

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

Luann Layman,

*Appellant,*

v.

Case Nos. 10-REC-01-0003

10-TFR-01-0004

10-RED-01-0005

Franklin County Children Services,

*Appellee*

**ORDER**

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

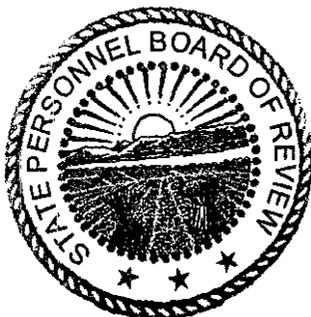
After a thorough examination of the respective records in these matters and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the findings of the Administrative Law Judge but must reject the Recommendation of the Administrative Law Judge. The Board finds that the records support Appellee's contention that Appellant is not currently capable of performing the supervisory duties of her former position. Accordingly, the Board finds that Appellee has met its burden of proof; by showing that its actions were measured and appropriate under the circumstances of the instant appeals.

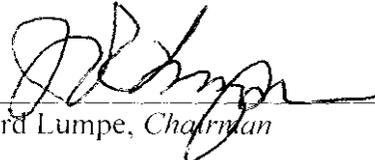
Wherefore, it is hereby **ORDERED** that Appellants disciplinary **REDUCTION** be **AFFIRMED** and further **ORDERED** that Appellant's **RECLASSIFICATION** appeal and **TRANSFER** appeal be respectively **DISMISSED** since these two actions were encompassed within Appellants disciplinary reduction, pursuant to O.R.C. §§ 124.03 and 124.34.

Lumpe - Aye

Sfalcin - Aye

Tillery - Aye



  
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J. Richard Lumpe, *Chairman*

11-12-10  
MH

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

Luann Layman  
*Appellant*

Case Nos. 10-RED-01-0005  
10-TFR-01-0004  
10-REC-01-0003

v.

September 10, 2010

Franklin County Children Services  
*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 May 25, 2010. Present at the hearing were the Appellant, Luann Layman, appearing *pro se* and Appellee Franklin County Children Services designee Heather Saling, Director of Employee Relations, represented by Scott J. Gaugler, Assistant Prosecuting Attorney.

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

Appellant Layman was reduced in position from a Child Welfare Casework Supervisor 2 to a Child Welfare Caseworker 3, effective January 18, 2010. The reduction order states as follows:

Ms. Layman was found to have neglected her duty and committed nonfeasance and malfeasance by failing to provide adequate supervision to assure appropriate services and competent casework, and failing to adjere (sic) to Interstate Compact on the Placement of Children, pursuant to ORC section 124.34.

Appellant Layman filed a timely appeal of her reduction.

## STATEMENT OF THE CASE

Appellee's first witness was Michael Franks, currently the Director of the Central Region and an employee of Appellee for approximately twenty-six years. As Director, Mr. Franks oversees the on-going caseworker function and supervises a staff of approximately fifty employees. He stated he knows Appellant Layman as she was a supervisor in the Central Region and was an indirect report to him.

Mr. Franks explained that the Interstate Compact is a national law which governs the movement of a child in the system from one state to another. It consists of agreed upon standards and sharing of information between the pertinent states. The purpose of the Compact is to ensure the safety of the child and to ensure that proper services continue without disruption.

Appellee's Exhibit 6 was identified as the result of a fact finding investigation that Mr. Franks conducted with Appellant Layman. Mr. Franks continued to explain that under the Interstate Compact, the custodian jurisdiction which is seeking a home study for a relative in another state must complete a significant study of the child in order to maintain care and custody. Specific behavioral characteristics have to be detailed so the receiving jurisdiction can make an informed decision.

Mr. Franks explained that a child came under the custody of Appellee on November 23, 2007. On November 29, 2007, he was placed into a foster home. Appellee had been contacted by the child's maternal grandfather on November 22, 2007 as he asked for custody of the child. Because the grandfather lived in the state of Washington, it was going to take time to change the custody. The case went under the supervision of Appellant Layman on December 11, 2007 as that was the date it was assigned to one of her caseworkers. On January 7, 2008, the caseworker sent a request to the Interstate Compact office to seek a home study for the grandfather's home in Washington. Approval notification was not received until May 21, 2008. On August 26, 2008, Franklin County Juvenile Court issued legal custody of the child to the grandfather and temporary custody held by Appellee was terminated. On August 27, 2008, the child was moved to Washington and all went well until February 23, 2009, when a caseworker in Washington contacted Appellee to report that the grandfather wanted to begin day care for the child and asked if Appellee would fund the day care.

Mr. Franks testified Washington and other pertinent parties never knew that custody had been lost by Appellee and he opined that had Washington known that, they may not have accepted jurisdiction of the child. Since custody had been terminated, Appellee could not respond to the request for treatment for the child and for the costs. Mr. Franks testified that protocol is that any changes be communicated to the receiving state and this did not happen. He stated that his review of this case uncovered several errors, those being: there was no signature of the supervisor, Appellant Layman, on the form showing Ohio's intent to place the child in Washington; the child needed behavioral assessments which were not done or were lacking; Washington was unaware of the substantial behavioral concerns of the child due to the lack of documentation; the biological mother was incarcerated and there was no monthly contact with her as there should have been; and lastly, Appellee should not have terminated custody when Washington and the IPC did not concur, as they were not aware of the change.

Mr. Franks testified Appellant Layman should have assured that all of those things were taken care of and she did not. He stated he first became aware of problems when the treatment report was issued from the provider in Washington. Washington asked for funding and Appellant Layman asked for approval to do so, but her supervisor said no based on the fact that custody had been terminated so Appellee had no jurisdiction over the case. Mr. Franks testified he found Appellant Layman, as supervisor, had significant gaps in her review and there was no case plan amendment to include the grandfather in the service provisions. He stated he felt the grandparents were not fully aware of what they were getting into with the child.

Appellee's next witness was Heather Saling, Director of Employee Relations since approximately 2004. Ms. Saling identified Appellee's Exhibit 5 as an excerpt from the employee handbook regarding discipline, stating it gives employees a clear understanding of the workplace expectations and is available on the intranet and also in hard copy. Appellee's Exhibit 2 was identified as the pre-disciplinary packet she prepared for Appellant Layman and Appellee's Exhibit 3 was identified as the report from the pre-disciplinary conference. Ms. Saling testified she recommended Appellant Layman be demoted due to the extent of the violations and the concerns in the instant case. She stated she did not feel Appellant Layman should be a supervisor due to the errors she made. She explained that the classification immediately under the supervisor class is a Caseworker 4, although there are very few of those, so it was her recommendation to demote Appellant Layman to a

Caseworker 3. Ms. Saling identified Appellee's Exhibit 4 as the memorandum she prepared for the Executive Director detailing her recommendation of demotion for failing to supervise, failing to properly complete the Interstate paperwork, failing to adequately contact the biological mother, failing to retain custody and failing to offer the child mental health services.

Appellant Layman testified she was assigned the case in December 2007. She identified Appellant's Exhibit A as a CALL Program Referral Form which her caseworker completed. She stated this was a consult with the hospital and they were requesting a behavioral health assessment and level of care/service recommendations as well as an assessment as to counseling needs. In January 2008, the child was put on a waiting list with Children's hospital for counseling.

Appellant Layman testified that at the present time, she understands that Ohio should have held onto custody of the child, but at the time, she did not know that. She testified the packet she sent to the legal department, which showed that custody was terminated in Ohio, was not returned to her and the August 26, 2008 hearing which terminated custody was covered by the Appellee's attorney, as the caseworker was not present. She stated there were on-going telephone calls between the caseworker and the grandfather and the caseworker always made the recommendation for the counseling for the child. Appellant Layman stated the Associate Director of the agency had been involved with this case during all of the paperwork.

In May, 2009, Appellant Layman testified she arranged for a telephone conference between all parties to resolve the issue of payment for services for the child. She stated she felt Ohio was responsible for the payment, but the Associate Director did not agree. A meeting was held to discuss the issue and neither she nor her caseworker was in attendance at that meeting. On June 4, 2009, the case was transferred to the adoptions section for resolution of the money issue.

Appellant Layman testified that her Exhibit A shows that the caseworker did request an assessment for counseling and that no one ever requested that the child be re-assessed or re-evaluated due to his behavior. The foster parent actually commented that the child's aggressive behavior had decreased. With regard to the allegations against her, Appellant Layman testified she submitted her case plan on September 30, 2008. The grandparents could not sign the document since they

were out of state. She testified there have been problems with the case plans on an agency-wide basis.

Appellant Layman testified the biological mother was invited to meetings, but because she was incarcerated, she could not attend. She stated there are letters between the mother and the caseworker in the file. Appellant Layman testified that after this incident, there are now plans in place of how to meet with parents who are incarcerated, but prior to that, there were no plans and the Appellee had been cited for not having a plan. Appellant Layman testified no paperwork was ever returned by the Interstate Compact division for missing information or for any other reason. The Associate Director signed the financial assessment and the family history was attached to the packet. The home study was included in the legal packet and Appellant Layman reiterated that neither the Associate Director nor legal returned the packet for any improprieties.

Appellant Layman testified there was newspaper article about this case in the August 17, 2009 edition and it is her belief that she was found to be wrong in the paper even before an investigation was conducted. She stated the caseworker was given a two day suspension. Appellant Layman identified Appellant's Exhibit B as her performance evaluation from April 2010. She stated she has been employed with Appellee for approximately eighteen years and has only had a one day suspension in the early 1990's when she was a Caseworker. She became a supervisor in April 2000. She also identified Appellant's Exhibit C as the agency handbook for handling Interstate cases, which became effective in April 2010. She stated there was no such book when she was dealing with the instant case.

Appellant Layman stated she felt the discipline she received was too harsh, especially considering the fact that her caseworker only received a two day suspension and that she was not alone in the decision making. She testified she relied on the legal staff regarding the custody issue and that none of the errors made were intentional. Appellant Layman testified she has always been an advocate for children and their welfare and she has been dedicated to her work. She stated she felt she made a difference.

On cross examination Appellant Layman testified she was not aware that custody was to be maintained. She stated she knew the agency had to be involved, but did not realize that custody had to be maintained. Appellant Layman testified the documents state that the child was abused and that the term "battered" was not

used. She stated that when the information was initially sent, Washington had all of the information. She opined that the legal department or the Associate Director should have let her department know that they were supposed to retain custody. The change of status was noted on the forms and the case plan also noted that counseling was necessary. With regard to the amended case plan, since the grandparents could not attend the meeting, the caseworker had on-going conversations with them and a coy was mailed to them. Appellant Layman confirmed that face-to-face visits were not done with the biological mother who was incarcerated.

### **FINDINGS OF FACT**

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

1. At the time of her demotion, Appellant Layman had been employed for approximately eighteen years and had been a supervisor for approximately ten years. Her previous discipline consists of a one day suspension in the early 1990's when she was a Caseworker.
2. As a supervisor, Appellant Layman was responsible for ensuring that her unit of Caseworkers was assigned work and did their work. She was also to review and approve the work of her subordinates.
3. A child came under the purview of one of Appellant Layman's caseworkers on December 11, 2007. A CALL Program Referral Form was completed on January 11, 2008, in which several assessment referrals were sought for the child. The child was put on a waiting list for counseling in January 2008 and the foster mother was contacted in July 2008 informing her counseling could take place then.
4. The child's grandfather, who lives in Washington, contacted Appellee on November 7, 2007, about gaining custody of the child. A case plan was written on December 20, 2007 and was amended and submitted on September 30, 2008. The grandfather did not sign since they were out of state, but everyone else signed and it was mailed to the grandfather.
5. Face to face visits with the child's biological mother were not conducted as she was incarcerated. The caseworker did have contact

with her, however, and she was in agreement with the grandfather taking the child.

6. On January 7, 2008, a cover letter was sent to Washington asking them to do a home study of the grandfather's home. The letter was not signed by Appellant Layman. Attached was a child inventory which did not fully disclose all of the information that was available on the child, although it did note that counseling would likely be needed in the future and it did state the child had been abused.
7. The child went to live with his grandfather in Washington on August 26, 2008.
8. That same day, Appellee's custody of the child was terminated. The Interstate Compact Agency was not aware that Appellee no longer retained custody, as Appellant Layman did not know that Appellee was not to give up custody. She did not attend the custody hearing, as it was attended by legal counsel for the agency.
9. In late February 2009, the grandfather asked Appellee to fund services for the child. Appellant Layman's supervisor denied the request based on the fact that Appellee no longer had custody of the child.
10. Appellant Layman tried to facilitate conference calls to determine who should be financially responsible for the services needed by the child. Ultimately the case was transferred to the adoptions section for resolution.
11. In Appellant Layman's performance evaluation, dated April 3, 2010, covering the year previous, prior to her demotion, the majority of her ratings were a "3", which is listed as "outstanding". In the areas that impacted her demotion, she was rated "1" or "2", which is "Needs Improvement" and "Good", respectively.

### **CONCLUSIONS OF LAW**

In order for Appellee's reduction of Appellant Layman to be upheld, Appellee had the burden of proving by a preponderance of the evidence, the allegations contained in the reduction order. Appellee has met its burden, in part.

Appellant Layman was charged with neglecting her duty, nonfeasance and malfeasance by failing to provide adequate supervision and by failing to adhere to the Interstate Compact.

Appellant Layman was charged with not ensuring referrals were made and effectively following up on services for the child. The CALL Program Referral Form, Appellant's Exhibit A, does show that a Behavioral Health Assessment, Level of Care/Service Recommendations and Assistance with Referrals are checked items. Appellant Layman testified the child was placed on a waiting list in January 2008 for counseling services through Childrens' Hospital and the pre-disciplinary packet indicates the foster mother did receive a call in July 2008 from the Hospital stating the child now had an appointment for counseling, but the foster mother declined the appointment. In looking at Ohio Administrative Code section 5101:2-42-66.1, there are other timelines listed as to comprehensive plans that should be in place for the child. Appellant Layman did not produce any evidence that her caseworker followed up on the requested assessments and there was no evidence to show that Appellant Layman did any follow up on these items.

The next charge was that Appellant Layman did not timely file the amended case plan and the grandfather did not sign it. Appellant Layman admitted that the amended case plan was filed late, stating that a majority of case plans are late. She also admitted that the grandfather did not sign the amended case plan since he was in Washington. Appellant Layman did violate Ohio Administrative Code section 5101:2-38-05 by filing the plan late and not having the grandparent sign it or have an explanation as to why the grandfather did not sign the amended case plan.

The third charge was that face-to-face interviews were not conducted with the child's mother. Appellant Layman admitted that her caseworker did not conduct face-to-face interviews with the mother that was incarcerated. She also testified, however, that after her discipline, Appellee established guidelines for meeting with incarcerated parents and stated they had been cited prior to this for not doing so. Appellee did not rebut Appellant Layman's testimony.

The last two charges deal with violations of the Interstate Compact, namely that the packets did not include all available family history and other information and that custody should not have been terminated and Washington was not notified of the termination. Appellant Layman testified she did not know that custody should not have been terminated. She argued that during the termination hearing, neither she nor her caseworker was present, as the Appellee was represented by their legal department. Appellant Layman also argued that the Interstate Compact documents were sent to various departments before being sent to Washington and they were never returned to her by anyone for more information or for corrections. Appellant Layman also testified that after this incident, a handbook, Appellant's Exhibit C, was made available for employees when handling Interstate cases, effective November 30, 2009 and revised April 2010.

It is clear that Appellant Layman did not comply with several provisions of the Interstate Compact procedures; however, the evidence did not establish that Appellant Layman was the sole person at fault. The evidence established that at various times throughout this process, her Associate Director was involved, the legal department was involved and the people to whom the documents were sent were involved. At no time during the entire process did anyone go to Appellant Layman and tell her that custody should not have been terminated, or after it was terminated, tell her how to handle the problem. Once Appellant Layman was notified of the problem caused by the termination of custody with respect to paying for services in Washington, she tried to find a solution by bringing all of the parties together in a conference call. That is how the case was ultimately transferred to the adoption section for resolution.

In looking at an employee's discipline, Appellee must prove by a preponderance of the evidence that the allegations against an employee are true and secondly, that the employee was aware of the guidelines or laws that have been violated. In this instance, Appellee did not prove that Appellant Layman was aware of all of the pertinent regulations. Appellant Layman established in two instances that the problems with this case prompted Appellee to address the face-to-face visits when a party is incarcerated and also to revise the guidelines on the Interstate Compact issues. The un-rebutted fact Appellee felt the need to clarify both of those areas after this case lends credence to Appellant Layman's argument that she was not clear on what the proper protocol was in both of those instances. Appellee did not present any evidence that Appellant Layman had been trained in

either of those areas nor did they explain why legal counsel did not know that custody should not have been terminated since it was legal counsel who was present at the custody termination hearing.

There is a plethora of rules and regulations regarding the issue of child placement and Appellee did not establish that Appellant Layman was properly trained or aware of the pertinent requirements in this case. That being said, the evidence did establish that Appellant Layman has been a long tenured employee and there were clearly some omissions on her part, such as not including all of the information about the child on the forms, not following up on the assessments, not reviewing the work of her caseworker closely enough and not completing the amended case plan timely.

In reviewing Appellant Layman's performance evaluation for the one year period preceding April 3, 2010, all but four areas out of twenty-two, were rated as Outstanding. None of the four lower scores were "Unsatisfactory". Three of the four were rated "Good" and one was rated "Needs Improvement". As stated earlier, those four areas were impacted by the mistakes made in this case. The performance evaluation does not indicate that Appellant Layman was not a good supervisor. In fact, in reading the comments, she appeared to be a very good supervisor. Given her tenure of eighteen years, one previous discipline in the early 1990's and the fact that she was a supervisor of ten years, with a good performance evaluation, it appears the discipline in this case was too harsh.

Appellant Layman appeared to be remorseful for the situation she put the agency and the child in and when she found out the circumstances, she took action to rectify the situation. She admitted her mistakes and testified she wasn't aware of some of the requirements. Her testimony appeared credible. It is not this Administrative Law Judge's recommendation that her reduction be completely disaffirmed, as it is clear she violated rules that she surely should have been aware of and that she did not supervise or review her caseworker's work as she was required to in this instance. Instead, being reduced from the time period of January 18, 2010 to the present should be just punishment for the errors that were made.

Appellant Layman also filed a transfer appeal and a reclassification appeal. At the record hearing, it was determined that no separate transfer or reclassification occurred and that those actions were encompassed within Appellant Layman's

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reduction. Therefore, it is my **RECOMMENDATION** that the transfer appeal and the reclassification appeal be **DISMISSED**.

Further, it is my **RECOMMENDATION** that Appellant Layman's reduction be **AFFIRMED** for the time period of January 18, 2010 until the Board Order is issued in this case, at which such time, Appellant Layman should be restored to her position of Child Welfare Casework Supervisor 2 with no back pay.

  
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Marcie M. Scholl  
Administrative Law Judge

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