

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Sunday Zidonis,

*Appellant,*

v.

Case No. 10-REM-06-0143

Columbus State Community College,

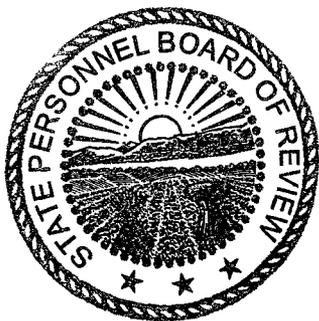
*Appellee.*

**ORDER**

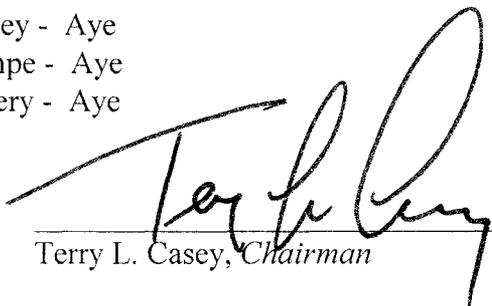
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 removal of Appellant be **AFFIRMED**, pursuant to O.R.C. § 124.34, since Appellant violated the Last Chance Agreement which she signed and agreed to on March 5, 2010.



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 constitutes ~~(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, August 1, 2011.

  
*Clerk*

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

8.1.11 mth

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

Sunday Zidonis

Case No. 10-REM-06-0143

*Appellant*

v.

June 27, 2011

Columbus State Community College

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on March 2, 2011. Present at the hearing were the Appellant, Sunday Zidonis, represented by James J. Leo, Attorney at Law and Appellee Columbus State Community College designee Dr. Deborah Coleman, Vice President, represented by Timothy A. Lecklider and Timothy M. Miller, 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.

**STATEMENT OF THE CASE**

Appellee's first witness was Appellant Zidonis, as if on cross examination. Appellant Zidonis testified she started her employ with Appellee as a part-time employee in July, 1998, and became a full-time employee in July, 2004, as a Project Specialist. In January, 2007, she was promoted to Project Coordinator and her direct supervisor was Dr. Deborah Coleman.

Appellant Zidonis identified Appellee's Exhibit 1 as her position description, although she testified it was not descriptive of her duties. She described her duties as one of coordination, stating she collected data from people who implemented programs and she posted the data. Appellee's Exhibit 2 was identified by Appellant Zidonis as the Last Chance Agreement which she signed. Appellant Zidonis testified she understood that the Agreement stated if she failed to meet the requirements of the Agreement, it would result in her termination. There were three

goals or requirements placed upon her by the Agreement which needed to be completed by March 26, 2010 and given to Dr. Coleman.

Appellant Zidonis explained that one area of her work that was on-going was the Academic Quality Improvement Program or AQIP. Pursuant to the Agreement, work involving AQIP was to be turned into Dr. Coleman by March 26, 2010. Appellant Zidonis testified that she did turn the work into Dr. Coleman by that date, although she testified she did not have a copy of the work and she did not recall the exact date that she turned in the work.

In looking at Appellee's Exhibit 8, Appellant Zidonis testified that the document was produced by a consultant and it was not what she turned in as her training program. She testified she did turn in her training document, but she did not have a copy of it and could not recall the date she turned it in, but stated it was prior to March 26, 2010. Appellee's Exhibit 6 was identified by Appellant Zidonis as the document she turned in as the Communication Plan pursuant to the Agreement. She testified that it was "undetermined" as to if the plan met the criteria of the Last Chance Agreement. Appellant Zidonis stated that her supervisor stated it was not adequate but she does not know why. In noting that there were no reference materials attached to the Communication Plan, Appellant Zidonis testified she did not know if she attached any materials with her submission or not. There was also no written index attached as required by the Agreement. Appellant Zidonis stated that the orientation materials were included on pages three through five and that the document extends over an entire year.

Appellee's Exhibit 3 was identified by Appellant Zidonis as the notice of the pre-disciplinary hearing which she received and she stated that she did not recall what she said at the pre-disciplinary hearing. Appellee's Exhibits 4 and 5 were identified by Appellant Zidonis as the notice of removal and the order of removal, respectively, which she testified she received.

Appellee's next witness was Dr. Deborah Coleman, Vice President for Knowledge Resources and Planning. She stated she has been employed for nineteen years with Appellee and that she reports to the President. Her duties consist of ensuring that all of the key compliance functions are met, writing and developing grants and looking at the post award and compliance requirements.

In looking at Appellant Zidonis' position description, Appellee's Exhibit 1, Dr. Coleman testified that it does describe Appellant Zidonis' duties, although the duties associated with AQIP became a bigger role and took more time of the position. She explained that AQIP is the format through which the college reports and that it replaced an older document. Dr. Coleman stated AQIP is a self-study and is a continuous document commitment to self-study. It is through those documents that the Appellee meets the requirements for accreditation and it is necessary to have the accreditation to remain open.

Dr. Coleman testified that the Last Chance Agreement signed by Appellant Zidonis was the last step in a very long process of progressive discipline and activity review. She stated the items in the Agreement never changed from the first request to Appellant Zidonis which was made approximately eight months prior to the Agreement. In looking at Appellee's Exhibit 2, the Agreement, Dr. Coleman testified that she first came up with the deliverables listed in the Agreement during the first written process of Appellant Zidonis' review and have progressively been repeated. Dr. Coleman testified she never received the AQIP materials specified in the Agreement. Instead, Appellant Zidonis left a bunch of materials for her, but the required finished product was not among the materials.

With regard to the training documents required by the Agreement, Dr. Coleman testified she did receive materials from Appellant Zidonis and identified those materials as Appellee's Exhibit 8. She explained they were power point slides which she interpreted to be the training program. Dr. Coleman testified that those materials do not meet the criteria of the Agreement as the language in those materials could not be understood by someone with minimal experience and there was nothing included to explain how a presenter would be using the materials. There was nothing which showed any documentation for feedback for a presenter and no introduction as to how the materials would be used. There was no application tools present, just a description of the tools and there was nothing to evaluate the effectiveness of the program.

In looking at Appellee's Exhibit 6, the AQIP Communication Plan, which Appellant Zidonis submitted on March 25, 2010, Dr. Coleman testified that the Communication Plan did not meet the criteria of the Agreement. She explained that the materials were what she would term a "skeleton" as she could not give those materials to someone and have them implement them. There were no collateral materials, there was no depth and it was not a full package. She stated it was akin

to a first draft and the pages she received would have to be turned into a program. There were no reference materials with what she received from Appellant Zidonis. Looking at page 2 of Appellee's Exhibit 6, Dr. Coleman testified there were no objectives, it was not quantified, nothing showed who performed what tasks and there were no strategies included as to how to meet the themes. No index was received and there was no orientation to the materials as there was nothing to explain how these documents would be used or implemented.

On cross examination Dr. Colman testified she had intense communication with Appellant Zidonis. She met with her prior to every AQIP meeting to review and compare and they met at least once a week face to face. Dr. Coleman testified that Appellant Zidonis' duties did not change over the last two years. She stated her position description was created when Appellant Zidonis was promoted and that it was reviewed annually. In looking at Appellee's Exhibit 8, Dr. Coleman testified that the training materials turned in by Appellant Zidonis were not relevant to the community, such as faculty to faculty and staff to staff.

Appellant Zidonis testified she worked for Appellee for approximately ten and one-half years. She explained that AQIP enables the college to meet accreditation through self-study and the development of a portfolio. She was responsible for coordinating the functions for accreditation. She interacted with Dr. Coleman, the Steering Committee and the campus at large. Appellant Zidonis explained that the Steering Committee was to implement projects.

Appellant Zidonis testified that she submitted a chart which was required of her pursuant to the Last Chance Agreement and that the chart was posted on the website. She testified that she created the training program and that she felt the materials were relevant because they were being used successfully at another community college. Appellant Zidonis testified she obtained the materials from a conference she attended and stated it contained a definition, a method of approach, explained how information is collected and what the impact to a college is. She also stated that it was her belief that the materials were basic and able to be understood by minimally experienced people.

In looking at Appellee's Exhibit 6, Appellant Zidonis testified this was her communication plan which gives an approach or strategy for accomplishing communications. She stated it can be easily adapted. Appellant Zidonis testified she believes that all of this material was submitted, but she could not remember if it was or not.

On cross examination Appellant Zidonis testified she thought she turned in the required documentation to Dr. Coleman the day before the deadline by putting the documentation in her mailbox. She testified she believes she sent an email to Dr. Coleman telling her she left the papers in her mailbox.

On rebuttal, Dr. Coleman testified she received documents in her mailbox from Appellant Zidonis, but there was a stack of material, none of which seemed responsive to the AQIP request. In looking at Appellee's Exhibit 7, Dr. Coleman testified she did receive these materials on March 26, 2010, as it was part of the materials in her mailbox. She testified the problem definition is fine but the approach/method needs more specificity such as identifying who the trainers will be and if they are willing to do the training. The term "mentor" needs to be defined as well as who is responsible for implementation. Dr. Coleman testified that what she received was not a fully developed idea, as there is still a lot of planning to be done in order to actually implement the program. On cross examination, Dr. Coleman testified she felt the Agreement was clear and is not subjective. She also stated that in her email to Appellant Zidonis, she was saying that she did not have the matrix and that she would like for Appellant Zidonis to send it to her.

#### **FINDINGS OF FACT**

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

1. Appellant Zidonis began her employ at Appellee as a part-time employee in 1998 and became a full-time employee in 2004. In January, 2007, she was promoted to Project Coordinator and her direct supervisor was Dr. Deborah Coleman.

2. Appellant Zidonis' past disciplinary history consists of a verbal reprimand in July 2009; a written reprimand in November 2009; a three (3) day suspension in December 2009; and a five (5) day suspension in March 2010. She also signed a Last Chance Agreement on March 5, 2010.

3. The Last Chance Agreement required Appellant Zidonis to submit three deliverables, as described in the Agreement, by March 26, 2010.

4. Appellant Zidonis left a stack of material in Dr. Coleman's mailbox which she stated met all of the criteria of the Last Chance Agreement, although she agreed that she did not turn in a written index to the communication plan and there were no reference materials attached to Dr. Coleman's copies. Appellant Zidonis testified she did provide reference materials, but did not know when she did so and she did not have a copy of the materials she provided.

5. Appellant Zidonis could not recall the date she provided the materials required in the Last Chance Agreement, but stated it was before the deadline date.

### CONCLUSIONS OF LAW

In order for Appellee's removal of Appellant Zidonis to be upheld, Appellee had the burden of proving by a preponderance of the evidence that Appellant Zidonis violated the terms of the Last Chance Agreement. Appellee has met its burden.

This Board's jurisdiction in an appeal involving a Last Chance Agreement is limited to determining whether or not the Appellant violated the Agreement and if the evidence establishes that the Agreement was violated, then this Board has no discretion to do anything but affirm the removal. Section 124.34(B) and (E) of the Ohio Revised Code states in pertinent part:

(B) . . . However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority.

(E) As used in this section, "last chance agreement" means an agreement signed by both an appointing authority and an officer or

employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the state personnel board of review or the appropriate commission.

With respect to the first deliverable under the Last Chance Agreement, the AQIP "single document in a summarized format", Appellant Zidonis did not produce it. She testified she did turn it in, but had no copy of it and could not recall the date she turned it in. Dr. Coleman testified she never received it. Dr. Coleman testified she received a packet of materials in her mailbox, but none of the materials met the criteria of the AQIP Project as delineated in the Agreement. Appellant Zidonis did not produce the document at her pre-disciplinary conference, even though the document was due on March 26, 2010 and her pre-disciplinary conference was not until April 22, 2010, giving her approximately a month to produce the document she stated she turned in. Dr. Coleman identified all of the documents which she received and none of them responded to this requirement of the Last Chance Agreement. While one could argue about whether or not the other documents met the requirements of the Agreement, the fact that no document was received is not subjective. Dr. Coleman's testimony on this issue was found to be credible, as Appellant Zidonis could not rebut Dr. Coleman's testimony by producing a document either at her pre-disciplinary conference or at this hearing and she could not state a specific date that she produced the document.

Appellant argued that Appellee's Exhibit 3, a memo from Dr. Coleman to Appellant Zidonis dated April 15, 2010, is proof that Appellant Zidonis submitted the required AQIP documents; however, the memo does not establish that Dr. Coleman received the information. Her comments with regard to that deliverable were:

Requested re-sending of matrix re: this deliverable. I am not sure I have received the latest version. Was sent material not specifically related to this requirement. Do not have it at this time.

Dr. Coleman testified that what she was trying to say in the memo was that she was not clear that she had the most relevant material, as the documents given to her by Appellant Zidonis were in a stack and none of the documents seemed relevant to the AQIP deliverable. She also testified that she probably told Appellant Zidonis verbally that she did not receive any matrix and Appellant Zidonis told her she did send it, so she asked her to re-send it since she did not have it. Dr.

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Coleman stated that she did not receive anything from Appellant Zidonis with regard to her request after this memo. If Appellant Zidonis did have the requested materials, then one must question why she didn't just re-send the materials to Dr. Coleman. Appellant's assertion on this matter has not been proven.

The evidence also established that Appellant Zidonis did not turn in an index as required by the Agreement under the Communication Plan.

Appellee has met its burden of proof by establishing that none of the deliverables required in number one of the Agreement with regard to the AQIP Projects were received by Dr. Coleman and there was no index included with the materials turned in by Appellant Zidonis in response to the third deliverable. Appellee presented evidence to establish why the materials that were turned in did not meet the Agreement's requirements, but it is not necessary to discuss those as Appellee's only burden was to show that the Agreement was not met. They have done so with regard to the absence of the first deliverable and the absence of an index pursuant to the third deliverable.

Therefore, it is my **RECOMMENDATION** that the removal of Appellant Zidonis be **AFFIRMED**, pursuant to section 124.34 of the Ohio Revised Code, since she violated the Last Chance Agreement which she signed and agreed to on March 5, 2010.



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Marcie M. Scholl  
*Administrative Law Judge*

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