

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

Shirley A. Crosby,

Case Nos. 09-SUS-08-0358  
09-SUS-09-0405

*Appellant,*

v.

Department of Rehabilitation and Correction,  
Ohio Reformatory for Women,

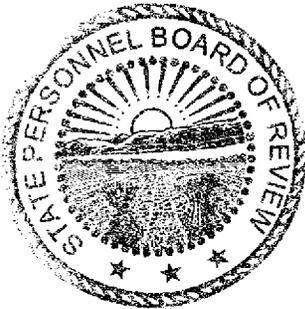
*Appellee.*

**ORDER**

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

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 80 hour working suspension (Case No. 09-SUS-09-0405) be **MODIFIED** to a forty 40 hour (5 day) working suspension. It is further **ORDERED** that Case No. 09-SUS-08-0358 be **DISMISSED** due to Appellee's rescission of the suspension order in this case. Since both actions are working suspensions, Appellant did not lose any money and is therefore not entitled to any back pay.



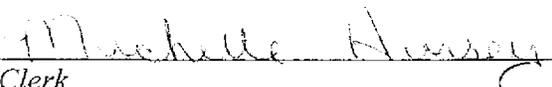
Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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, October 1, 2010.

  
\_\_\_\_\_  
Michelle Hanson  
*Clerk*

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

10/1/10 MH

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

Shirley A. Crosby

Case No. 09-SUS-09-0405  
09-SUS-08-0358

*Appellant*

v.

May 17, 2010

Department of Rehabilitation & Correction,  
Ohio Reformatory for Women

Marcie M. Scholl  
*Administrative Law Judge*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on February 16, 2010. Present at the hearing were the Appellant, Shirley A. Crosby, appearing *pro se* and Appellee Department of Rehabilitation and Correction, Ohio Reformatory for Women designee David Lundberg, Labor Relations Officer, represented by Komlavi Atsou and James A. Hogan, Assistant Attorneys General.

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

Prior to taking evidence, Appellee stated it has rescinded the order of suspension in case number 09-SUS-08-0358. Therefore, it is my **RECOMMENDATION** that appeal be **DISMISSED**.

Appellant Crosby received an 80 hour working suspension from her position of Correction Captain, effective September 13, 2009. The pertinent part of the suspension order states as follows:

The reason for this action is that you have been guilty of Standards of Employee Conduct, Rule 49; Any violation of ORC 124.34 ... and Rule 12: Making obscene gestures or statement, or false, abusive or inappropriate statements. On 7/24/09 you made an inappropriate comment regarding an officer to another officer and other staff members were present. Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an

assignment. On 10/22/08 the LRO received an incomplete investigatory interview packet that was started on 5/16/08 but never finished. ON (sic) 10/31/08 the LRO received an incomplete investigatory packet that was given to you on 8/11/08 to be completed by 8/25/08. On 12/3/08 the LRO received an incomplete investigatory packet that was to be completed by you from a 7/19/08 incident.

Appellant Crosby filed a timely appeal of her working suspension.

### **STATEMENT OF THE CASE**

Appellee first called Appellant Crosby as if on cross examination. She stated she has been a Captain since approximately January, 2008 and effective September 13, 2009, she began serving an eighty hour working suspension.

Appellant Crosby identified Appellee's Exhibit 2 as the order of suspension and Appellee's Exhibit 3 as the receipt she signed for the order. Appellee's Exhibit 5 was identified as the pre-hearing notice she received and Appellee's Exhibit 6 was identified as the certified mail receipt she signed for the notice. Appellant Crosby identified Appellee's Exhibit 1 as the position description.

In her position of Captain, Appellant Crosby testified she acts as the administrative manager in the absence of the Warden and can make all necessary decisions as manager. Because of that, she is privileged to some information that is not available to the correction officers. Appellant Crosby stated she must follow the policies of Appellee and that her personal judgment, skills and integrity are relied on in her position of authority.

Appellant Crosby testified she was in her office with Correction Officer (CO) Rengert on July 24, 2008. She explained that two Captains run a shift. CO Rengert told Appellant Crosby that she and CO McKitrick had an incident in the entrance way and also when they were walking some nurses out to the parking lot. When they were coming into work, there was a verbal conversation that appeared to be threatening between the two CO's. After their shift was up, there was concern that there could be an incident in the parking lot. Appellant Crosby testified that she did not know this information right away, as CO Rengert reported it to the other shift

captain, Benedict, who told her to tell the shift captains and to write a report. Appellant Crosby denied telling CO Rengert that CO McKitrick was on medicine for seizures or for any other reason.

Upon being assigned an investigation, Appellant Crosby testified it is necessary to conduct an investigatory interview. There is also needed a summary of the incident, a Q & A to be completed by the investigator, and an employee statement to be completed by the investigator. If the employee refuses to give a statement, then that must be noted. The employee must sign his or her statement and the union representative can also sign the statement. The investigator's conclusion is included and any mitigating or aggravating circumstances must also be noted by the investigator. Appellant Crosby agreed that failing to complete an investigation may result in putting Appellee at a security risk.

Appellee's Exhibit 17 was identified by Appellant Crosby as an investigation of a use of force which was assigned to her. She testified there was no summary of the incident nor were there any conclusions, or aggravating or mitigating circumstances noted by her. Appellant Crosby explained that the people she needed to interview were not available, as this was assigned to her on May 16, 2008 and she was on disability leave from October 2008 till January 2009 and some of the people she needed to talk to were out on disability from May to October 2008, so she could not talk to them.

Appellee's Exhibit 19 was identified by Appellant Crosby as an investigation which was assigned to her on July 31, 2008. She confirmed that this investigation was not completed, stating that the officer she needed to talk to could not get relieved from duty to talk to her. Appellant Crosby testified that even though there is a notation that an investigatory interview was to take place on July 31, 2008, the interview did not take place as the employee was not able to attend. She confirmed that during her pre-disciplinary hearing, she may have said that she got too busy to do this investigation.

Appellee's Exhibit 18 was identified by Appellant Crosby as the Investigation Review Checklist that she was supposed to have received on August 11, 2008, to be completed that same day. Appellant Crosby testified she never received this as it was put in a mailbox, but she didn't receive it.

Appellee's Exhibit 10 was identified by Appellant Crosby as a written reprimand she received on June 22, 2006, when she was Lieutenant, for failing to carry out a work assignment. Appellee's Exhibit 9 was identified as a two day working suspension she received on November 14, 2006, when she was a Lieutenant, for failing to carry out a work assignment. Appellee's Exhibit 8 was identified as a written reprimand received by Appellant Crosby on March 28, 2008, shortly after receiving her promotion to a Captain, for failing to post orders. Appellee's Exhibit 11 was identified by Appellant Crosby as her signature as proof of receipt of the Standards of Employee Conduct in October 2004.

Appellee's next witness was Jennifer Roach, an Investigator with Appellee for approximately five years and an employee for approximately six years. Ms. Roach testified she has also been the Workplace Violence liaison for approximately three years and is familiar with the policy. Ms. Roach testified she looked over the investigation that was conducted regarding Appellant Crosby to determine if the workplace policy had been violated. Ms. Roach then identified Appellee's Exhibits 12, 13 and 14 as other documents she reviewed before writing her report, identified as Appellee's Exhibit 15. She identified Appellee's Exhibit 16 as the Workplace Violence Policy, stating there is a zero tolerance for workplace violence. Ms. Roach testified she concluded in her report that Appellant Crosby's comment that "C.O. McKitrick might have seizures and hit you in the in parking lot" could be interpreted by correction officer Rengert as violating the workplace violence policy, specifically section 4, number 7.

Appellee's next witness was Cynthia Bartlett, an Investigator with Appellee since June, 2008. Ms. Bartlett testified she was the hearing officer at Appellant Crosby's pre-disciplinary hearing and it was her determination that there was just cause for discipline. She identified Appellee's Exhibit 4 as her report from that hearing. Ms. Bartlett testified Appellant Crosby denied making the statement to correction officer Rengert about Ms. McKitrick, but Lieutenant Johnson's statement matched that of officer Rengert's, so she did not find Appellant Crosby to be credible. With respect to the investigations, Ms. Bartlett testified Appellant Crosby stated she did not receive one of the investigations and she forgot about the other two.

David Lundberg was Appellee's next witness. He has been a Labor Relations Officer with Appellee since September, 2006, and as such, he manages discipline for the Warden and deals with all labor issues. He explained there are

two tracks to the disciplinary grid, as they are attendance and performance related. Mr. Lundberg stated the performance related violations are made known through the incident reports and are submitted to the Warden. Every morning the Warden reviews what is in his mailbox and assigns the work to an investigator. Mr. Lundberg then receives the investigation reports after they are completed.

Mr. Lundberg testified Appellee's Exhibit 17 was a use of force investigation assigned to Appellant Crosby by the Warden on March 27, 2008, or within twenty-four hours of that date, as is the practice. He stated the investigations can usually be turned around within ten to fourteen days. Mr. Lundberg testified this investigation was not completed within fourteen days and Appellant Crosby never asked for an extension of time. He signed the investigation on October 22, 2008, so he stated he probably received it on October 21, 2008, which was six months after it had been assigned to Appellant Crosby. Mr. Lundberg testified the investigation was not completed as it had no conclusion, no summary of the incident and no signature.

Appellee's Exhibit 18 was identified by Mr. Lundberg as another investigation assigned to Appellant Crosby on August 11, 2008 and would have been due to be completed on August 25, 2008. He testified he received it on October 31, 2008 and it was not completed. Appellant Crosby did not request that the investigation be reassigned nor did she ask for an extension of time to complete it. He stated there had been nothing done on this investigation.

Appellee's Exhibit 19 was identified by Mr. Lundberg as an investigation assigned to Appellant Crosby on July 18, 2008 and he received it on December 3, 2008. The allegation in this investigation was attendance related and he stated those investigations are relatively straight forward and can usually be completed in ten days. Mr. Lundberg testified Appellant Crosby started this investigation, but never finished it. He stated the Warden cannot correct an employee's behavior if the investigation is not completed. An incomplete investigation is a security risk and does not meet his expectations.

On cross examination Mr. Lundberg testified the investigations are assigned and placed in the mailbox by shift. He confirmed they are not handed to the investigator and he testified that it is possible that a person may not see something left in the mailbox from another shift. He testified on redirect examination that the captains are required to check their mailboxes.

Appellant Crosby testified other people who were present in the office when she was talking to Officer Rengert did not hear her make the comment she was alleged to have made. She stated she told Officer Rengert that what she was telling her was "off the record". Appellant Crosby testified she did not make the statement she was alleged to have made. She stated Ms. McKitrick is a friend of hers so there would be no reason she would say anything to hurt her.

With regard to the investigations, Appellant Crosby testified there is a lot of commotion in the office and when investigations are put into the mailboxes, it is possible that she would not receive it.

On cross examination Appellant Crosby testified she received two of the three investigations entered into evidence and she admitted that she did not complete those two investigations. Appellant Crosby stated she and Officer Rengert are on second shift and Lieutenant Johnson is on first shift. She testified Lieutenant Johnson and four other lieutenants were in the room during her conversation with Officer Rengert and none of the others heard her alleged comment. Appellant Crosby testified that she and Lieutenant Johnson have had disagreements in the past.

### **FINDINGS OF FACT**

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

1. Appellant Crosby has been employed by Appellee for approximately twelve years and was promoted to a Captain in January 2008. As a Captain, she is responsible for conducting investigations assigned to her by the warden and for managing the shift she is assigned to.
2. Prior to receiving an 80 hour working suspension, effective September 13, 2009, Appellant Crosby's previous discipline consists of a written reprimand in June, 2006 for failure to carry out a work assignment; a two day working suspension in November, 2006 for failing to complete an investigation; and a written reprimand in March, 2008 for failing to follow post orders.

3. Appellant Crosby was assigned three investigations in 2008 and did not complete them.
4. Appellant Crosby received timely notice of her pre-disciplinary conference, attended the conference and had a chance to respond to the allegations.

### **CONCLUSIONS OF LAW**

In order for Appellee's 80 hour working suspension of Appellant Crosby to be affirmed, Appellee had the burden of proving by a preponderance of the evidence the allegations contained in the suspension order. Appellee has met some, but not all, of its burden.

Appellant Crosby admitted she did not complete two of the three investigations assigned to her and she testified she did not receive the investigation assigned to her on August 11, 2008, Appellee's Exhibit 18. While she testified it was hard to schedule the employees for interviews, Appellant Crosby admitted her errors with respect to the two investigations and was forthright in doing so. As for the investigation she stated she did not receive, Mr. Lundberg testified it was placed in the shift mailbox for Appellant Crosby's shift, but there was no evidence presented as to who placed it there. The evidence established that was the normal way of giving the investigations to the assigned employee. There was no evidence presented that Appellant Crosby had not received any other investigations in the past. What the evidence did not establish, however, was where the investigation papers were from the assignment date of August until October 2008, when it was returned to Mr. Lundberg. There was no testimony from either Mr. Lundberg nor Appellant Crosby as to where the papers were found or if Appellant Crosby turned them into Mr. Lundberg. If the papers were still in the shift mailbox, then Appellant Crosby's testimony that she did not receive them would be less credible, as the evidence established the Captains have a duty to check the mailboxes for their shift on a daily basis. If, however, the papers were found lying on a desk or somewhere other than in Appellant Crosby's office, then Appellant Crosby's testimony about never having received the investigation would be credible.

Since the burden is on the Appellee to prove the allegations by a preponderance of the evidence, the Appellee had to prove that Appellant Crosby received the third investigation. Appellee has not met that burden. Appellant

Crosby readily took responsibility and admitted that she did not complete two of the investigations in question. Those investigations did have some parts of the worksheets completed, but not all of them. The other investigation, Appellee's Exhibit 18, had nothing completed, which gives credence to Appellant Crosby's testimony that she never received the packet. Appellee's witness testified that the investigation paperwork was placed into the mailbox designated for the shift Appellant Crosby worked. Appellant Crosby testified she never received it. Since there was no evidence presented as to where or how that particular investigation paperwork was returned to Mr. Lundberg, it is impossible to make a finding as to whether or not Appellant Crosby received the investigation paperwork. Since the burden is on the Appellee, and it has not been proven that Appellant Crosby received the paperwork identified as Appellee's Exhibit 18, Appellee has not met its burden with respect to that investigation.

With respect to the allegation that Appellant Crosby made a statement to CO Rengert about CO McKitrick, once again, Appellee has failed to meet its burden of proof on that allegation. There was no witness testimony from anyone who was present for the alleged conversation, other than Appellant Crosby. She denied making the statement. The investigation report and the pre-disciplinary report, without any corroborating testimony from a witness with personal knowledge of the allegation, is hearsay. Appellant Crosby testified there were other people present that heard the conversation between she and CO Rengert, yet the only witness statement in the investigatory packet, other than that of CO Rengert, is that of Lt. Johnson, who corroborates CO Rengert's statement. The statements of the other witnesses are not in the packet. Appellant Crosby testified she and Lt. Johnson have had previous disagreements and Appellant Crosby maintains the other witnesses did not hear her make the statement she is charged with making. Without any direct testimony from a witness who was actually present, all of Appellee's evidence is hearsay. Therefore, Appellee has failed to meet its burden on this issue.

Appellant Crosby has had previous discipline, in the form of two written reprimands and a two day working suspension. While Appellant Crosby wanted to argue the merits of her past discipline, this Board can only look to the past discipline as proof that Appellant Crosby has been progressively disciplined and has been put on notice that failing to complete assignments is not acceptable behavior. Since Appellee has only proven in this instance that Appellant Crosby failed to complete two investigations assigned to her, an 80 hour working suspension is excessive

discipline. Appellant Crosby admitted she did not complete the two investigations and Appellee has not put forth any reason as to why Appellant Crosby would not be truthful with regard to her statement that she did not receive the third investigation. None of Appellant Crosby's previous discipline are for dishonesty.

Since Appellee failed to meet its burden of proof, except for the two investigations that Appellant Crosby failed to complete, it is my **RECOMMENDATION** that Appellee's 80 hour working suspension of Appellant Crosby be **MODIFIED** to a forty (40) hour (5 day) working suspension. Since these are both working suspensions, Appellant Crosby did not lose any money and is therefore not entitled to any back pay.

It is further **RECOMMENDED** that case number 09-SUS-08-0358 be **DISMISSED** due to Appellee's rescission of the suspension order in that case.



---

Marcie M. Scholl  
*Administrative Law Judge*

:mms