was identified by Appellant Kendrick as her position description, which states that she has responsibility for ensuring client funds are spent appropriately. Appellee's Exhibit 14 was identified as the policy regarding Budgets for House, Operations and Departments Managers, with an effective date of October 20, 2006. Appellee's Exhibit 15 was identified as the training she received on that policy on March 26, 2008. Appellant Kendrick testified that even though the document states the training was on budgets, in reality, the training was not on that topic.

Appellee's Exhibit 14, the Policy, contains a definitions section and Appellant Kendrick confirmed that the house budget was limited to the items found in the definitions section and that half-inch binders was not an item included in the definitions. In looking at Appellee's Exhibit 7, Appellant Kendrick testified her signature appears on the Payment Card Log as she purchased, on her state credit card, half-inch binders on February 16, 2009. She stated she does not know which budget her credit card is tied to. Appellant Kendrick testified the cost of the binders was \$50.85 and she identified Appellee's Exhibit 8 as the receipt. She stated she followed her supervisor's directive in making the purchase of the binders. Appellant Kendrick testified the policy found in Appellee's Exhibit 14 is not the policy that she made the purchase under and is not the policy that was presented to her at her pre-disciplinary conference.

In looking at Appellee's Exhibit 7, Appellant Kendrick confirmed that Yvette Gains also signed the Payment Card Log and she agreed that Ms. Gains had no authority to give Appellant Kendrick approval to purchase items. She testified her supervisor, the program and operations director can give approval for purchases. Appellant Kendrick testified she was of the belief that she had been given verbal authorization to make the purchase, as that was the common practice. She

confirmed that she had no written approval from anyone to make the purchase of the half-inch binders.

Appellee's Exhibit 16 was identified by Appellant Kendrick as the Payment Card Program Policy, effective August 16, 2005. Appellee's Exhibit 17 was identified as the sign in sheet for training on that policy and the sign in sheet contained her March 26, 2008 signature. Appellant Kendrick testified the training she received was not on that policy, but was on another, similar policy. In looking at Appellee's Exhibit 16, page two of the policy, Appellant Kendrick stated number four states that prior written approval is required from the cardholder's supervisor and the payment card administrator before making a purchase. She testified this does not always happen, as the policy is just a guideline, and that in making the purchase of the binders, she did what she always does and if she thought she was not following policy, she would not have made the purchase.

Appellant Kendrick testified her position description states that she is to ensure the clients have the appropriate level of clothing and that she may make extra purchases for them. Appellant Kendrick stated she could not make purchases for the clients unless she was told to do so. She testified she was not able to access the clients' accounts, although she was of the opinion that she should have been able to do so.

Appellee's Exhibit 19 was identified by Appellant Kendrick as an email she received from Kim Toohey, directed to all Programs Directors and Residential Care Supervisors. Appellant Kendrick testified that pursuant to that email, she was to complete a DCMIS access form and return it to Doug Carter by the close of business on March 5, 2009. Appellant Kendrick admitted that she did not do so.

Appellant Kendrick identified Appellee's Exhibit 20 as the Standard Guidelines for Progressive Discipline. She then identified Appellee's Exhibits 21, 22 and 23 as her three prior disciplines, consisting of a two day working suspension in February 2009; an oral reprimand in October 2008; and a written reprimand in November 2007.

Appellee's next witness was Donna Blakely, a Mental Health Administrator 3/Unit Director with Appellee since October 30, 2005. As such, Ms. Blakely stated she oversees the Qualified Mental Retardation Professionals (QMRP), in-service trainings, works with placements and an array of other duties.

Ms. Blakely explained that for a purchase of less than one hundred dollars, she receives a purchase request and she approves those. If there are items not on a list in the purchase policy, she forwards the request to the program/operations director, as Ms. Blakely stated she can only approve for purchase the items listed in the policy. In looking at Appellee's Exhibit 14, Ms. Blakely testified half-inch binders require the higher level approval, as the Operations Director could approve such a purchase, but stated she cannot, no matter what the purchase price is. She stated purchases have to be made according to policy.

Ms. Blakely identified Appellee's Exhibit 8 as the receipt she signed for the binders. She testified that this means there is a checks and balance in the system, not that she approved the purchase. Ms. Blakely explained that the person who made the purchase cannot also sign the receipt and when she signed it, she assumed approval had been given for the purchase. Ms. Blakely identified Appellee's Exhibit 12 as an email she responded to regarding the purchase of the binders. The email is from the Operations Director to the Program Director. She also explained that Randy Russell was the Operations Manager at the time of this incident and that she could receive requests for purchases from a Residential Care Supervisor, as well as Jackie Terry.

On cross examination Ms. Blakely testified she always gives prior approval on purchases.

Appellee's next witness was Kim Toohey, currently employed at Youngstown Developmental Center since June 2009, but prior to that, she was Program Director at Appellee for two years, from June 2007 to June 2009. As Program Director, Ms. Toohey stated she was responsible for anything programmatic, including the psychology unit, social workers, occupational and physical therapists, the Unit Directors and, indirectly, the residents. Ms. Toohey explained the DCMIS form is for security purposes, as the managers complete the form to gain access to the database system regarding the residents. The system has the most up-to-date balance for each account of a resident. She stated this is important in order to be able to purchase things for the residents out of their accounts.

Ms. Tooey identified Appellee's Exhibit 19 as her emails regarding the completion of the DCMIS access forms which Appellant Kendrick did not complete. Ms. Tooey testified the completion of the forms was of high importance and were to be completed by March 5, 2009.

Appellant Kendrick admitted that she did not complete the DCMIS form timely. She testified she has been employed for thirty-two years at Appellee and has been told to make purchases where the authorization for such purchases has come after the purchase has been made. She stated the authorization is not always in written form.

Appellant Kendrick testified Jackie Terry told her to purchase the half-inch binders, as Ms. Terry submitted all state purchases in the area. She stated Ms. Terry never asked her if she got approval because it was Ms. Terry who approved the purchases or who requested them. Appellant Kendrick testified she thought Ms. Terry had done the approvals. Appellant Kendrick stated she did not shop for the residents, as Ms. Terry did not want her to, so Ms. Terry did the shopping. Appellant Kendrick testified that under different supervisors, she did do the shopping.

On cross examination Appellant Kendrick testified she would never see the approvals done by Ms. Terry. She stated Ms. Terry was sorry that Appellant Kendrick was written up for this incident and she expressed that to Appellant Kendrick. Ms. Terry is no longer working for Appellee.

FINDINGS OF FACT

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

1. Appellant Kendrick has been employed by Appellee for approximately thirty-two years and has been a Residential Care Supervisor since 1988.
2. Effective April 19, 2009, Appellant Kendrick received a five (5) day working suspension. Her previous discipline consists of a written reprimand in 2007; an oral reprimand in 2008; and a two (2) day working suspension in February, 2009.
3. Appellant Kendrick was to have completed a DCSMIS form by March 5, 2009. She admitted that she did not complete this form by the deadline.
4. As a Residential Care Supervisor, Appellant Kendrick had been issued a credit card in order to purchase certain items. On February 16, 2009, Appellant Kendrick used her credit card to purchase half-inch

binders for a purchase price of \$50.85. The binders were for use by the employees and she was told by Ms. Jackie Terry to make the purchase.

5. The Payment Card Log shows Appellant Kendrick as the cardholder and is it signed by Ms. Gains as the Approver and by Ms. Terry as the Supervisor.
6. Appellant Kendrick testified she has seen the policy for the Budgets for the House, although she testified she was not trained on the content of that policy.

CONCLUSIONS OF LAW

In order for Appellee's five (5) day working suspension of Appellant Kendrick to be upheld, Appellee had the burden of proving by a preponderance of the evidence, the allegations contained in the suspension order. Appellee has met its burden of proof.

Appellant Kendrick admitted to the allegation that she did not complete the DCMIS form timely. Therefore, Appellee has met its burden with respect to this allegation.

With respect to the allegation that Appellant Kendrick made an unauthorized purchase with her credit card, Appellee sustained its burden of proof on this allegation also. The evidence established, and Appellant Kendrick admitted, that she made the purchase as alleged. The question is whether or not the purchase was authorized. Appellant Kendrick testified she was told to make the purchase by her then supervisor, Ms. Terry. Ms. Terry's name and signature appears on the Payment Card Log and the form is also signed by Ms. Gains as the approver. Ms. Terry was not called as a witness, so there was no evidence presented to rebut Appellant Kendrick's testimony that she was told by Ms. Terry to make the purchase. Ms. Gains was also not called as a witness, so there was no testimony to explain why her signature would appear on the form as an Approver, if indeed, the purchase was not approved.

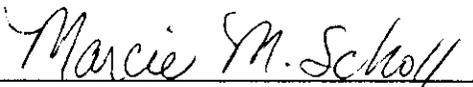
However, the policies as admitted into evidence (Appellee's Exhibits 14 and 16) indicate Appellant Kendrick did not comply with the Cardholder requirements on page 408 of Appellee's Exhibit 16. Number 4 under that section states as follows:

Cardholders will obtain prior written approval from the Cardholder Supervisor and the Payment Card Administrator for all requests to purchase. The form of written approval will be the State Request to purchase Credit Card Transaction form.

Appellant Kendrick testified she was told by Ms. Terry, her supervisor, to make the purchase of the binders and Appellant Kendrick believed Ms. Terry had made and received the necessary approvals, as Ms. Terry had always done so. Appellant Kendrick testified it was Ms. Terry who submitted all the of purchases for her area and Ms. Terry never asked her if she had obtained the necessary approvals. It is unfortunate that Ms. Terry was not present to testify, but Appellant Kendrick could have called Ms. Terry as a witness on her behalf. It is clear that the policy mandates that Appellant Kendrick should have obtained prior written approval from her supervisor before making the purchase. Appellant Kendrick testified that does not always happen, but since Ms. Terry was not present to testify, there is no other evidence to establish that was the practice at the Appellee's offices.

This is Appellant Kendrick's third offense and the disciplinary grid calls for a five day suspension for the third offense. Appellee could have levied a five (5) day suspension with loss of pay, but instead they levied a five (5) day working suspension so Appellant Kendrick did not suffer any reduction of her pay. It is hoped that Appellant Kendrick will follow the timelines and the guidelines set for her in the future, as she is a long-term employee who appeared to be very dedicated to her job. However, Appellee has met its burden of proof.

Therefore, it is my **RECOMMENDATION** that the five (5) day working suspension of Appellant Kendrick be **AFFIRMED** pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms