

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

ANGIE KNAPP,

Appellant,

v.

Case No. 10-REM-08-0208

FAYETTE COUNTY DEPARTMENT OF JOB & FAMILY SERVICES,

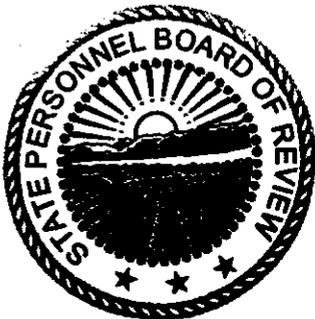
Appellee

ORDER

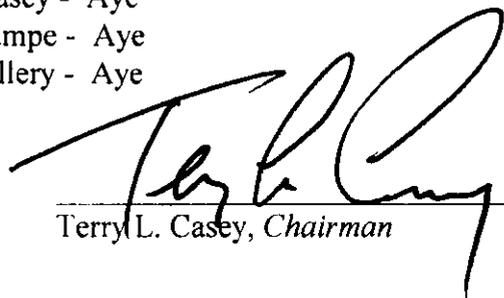
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 instant order of removal issued to Appellant, effective June 30, 2010, removing the Appellant from the position of an Eligibility Referral Specialist 2 is **AFFIRMED**, and the Appellant's appeal is **DENIED**.



Casey - Aye
Lumpe - Aye
Tillery - Aye

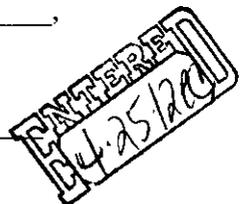

Terry L. Casey, *Chairman*

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, April 26, 2012.


Erin E. Conn
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**

Angie Knapp,

Case No. 10-REM-08-0208

Appellant

v.

March 28, 2012

Fayette Co.,
Dept. of Job & Family Services,

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter cause came on for consideration on December 17, 2010, after holding a Show Cause hearing on November 22, 2010, and after the submission of the simultaneous post hearing briefs submitted by both the Appellee and the Appellant on December 14, 2010. At issue at the Show Cause hearing was the order of remand dated October 29, 2010, wherein it was ordered by the Board to address whether the Appellant received the second page of the relevant R. C. 124.34 Order of Removal and whether the Appellant was orally apprised of the appropriate mechanism for appeal was to file the same internally with Fayette County.

After a short hearing with Ms. Angie Knapp, the Appellant herein, testifying as if on cross-examination and Ms. Lori Hellenthal, the Director of the Department of Job and Family Services testifying on direct examination, the evidence, by a preponderance, did not reflect that the Appellant received the second page of the relevant R. C. 124.34 Order of Removal in addition to the Appellant was orally apprised of the appropriate mechanism for appeal was to file the same internally with Fayette County.

With respect to the Appellant not receiving the second page of the relevant R. C. 124.34 Order of Removal Ms. Hellenthal testified that she gave Ms. Knapp the second page of the order and that it was stapled to the first page of the order. However, upon review of the original first page of the R. C. 124.34 Order of Removal there were no staple holes to evidence that that was ever done. However,

later Ms. Hellenthal explained that she must have paper clipped the pages together, contradicting her previous testimony.

With respect to the Appellant being apprised that the appropriate mechanism for appeal was to file the same internally with Fayette County, the evidence revealed that the Appellant tried to inquire as to how to appeal her removal from employment by calling the Assistant Director for clarification. However, the evidence revealed the Assistant Director never returned her call, resulting in her calling Mr. Bob Peterson, a Fayette County Commissioner, who told her to seek legal counsel, in addition to telling her that she needed to file with the County first, referring her to the internal Complaint Policy section 8.06. The evidence reflected that the Appellant filed a complaint internally timely. Further, the evidence reflected that the Appellant after having received the Commissioner's decision internally via a letter that was sent to the Appellant to uphold her removal on July 19, 2010, she promptly filed an appeal of that decision 10 days afterwards with this Board.

While Appellee's contention that ignorance of the law is no excuse and that there should not be equitable tolling in this case, the undersigned finds that in the interest of fairness, this case should not be dismissed on a procedural defect, considering the above circumstances, and that this case should proceed on to a hearing on the merits of her removal.

Therefore, based upon the reasons stated above, even though the Appellant, Angie Knapp, was served with an Order of Removal, in accordance with Ohio Revised Code Section 124.34, on or before the effective date of June 30, 2010, but had not filed an appeal of that order until July 29, 2010, due to the extenuating circumstances listed above, the record hearing on the merits was held on March 7, 2011, and concluded upon the simultaneous filing of post hearing briefs on April 22, 2011.

The Appellee, the Fayette County Department of Job and Family Services, served an Order of Removal upon the Appellant, Angie Knapp, an Eligibility Referral Specialist 2. That order alleged the following:

This will notify you that you are removed from your position of Eligibility Referral Specialist 2, effective June 30, 2010.

The reason for this action is that you have been guilty of specifically: failure good behavior regarding call offs; dishonesty regarding statements made to the director and immediate supervisor regarding her absences; insubordination regarding failing to conduct group and take interviews as directed; and failure good behavior/dishonesty regarding altering an excuse slip from a doctor's office visit.

The Appellant, Angie Knapp, appeared at the record hearing and was represented by Michael E. Moses, Attorney at Law. The Appellee, the Fayette County Department of Job and Family Services, was present through its designee Ms. Lori Hellenthal, the Director of the Fayette County Department of Job and Family Services, and was represented by Eugene P. Nevada, Attorney at Law.

This hearing was conducted by the State Personnel Board of Review in accordance with 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. However, as was noted above, due to the extenuating circumstances and the confusion of the Appellant, coupled with the actions of the Appellee, the appeal was not filed within ten (10) days after having received such an order with the State Personnel Board of Review, but rather within 10 days after having received actual notice from the Appellee that she could only appeal to the State Personnel Board of Review on or about July 19, 2010. It should be noted that the Appellee, through its counsel, at the onset of the record hearing raised an objection regarding the untimeliness of the Appellant's appeal, and that this case should be dismissed, which was overruled by the undersigned Administrative Law Judge, to preserve this issue on appeal, if necessary.

STATEMENT OF THE CASE

The Appellee began its case-in-chief by calling the Appellant, Ms. Angie Knapp, to the witness stand on cross-examination. When questioned, the witness testified that she is not currently employed, but that she was employed previously by the Fayette County Department of Job and Family Services. The witness then identified Appellee's Exhibit 1, as a pre-disciplinary hearing conference notice which she received, and which she attended. The witness also identified Appellee's Exhibit 2, as the hearing officer's report and finding regarding the instant discipline at issue.

The witness' attention was then redirected to Appellee's Exhibit 1 regarding the charge of failure of good behavior in that on or about June 3, 2010 you failed to properly follow agency procedures and requirements for calling off for work that day. When questioned, the witness attested that she did not speak to her supervisor, but only left a voicemail. The witness identified Appellee's Exhibit 5, as the Fayette County Personnel Policy Manual's policy regarding sick leave. When referencing page 2 of said exhibit regarding request for sick leave approval the witness affirmed, when questioned, that she knew that when an employee requesting sick leave shall inform his or her supervisor or appointing authority of the fact and the reason prior to, or in the case later than one half hour after, his or her scheduled starting time. Moreover, when questioned, affirmed that leaving a voicemail was not the appropriate way to call in sick as one has to directly talk to his or her supervisor. The witness identified Appellee's Exhibit 6, as her signature and acknowledgment of having reviewed the Fayette County Personnel Policy Manual on June 28, 2007.

Ms. Knapp, when questioned, identified Appellee's Exhibit 11, as a memorandum dated November 6, 2009, evidencing a meeting that the agency had with her regarding her "attendance issues". The witness explained that they were watching her attendance as she had from January 2009 through October 24, 2009 used more than 221 hours of leave, including 57.5 hours of leave absence without pay. Next, when questioned if she had ever been disciplined prior to this was this discipline, the one at issue, testified in the negative. However, the witness then went on to identify Appellee's Exhibit 11.1, as a written reprimand she received on or about December 17, 2009, for failure of good behavior and insubordination regarding her usage of sick leave. Additionally, the witness also identified Appellee's Exhibit 11.2 as another written reprimand dated February 11, 2010, for failure of good behavior and insubordination regarding her usage of sick leave. Ms. Knapp, when questioned, affirmed that it would be fair to say that the agency wanted to enforce the sick leave policies and/or rules and that even though she had these two prior written reprimands within the past year, on June 3, 2010 she did not speak with someone when calling in for sick leave.

The witness and testified that her job at that they County Department of Job and Family Services, was that of an Eligibility Referral Specialist 2 wherein she determined eligibility for Medicaid, public assistance, food stamps and cash assistance, along with handling group intake interviews, as well. The witness then recalled, when questioned, that she attended on April 7, 2010, a meeting where it

was discussed to all those in attendance, including herself, about doing group intakes, along with scheduling May 27th as the date that she specifically must keep open to handle a group intake that day. The witness identified Appellee's exhibits 7 and 8, as documentation which evidenced that the meeting on April 7, 2010, did take place regarding the above noted and that Ms. Knapp was in attendance. Further, the witness identified Appellee's Exhibit 9, as an e-mail dated April 7, 2010; to the income maintenance support unit, the unit where Ms. Knapp worked, wherein it was noted that May 27, 2010, was to be scheduled for a group intake day. Specifically, when questioned, the witness affirmed that she failed to keep May 27, 2010, as a group intake interview that day.

Next, the witness re-identified Appellee's Exhibit 5, the Fayette County Personnel Policy Manual and attested that she was not aware that there were different groupings or levels of violations that can occur. However, the witness did state that she knew that she was under an obligation to be honest with her supervisors, and specifically that if she were to falsify a doctor slip or lie that would be wrong and she should be fired.

Ms. Knapp testified that she failed to do any group intake on May 27, 2010, as she had been told to do, which was the Thursday before the Memorial Day weekend and that she left approximately 2:30 p.m. that afternoon, as well. The witness testified that she did not go to work on May 28, 2010, and most likely called in that day, but that she did recall that she called in on June 1, 2010, and left a voicemail message. The witness then identified Appellee's Exhibit 14, under the 06/01/10 date as an accurate depiction of her voicemail she left on Director Hellenthal's voicemail. It should be noted that the message read as follows:

"Hi Lori, it's Angie from downstairs. Um I am calling to let you know that um the doctors got me off work today and tomorrow. I've got a pulled muscle in a pinched nerve in my back and I've been on the couch flat since Friday. Um I will give Julie a call to let her know so that um she can write me off on the board but you told me if at any time I needed time without pay let you know and today and tomorrow will be without pay because I used all my last sick time Friday when I um was off work. So if you have any questions call me back at um my home number is 740 - 831 - 4341. Thanks Lori bye".

When questioned, the witness testified that when she called in she did have zero sick leave hours available, and was basically calling in absence without leave (AWOL). Further, the witness testified that she never called Julie that day, as she had left it on Ms. Hellenthal's voicemail. Additionally, the witness agreed when questioned that when she called in and left that voicemail message on June 1, 2010, she was calling in for Tuesday June 1, 2010, as well as for Wednesday, June 2, 2010. When questioned if she returned to work on Thursday June 3, 2010, the witness testified that she did not. The witness explained that on June 3, 2010, she called in and left another voicemail message on Eligibility Referral Specialist Supervisor, Ms. Julie Thacker's voicemail. Further, the witness testified that she did actually then return to work on June 7, 2010.

The witness then identified Appellee's Exhibit 14, under the 06/03/10 date as an accurate depiction of her voicemail she left on Ms. Julie Thacker's voicemail. It should be noted that the message read as follows:

"Hi Julie, its Angie. Um I talked to Lori the other day and told her that the doctor wrote me off for all of this week and that I would be back Friday. Actually I had to go back to the doctor yesterday and um I'm not going to be back until Monday. My back is not feeling better. I got a pulled muscle and a pinched nerve and I can't hardly stand. I can't hardly sit for very long so she is going to go ahead and take me off until Monday and I will bring my doctors excuses with me. Thank you bye."

When questioned, the witness testified that she had in fact called the doctor, but had not seen the doctor on Friday, as that is an untrue statement, as well as telling Ms. Hellenthal that she would only be off for two days, in contradiction of her voicemail message dated 06/03/10. The witness agreed that she actually saw her doctor on May 27, 2010, and got a doctor's note saying she could return to work on June 1, 2010. The witness then identified Appellee's Exhibit 13, as a doctor's excuse stating that she was seen on May 27, 2010, and that she could return to work on June 7, 2010, and attested that she did not change the number 1 to a 7. Additionally, the witness testified that she actually went to the doctor's office again on June 6, 2010, wherein she obtained a return to work slip for June 7, 2010. When questioned, how could the doctor's office could attest to your condition on June 1, 2, 3 and 4, 2010, when they did not see you until June 6, 2010, the witness explained

that she had called into the doctor's office those days and to have her prescription changed, as well.

The Appellee next called Ms. Penny Benner to the witness stand. When questioned, Ms. Benner testified that she is employed as a receptionist and has been for the last five years at Campbell – Wall After-Hours Family Practice located in Washington C. H., Ohio. When questioned as to her duties, the witness explained that she handles most everything at the front desk, including but not limited to, calling in prescriptions, fielding phone calls and filling out doctor's excuses for return to work. Ms. Benner testified that she knows of Ms. Angie Knapp, as she is a patient with the practice. The witness when questioned testified that on May 27, 2010, Ms. Knapp obtained an excuse slip. The witness then identified Appellee's Exhibit 13 as an excuse slip that she wrote out for Ms. Knapp that says the excuse was from May 27, 2010 to June 7, 2010, but that in all actuality it was from May 27, 2010 to June 1, 2010, and appeared to have been altered. Additionally, when questioned, the witness testified that on June 1, 2010, Ms. Knapp had not obtained a doctor's excuse for being off work for June 1 and June 2, 2010. Further, a witness testified Ms. Knapp was only seen on May 27, 2010 and June 6, 2010, and not any visits between those dates, although her records indicated that on June 3, 2010, Ms. Knapp had telephoned in, but not on June 2, 2010, nor did she visit the office.

When questioned, the witness testified that on June 6, 2010, Ms. Angie Knapp came into the office and requested an additional returned to work slip. The witness identified Appellee's Exhibit 12 as that additional returned to work slip, excusing Ms. Knapp from June 1, 2010 to June 4, 2010, returning to work on June 7, 2010. When asked if the backdating of returned to work slips happens, the witness explained that it does, but very rarely, and that Ms. Knapp had requested the same. The witness then identified Appellee's Exhibit 16 as a statement which she wrote out on June 18, 2010, when requested to do so, evidencing her recollection of the events that took place concerning Ms. Knapp coming into the After-Hours Family Practice. Further, when questioned, Ms. Benner testified that Appellee's Exhibit 13 is an altered slip.

On cross-examination, the witness testified that there are three other receptionists at the practice and that they all take turns answering phones. Further, depending on the circumstance, a call could come in and no notation would be made in the file, but that would be for may be the requesting of office hours and the like. However, the witness stated that if one would call in to the office to extend his

or her return to work status that would usually generate additional office visit, since they would be needed to be seen again. Moreover, when questioned, the witness testified that Ms. Knapp was issued two prescriptions, Flexural and Vicodin on May 27, 2010, both good for approximate 3 1/2 days with one more refill on the Flexural.

The witness then identified Appellee's Exhibit 12, as the return to work slip dated June 6, 2010, authored by Vicki K Parker, CNP or certified nurse practitioner, which indicated that Ms. Knapp should be excused from work from June 1, 2010 to June 4, 2010, and be allowed to return to work on June 7, 2010. Upon reviewing Ms. Knapp's record, the witness testified Ms. Knapp called in on June 3, 2010, indicating that she still could not go back to work and probably not until Monday, wherein she was told that in order to extend the return to work slip and pain medication she would have to come in for an office visit. The next notation the file indicated that Ms. Knapp came in on June 6, 2010 where by generating Appellee's Exhibit 12. The witness then re-identified Appellee's Exhibit 13 as the first slip that was issued to Ms. Knapp on May 27, 2010, excusing her absence until June 7, 2010, the date of which June 1, 2010, had been altered. When questioned, the witness testified that the office does not keep any carbon copy of the excuses that are written down.

Upon questioning by the undersigned, the witness when questioned why would have Ms. Parker written down an excuse for the dates of June 1 through June 4, 2010, if one that already been written by Ms. Campbell as evidenced by Appellee's Exhibit 13, the witness stated, "that would have been my question, as well."

Appellee's next witness to testify was Ms. Julia Thacker, an Eligibility Referral Supervisor for the Fayette County Department of Job and Family Services, who was held for position for approximately the past eight years while being employed by the department for approximately the last 11 or so years. When questioned as to her duties, Ms. Thacker explained that she was providing supervision over the programs of food stamps, cash assistance and the Medicaid program. Further, the witness testified that she was Ms. Knapp's immediate supervisor and that Ms. Knapp, as an Eligibility Referral Specialist 2, was responsible for ensuring that clients which she saw to provide them with the requisite cash assistance, food stamps and Medicaid.

Next, the witness testified, when questioned, that group intakes occur when there are large amounts of applicants for assistance. Further, the witness stated

that Ms. Knapp was an eligibility determiner, and that she participated, or she should, in group intakes as part of her job responsibilities. The witness then identified Appellee's Exhibit 4 as a position description for an Income Maintenance Worker dated in June 2007, the position that Ms. Knapp was hired into, then became an Eligibility Referral Specialist 2, by actions of the Ohio Department of Administrative Services. When questioned, the witness testified that Ms. Knapp's duties, included but were not limited to, assisting and interviewing incoming clients to determine eligibility for Healthy Families Medicaid, makes appropriate referrals for support services, schedules appointments, interviews clients and does follow-ups, along with providing technical assistance to eligibility referral specialist 2s in completing case work. Specifically, when questioned, as to whether she discussed with Ms. Knapp the need to do group intakes stated, after identifying Appellee's Exhibit 7 that in April 2010 there was a staff meeting wherein Ms. Knapp was in attendance, that she addressed the need to do group intakes to the Income Maintenance staff. Further, the witness then identified Appellee's Exhibit 9, as an e-mail which she sent out to the Income Maintenance Support Unit, including Ms. Angie Knapp, which scheduled group intakes which they were supposed to keep their respective schedules open for the dates listed, including May 27, 2010. When asked if she knew that everyone in Income Maintenance Support Unit received the above noted e-mail identified Appellee's Exhibit 10 answered in the affirmative. When asked if Ms. Knapp performed any group intake on May 27, 2010, answered in the negative, even though she was there that day until 2:00 p.m. or so.

The witness then testified that Ms. Angie Knapp was off, or absence from work on June 1, 2010, and that she did not directly call her to inform her that she was going to be off work that day. However, the witness did note that she did find out that Ms. Knapp was going to be off work when Ms. Hellenthal informed her that Ms. Knapp had left her a voicemail. Further, when questioned, the witness testified that on June 3, 2010, Ms. Angie Knapp left a voicemail for her about being absent at work. The witness identified Appellee's Exhibit 14 as an accurate depiction of the voicemail that Ms. Angie Knapp left on her phone, as follows:

"Hi Julia, it's Angie. Um I talked to Lori the other day and told her that a doctor wrote me off for all this week and that I would be back Friday. Actually I had to go back to the doctor yesterday and um I'm not going to be back until Monday. My back is not feeling better. I got a pulled muscle and a pinched nerve and I can't hardly stand. I can't hardly sit for very long so she is going to go ahead and take

me off until Monday and I will bring my doctor with me. Thank you
bye."

Upon further questioning, the witness testified that Ms. Knapp told her specifically that she had been to the doctor yesterday, meaning June 2, 2010, and that she was under the belief that Ms. Knapp at that point physically went to see a doctor on June 2, 2010. The witness testified that Ms. Knapp did not come back to work until June 7, 2010 wherein she submitted a doctor's excuse identified as Appellee's Exhibit 13, as the copy of the actual doctor's note excusing Ms. Knapp from work from May 27, 2010 to June 7, 2010, along with a leave request. Moreover, when questioned, the witness testified that it was her belief that the leave slip had been altered, and contacted the doctor's office, as it didn't seem to reason the excuse was written on a couple of different dates, as the Appellant had previously indicated on the voicemails that she had left that she had seen the doctor a couple of different times during the dates indicated on the return to work slip. The witness testified that the doctor's office told her that Ms. Knapp had been seen on May 27, 2010, allowing her to be turned work on June 1, 2010 and later came back on June 6, 2010, requesting a return to work slip for June 7, 2010, along with having it backdated. Furthermore, the witness testified that the above noted exhibit had remained in her possession and that it had not been altered by anyone, including herself, nor did she have a reason to alter it, as well.

On cross-examination, the witness testified that she called the doctor's office on June 7, 2010, at approximately 3:30 PM, as to inquire into what she believed was altered doctor's slip. When asked why she thought it was altered, testified that since Ms. Knapp had left her a voicemail on June 3, 2010, stating that she had been to the doctor's office yesterday, meaning June 2, 2010, that the dates were just not matching up correctly, and Appellee's Exhibit 13 has no reference as to the June 2, 2010 office visit. However, the witness did state that she did receive a second doctor's excuse on June 8, 2010, from Ms. Knapp, excusing her from work June 1, 2010 to June 4, 2010, earlier identified as Appellee's Exhibit 12.

With respect to Appellee's Exhibit 14 the transcribed portion dated June 3, 2010, the witness attested to the accuracy of the voicemail, along with stating that the voicemail had not been saved. When questioned, the witness testified that she requests all of her employees to talk her directly when calling off sick as per departmental policy. Further, the witness when questioned, testified that when employees calling off sick, specifically those who have no leave balances, have to

talk directly to her, and had in the past had others who've left voicemails in which those individuals had been correctly counseled on the proper procedure.

When questioned as to what excuse did Ms. Knapp provide to her regarding her absence from the May 27, 2010 group intake of applicants starting at 7:30 AM, testified that she had not been there that day. The witness testified that she found out from another supervisor that Ms. Knapp didn't do the group intakes on May 27, 2010, as she was doing pre-determinations, which had been scheduled approximately a month out, wherein Ms Knapp knew approximate two months out that she had to keep the May 27, 2010, date open for group intakes. Generally speaking, the witness testified each caseworker can schedule the cases the way they want but, at no time did Ms. Knapp ever come to her to request a rescheduling of her redetermination matters prior to the May 27, 2010.

The witness then stated that she has known Ms. Knapp since she was a contract employee with the agency, along with when Ms. Knapp was on assistance, as well. The witness testified that prior to November 2009, she can't recall if anyone else at the agency ever supervised Ms. Knapp, except herself, and that she authored various performance evaluations of Ms. Knapp that pointed out she had attendance issues and some errors in the determination eligibility. When asked if she was aware of anything outside of the agency regarding misconduct on the Ms. Knapp's part, testified only by hearsay, but not while on duty. Further, when questioned if she knew of an individual by the name of Robin Sword, the witness answered in the affirmative, as she is her supervisor and that she is employed as an Eligibility Referral Specialist 2.

Appellee's last witness to testify was Ms. Lori Hellenthal, the Fayette County Department of Job and Family Services Director, a position she's held for approximately last four years, while being employed with the agency for approximately 16 years. When asked when she became aware of the incidents involving Ms. Angie Knapp, the witness testified around the end of May 2010 and/or June 1, 2010. The witness then identified Appellee's Exhibit 1 as the notice of pre-disciplinary hearing conference and was a directed to the third charge of dishonesty, and was questioned regarding this charge. The witness testified that on or about June 1, 2010, Ms. Knapp called in and left a voicemail message on the agency phone and that she also personally talked with her. The witness explained that Ms. Knapp indicated to her that she was going to be absent on Tuesday, June 1, 2010 and Wednesday, June 2, 2010, returning on Thursday, June 3, 2010, along with

indicating to her that she had a doctor's excuse for both June 1 and June 2, 2010. Additionally, with regards to the charge of dishonesty on or about Thursday, June 3, 2010 Ms. Knapp that also called in and left a voicemail message for her immediate supervisor Ms. Thacker indicating that she had previously talked to her where she said she should be off all week, returning on Friday, June 4, 2010. Again the June 3, 2010, a voicemail message by Ms. Knapp also indicated that she went to her doctor's office on Wednesday, June 2, 2010, and as a result would be off until Monday, June 7, 2010, as per her doctor's slip. The witness stated that the charge of dishonesty occurred when Ms. Knapp on June 3, 2010, indicated and/or represented to Ms. Thacker that she'd be off all week and back on Friday, June 4, 2010, as that was not what she told her. Additionally, the witness opined that Ms. Knapp also had indicated that she went to her physician on June 2, 2010, but did not actually go until Sunday, June 6, 2010, as additional statements that were misrepresented to her.

With respect to the fourth charge, in the notice of pre-disciplinary hearing conference, the charge of failure good behavior, dishonesty with regards to the altered doctor's returned to work slip, the witness testified that Ms. Knapp in order to justify her absence from work submitted an excuse from Campbell Wall, dated May 27, 2010, that purportedly excused her to return to work on June 7, 2010. However, in addition, the witness testified that Ms. Knapp also submitted another excuse from Campbell Wall dated June 6, 2010, regarding her absence from June 1, 2010 with a return to work date of June 7, 2010. The witness testified that Ms. Knapp had had previous discipline and had been put on notice regarding her usage of sick leave, specifically citing Appellee's Exhibit 11, as a meeting she had with Mr. Edsall on November 6, 2009, wherein she was counseled regarding her usage of sick leave, along with being told that she was going to be monitored regarding her excessive use or abuse of leave. Further, the witness identified Appellee's Exhibit 11.1 and 11.2, as a record of written reprimands that occurred on or about December 17, 2009, and a record of instruction and counseling that occurred on January 11, 2010, respectively both involving inappropriate usages of leave, wherein she did not have any. Upon further questioning, the witness testified that as result of trying to correct Ms. Knapp's behavior, she doubts that Ms. Knapp due to her lack of credibility will ever correct her performance. When questioned about trying to connect the past corrective actions with the present issue at hand, the witness testified that Ms. Knapp did not have any leave to take with pay, but only without pay, and that she had to have a doctor slip to ensure that she would be granted leave without pay.

When questioned if the doctors return to work slip had been altered, the witness after referring to Appellee's Exhibit 14, stated that according to the conversation that Ms. Thacker had with Ms. Knapp on June 8, 2010, after advising Ms. Knapp that her return to work slip had been altered, Ms. Knapp stated that the slip she had turned in was dated June 1, 2010 and not June 7, 2010, and that she did not know how the one became a seven unless a pen in her purse marked it or someone at home had. Further, when questioned, the witness testified that doctor's excuse; the one dated May 27, 2010 to June 7, 2010 has been submitted directly to Ms. Knapp's supervisor, Ms. Thacker, and not to her. Further, the witness testified that it as her belief that Ms. Knapp had falsified this doctor slip, along with being dishonest to her when leaving the voicemails regarding her visits to the doctor and when she would return to work. When asked why she felt that termination of Ms. Knapp was the appropriate sanction, the witness testified that the falsification of a doctor slip is a serious enough offense in and by itself, but having an employee who grants cash disbursements, food stamps and Medicaid to individuals amounting into the thousands of dollars each day, along with knowing that she is dishonest cannot be allowed to continue to work in that setting.

On cross-examination, upon questioning, the witness testified that the doctor's excuse slip was submitted as altered. Further, the witness testified that she relied on Mr. Edsall's determination, coupled with the fact that the doctor's office had testified that the excuse slip had been altered, as well.

When questioned if he was aware that Ms. Knapp at some point was under investigation by the Fayette County Sheriff's office, answered in the affirmative, along with stating that she first learned about it on about September 2009. With respect to the previous disciplines identified as Appellee's Exhibits 11.1 and 11.2, the witness again, when questioned, testified that Ms. Knapp not had any previous disciplines prior to September 2009.

The witness testified that Ms. Knapp left work on May 27, 2010, and that was the last day she worked until her return on June 7, 2010. The witness testified that Ms. Knapp left her a voicemail on June 1, 2010, and that she left a voicemail to Ms. Thacker on June 3, 2010. Upon questioning, the witness testified that Ms. Knapp did not speak to her directly, but only left voicemail, although she did leave her telephone number. However, the witness testified that it is not the practice of the agency for them to call and remind employees regarding the requirements for calling in for leave. When asked if this would have been her only infraction, this

would not have warranted termination, and could not recall ever having anyone suspended for just leaving a voicemail. The witness then identified Appellee's Exhibit 5, and was question regarding paragraph C, on the second page of the document, and was asked where does it state, "direct oral communication" must be made when requesting sick leave his or her supervisor, answered in the negative, with the explanation that Ms. Knapp, along with all others, had been told at various staff meetings that direct communication with his/her supervisor was a requirement.

When questioned if the violation of her not participating in the group intake day would've been grounds for termination, the witness testified that she does not have the policy manual front of her to match it up with its offense grouping to adequately answer that question. When questioned regarding the doctor's excuses previously identified as Appellee's Exhibits 12 and 13, the witness testified that the first excuse to be turned in by Ms. Knapp was Appellee's Exhibit 13, the one dated May 27, 2010, and a return to work dated June 7, 2010. When asked if anyone questioned why there was a blank spot next to the, "from May 27 to blank", witness answered in the negative. Upon further questioning, the witness explained that in Appellee's Exhibit 12, the dates from June 1 to June 4 with returned to work on June 7, 2010, were all filled in with no blanks.

On redirect examination, with respect to the incident regarding the nonparticipation in the group intake day, the witness identified Appellee's Exhibit 5, section 8.04 pages 6 of 9, and agreed that a group 3 offense, upon the first occurrence includes a punishment up to and including termination. Further, when asked about the 12th offense listed under the group 3 offenses, the witness noted that it was for insubordination by refusing to perform assigned work or to comply with the written or verbal instructions of the supervisor. Upon further questioning, the witness testified that with respect to the April 7, 2010 staff meeting, along with follow-up e-mail communications regarding Ms. Knapp to perform group intakes on May 27, and that her failure to do so, amounts to insubordination.

The Appellant began her case-in-chief by calling Ms. Luana Schneider to the witness stand. When questioned, the witness testified that she is been employed by the Fayette County Department of Job and Family Services since 1990, and that she currently holds position of Eligibility Referral Specialist in the Work Activities Unit. Further, the witness testified that her direct supervisor is the Assistant Director Ms. Faye Williamson, and that Ms. Thacker was her past supervisor.

The witness then stated that she is familiar with the policy for calling off sick into the agency. The witness testified that one is to call 15 minutes or so before the start of the shift, and that the current practice of notification is to talk directly to one's supervisor when requesting leave. However, the witness testified that she has left a voicemail before, albeit only once, and that she did not receive discipline nor was she counseled on the same. Further, the witness testified that she's never heard of anyone at the agency being disciplined for leaving a voicemail, when calling off sick.

There was no cross-examination of the witness elicited.

The Appellant's next witness was Ms. Robin Sword who explained that she's been employed by the Fayette County Department of Job and Family Services for approximately the last 21 years, and that she currently holds a position of Eligibility Referral Specialist 2. Further, the witness when questioned testified that her immediate supervisor is Mr. Julia Thacker, and that she has been so for approximately the last six years, as well.

The witness testified that she also is familiar with the policy and/ or procedure for calling off sick into the agency. The witness stated that when calling in one is to directly speak to a supervisor, as that was explained to everyone at a staff meeting. Specifically, the witness testified that she does not leave voicemails, but did note that the automated did telephone system is cumbersome and difficult to use. Furthermore, the witness testified that as far she knows no one has been disciplined for leaving a voicemail when calling off sick.

When questioned about re-determination hearings, the witness testified that they are to turn in their schedules before the 10th of each month, as the state would schedule those hearings, and set them for the next month.

On cross-examination, the witness testified that she would not really be in the position to know if someone were to receive discipline for leaving a voicemail whether that was in the form of a counseling, a reprimand or time off. Further, the witness testified that she is familiar with Group Intake Interviews and testified that if someone had over one and a half months notice one could reschedule re-determinations hearings, if need be.

The Appellant, Ms. Angie Knapp, then testified on direct examination. When questioned, the witness identified Appellee's Exhibit 2, specifically the charge of

failure of good behavior regarding the call off on June 3, 2010, and explained that she left a voicemail as she had just taken her medication and was very sleepy, and she thought that it would be okay to leave a voicemail. Further, the witness testified she thought she was doing the responsible thing, other than not calling in at all. Moreover, when questioned, Ms. Knapp testified that she usually talks directly to Ms. Thacker, rather than putting a voicemail message on her phone, but that she has done this in the past once or twice before, with no repercussions. Additionally, the witness testified that she also left a voicemail message on Ms. Hellenthal's phone to let her know that it was going to be leave without pay, as she had previously instructed her to do so. The witness stated that she left her telephone number if they had any questions, but that they never called back.

The witness then explained that on May 27, 2010, she had some point in the morning twisted her back causing her pain and she left approximately 2 to 2:30 PM to go to the doctor's office. The witness testified that Ms. Schneider drove to the doctor's office that afternoon and eventually drove her home. When questioned, the witness testified that she was seen by Certified Nurse Practitioner Ms. Campbell and that she received two different shots, along with two different types of medication. The witness then identified Appellee's Exhibit 13 as the return to work excuse that was provided by Ms. Campbell which was dated May 27, 2010 with the returned to work dated June 1, 2010, not June 7, 2010, as indicated on the exhibit. When asked if she altered this document, the witness testified she did not. Further, the witness testified that Ms. Campbell had asked her how long she wanted to be off and that she told her at that time that she wanted to go back work on June 1, 2010. The witness then identified Appellee's Exhibit 11, specifically the second paragraph thereof, wherein it is noted that between January 1, 2009 and October 24, 2009 she had used more than 221 hours of leave, including 164 hours of leave that was paid, along with 57.5 hours of leave without pay, and explained that she had taken off a lot of time during that period for migraines and back problems and also noted that her daughter had had surgery, as well, for justification of using so much.

Next, the witness testified that the next time she called into the Campbell-Wall After-Hours Family Practice was on June 2, 2010. When questioned why she did not call on June 1, 2010, to the doctor's office if she knew she was going to be out longer, testified that Ms. Campbell had already told her that she would write an extension, if need be, when she was there on May 27, 2010. The witness then stated that she called the doctor's office on June 3, 2010, to explain to them that

they need to give her something that would knock her out so much, as she wanted to go back to work. The witness explained that she talked to Ms. Vicki Parker, in the doctor's office, who informed her that they could rewrite the prescription only upon her return to the office for a visit, along with supplying an additional note or excuse to return to work for the additional days she missed. The witness explained that when taking the medication she could not operate a motor vehicle, and when she was not taking medication she was in too much pain to drive. Thus, the witness opined that she not go back to the doctor's office until Sunday, June 6, 2010, upon her ex-husband's return to work from out-of-town.

The witness then identified Appellee's Exhibit 12, as the June 6, 2010 doctor's excuse that the Practice gave to her on that date, noting that it is exactly as how it was written out, as it appears in the exhibit. The witness testified that upon her return to work on June 7, 2010, she had taken her excuses that Ms. Vicky Parker wrote out from the Campbell-Wall After-Hours Family along with some additional leave paperwork and put it in Ms. Thacker's inbox, or at least thought she had, that morning. However, the witness testified that later that evening she learned after receiving a call from her doctor's office from Ms. Penny Benner that Ms. Thacker was checking on the excuses, and actually came out. Further, the witness testified that she also learned after having talked to Ms. Benner that the second excuse that had been written out on June 6, 2010 had not been attached to her leave forms which she turned into Ms. Thacker earlier that day. The witness then testified that Ms. Benner had told her that Ms. Thacker was trying to verify the doctors excuses, wherein she told her that she had two excuses; one written out on May 27, 2010 with return to work dated work of June 1, 2010 and the other written out on June 6, 2010, excusing her from June 1, 2010 through June 4, 2010 with a return to work date of June 7, 2010. However, the witness testified that Ms. Benner had told her that Ms. Thacker only had one excuse dated May 27, 2010, allowing her to return to work on June 7, 2010, to which Ms. Benner stated to Ms. Thacker that that excuse had been altered. At that time, the witness testified that she asked Ms. Benner if Ms. Thacker believes that I had altered that excuse, which she answered in the affirmative. The witness testified that there would've been no reason to alter the excuse as she had both excuses that she had obtained from the doctor's office. Furthermore, the witness testified that she still had the second excuse, and after realizing she had not turned in on June 7, 2010, only after talking to Ms. Benner, she turned it in on June 8, 2010.

The witness then re-identified Appellee's Exhibit 2, page 2 under the topic of dishonesty explained that she had told Ms. Thacker that she had previously stated to the director that it was her "hope" to be back on Friday when she left a voicemail. Further, the witness explained that she did not go to the doctor's office on June 2, 2010, nor did she say that she went, but only that she had spoken to them. When referencing Appellee's Exhibit 14, the transcript of the June 3, 2010, 6:49 AM voicemail that she had left for her supervisor Ms. Thacker, the witness stated that she did not go back to the doctor yesterday, or say that, as well. The witness when re-identifying Appellee's Exhibit 2, page 3, third paragraph wherein stated "employee spoke directly with director on 6/1 regarding absences, and when again reporting off on 6/3 the director states the employee misrepresented in employee's voicemail to supervisor the previous conversation with the director. Director read a transcribed account of the employee's voicemail, which was not disputed by employee", which the witness did not disagree with. Next, the witness identified Appellee's exhibits 12 and 13 and stated that she was excused from work from 6/1 to 6/4, and from 5/27 to 6/1, respectively.

The witness then re-identified Appellee's Exhibit 2, page 2 under the heading of the insubordination charge and noted that charge arose as the failure of her doing group intakes on May 27, 2010. The witness after reviewing Appellee's Exhibit 7 testified that on April 7, 2010, the group intake process was discussed in addition to understanding that she had to do group intakes on May 27, 2010. However, the witness testified that on April 7, 2010, she had already put in her schedule and got her schedule back by April 16, 2010. When questioned, the witness testified that she knew she had double booked the re-determinations, along with the group intakes on May 27, 2010. However, the witness testified that she simply forgot about it until the morning of May 27, 2010, that she had double booked the above noted. The witness then testified that it was on May 27, 2010 that she was injured around 9 AM, as she told the girls on her side, but did not leave until 2:30 p.m. The witness noted that Ms. Thacker was not there that day nor was anyone in administration there on May 27, 2010, as it was the Friday before the Memorial Day weekend.

The witness then identified Appellee's exhibits 11.1 and 11.2 as written reprimands ever issued to her on December 17, 2009 and January 11, 2010, wherein she stated she was found guilty on the first one, but not the second one by Mr. Edsall. However, both violations are clearly issued written reprimands and put in as corrective measures in an effort to improve the Appellant's conduct.

The witness was then questioned if she knows an individual known as Ms. Amber Haines, to which she responded in the affirmative, as she is a co-worker. When questioned, the witness testified that Ms. Haines asked her to perform an act of dishonesty, that being running her own Medicaid case and ask herself to authorize it for her, an act which she did not feel comfortable about doing, and eventually told Ms. Hellenthal about it. As far she knows, the witness testified that Ms. Haines did not receive any discipline. Upon further questioning, the witness testified that she didn't have leave for one half of the day on May 27, 2010, and none thereafter and that she did not receive any pay for the time off starting June 1, 2010 to June 4, 2010.

On cross-examination, Ms. Knapp testified that on June 3, 2010, at 6:49 AM she called into the office to lead the voicemail message on the phone since she had taken some medication and that she was very sleepy. When asked if she had an alarm clock is testified that she did, and that she set it that morning so she could call in to the office at a later time, differing from her previous testimony. Further, the witness testified that she did not try to call her supervisors at home, as well. The witness then answered in the affirmative that she was out of all forms of leave and that she was certain she turned in both leave forms upon her return to work on June 7, 2010. However, the witness did agree that she then did turn in a second leave form on June 8, 2010. When asked if she in fact altered the first leave slip since she only turned in one when she initially came back to work, testified that she did not. Further, the witness when questioned testified with regards the group intake meeting that she missed, stated that she simply just forgot about it. The witness was then questioned regarding Appellee's Exhibit 11.2, a written reprimand that was issued to Ms. Knapp, wherein she testified that she was found not guilty, only to agree that she in fact signed off on this corrective measure noting that this written reprimand had been issued to her.

The Appellant's next and last witness was Ms. Amber Haines, as called and deposed by both counsels on April 4, 2011. When questioned, witness testified that she is been employed by the Fayette County Department of Job of Family Services for approximately 6 years and is held the position as an Eligibility Referral Specialist 2, in the Support Unit where she fields incoming calls regarding complaints. When questioned, the witness testified that she is familiar with Ms. Knapp, as they were co-workers at the agency, and performed similar duties.

When questioned if she ever processed people's applications for Medicaid benefits, the witness answered in the affirmative, and although she never processed Medicaid benefits on the CRIS-E herself personally, she had for her children. Further, when processing benefits she, as well as anyone does have to seek approval from someone else in the agency in order to officially approve that person's application. The witness testified that Ms. Vicky Smith a Quality Control Reviewer was a person that she would go to have benefits approved and the application looked over for any errors. Furthermore, when questioned, the witness testified that there was a time when she came to Ms. Knapp to approve her case, as she is was not allowed to approve her own case on some benefits that she was seeking for her children. The witness recalled that Ms. Knapp took the application to her supervisor, Ms. Faye Williamson who then admonished her that she was not allowed to process her own application, nor did she approve anything, so she was not in trouble.

The witness when questioned if she ever been suspended from employment, Ms. Haines testified that she had a three-day suspension in 2007 for discourteous treatment to the public and for a violation of client/worker trust for using a personal cell phone camera to take a picture of a client. Further, the witness testified that she received a 10 day suspension in 2010 for approving cases and making mistakes as the agency did have zero unacceptable case error rate.

There was no cross-examination elicited by Appellee's counsel.

FINDINGS OF FACT

1. The jurisdiction of this Board to conduct this hearing was established by O.R.C. § 124.34.
2. The Appellant, Ms. Angie Knapp was employed by the Fayette County Department of Job and Family Services as an Eligibility Referral Specialist 2 from June 2007 through June 30, 2010, the effective date of her removal.
3. The Appellant, Ms. Angie Knapp, as an Eligibility Referral Specialist 2, was removed from her position with the Fayette County Department of Job and Family Services for violating the O.R.C. § 124.34 based upon her failure of good behavior regarding call offs; dishonesty regarding statements made to

the director and immediate supervisor regarding her absences; insubordination regarding failing to conduct group intake interviews as directed; and failure of good behavior/dishonesty regarding altering an excuse slip from a doctor's office.

4. The Appellant, Ms. Angie Knapp, as an Eligibility Referral Specialist 2, in her three years of service with the Fayette County Department of Job and Family Services, had a counseling session regarding her attendance issues in November 2009 wherein the agency had noted that in January 2009 through October 2009 she had used more than 221 hours of leave, including 57.5 hours of leave without pay, two letters of reprimand, one in December 2009 for her failure of good behavior and insubordination regarding her usage of sick leave and another one for the same thing in February 2010, both of which she denied initially, but were proven to exist. Further, Ms. Knapp affirmed that it would have been fair to say that the agency wanted her to follow the sick leave policies and/or rules. Moreover, Ms. Knapp affirmed that leaving a voicemail was not the appropriate way to call in sick as one has to directly speak to his or her supervisor.
5. The Appellee did prove by a preponderance of the evidence that Ms. Angie Knapp received her procedural due process through a pre-disciplinary hearing.
6. The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Ms. Angie Knapp, as she acknowledged having been given the Fayette County Personnel Policy Manual which covered, among other things, sick leave usage, disciplinary principles of classified employees and grounds for disciplinary action and penalties.
7. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant:
 - a. was guilty of a failure of good behavior regarding her call offs for taking leave.
 - b. was guilty of dishonesty regarding her statements made to the director and immediate supervisor regarding her absences;

- c. was guilty of insubordination regarding failing to conduct group intake interviews as directed;
- d. was guilty of a failure of good behavior/dishonesty regarding altering an excuse slip from a doctor's office.

8. The Appellant did submit evidence regarding disparate treatment of another employee, namely Ms. Amber Haines, an Eligibility Referral Specialist 2, however the evidence submitted did not contain similar issues of misconduct to be compared to misconduct as alleged in the instant case in hand.

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 her failure good behavior regarding call offs; dishonesty regarding statements made to the director and immediate supervisor regarding your absences; insubordination regarding failing to conduct group and take interviews as directed; and failure of good behavior/dishonesty regarding altering an excuse slip from a doctor's office visit.

Failure of Good Behavior

Appellee proved by a preponderance of the evidence that Ms. Knapp was guilty of failure good behavior regarding the call offs at the office. Ohio Revised Code Chapter 124 does not define "failure of good behavior." However, Black's Law Dictionary does define "failure of good behavior" to mean:

... Behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct (further citations omitted) Black's Law Dictionary at page 594 (Deluxe 6th Ed. 1990).

Therefore, for the Appellee to establish the employee violated and/or was guilty of failure of good behavior, the Appellee must demonstrate that the behavior question was contrary to the recognized standards of propriety and morality or that the employee demonstrated or participated in misconduct or wrong conduct.

In the case at hand, the Appellee proved by a preponderance of the evidence through staff meetings had explained the proper procedure for calling in to work sick

was to speak directly to one's supervisor and or the director, which Ms. Knapp did not comply with on two occasions regarding the incidents at hand on June 1, and then again on June 3, 2010, wherein she left voicemails. This standard was confirmed by a couple of Appellant's own witnesses. One also has to consider in this case that Ms. Knapp had been counseled in November 2009 regarding her attendance issues as the agency had pointed out that from January 2009 through October 2009 she had used more than 221 hours of leave, including 57.5 hours of leave without pay. Moreover, although Ms. Knapp initially denied having received any discipline regarding same or similar issues regarding usage of leave time the evidence revealed that she had received two written reprimands for failure good behavior and insubordination regarding her usage of sick leave in December 2009 and February 2010. Further, Ms. Knapp attested that she did not speak to anyone when she called in for sick leave on the today's question on June 1, 2010 and June 3, 2010. Thus, this charge was proven by a preponderance of the evidence.

Dishonesty

The Appellee proved by a preponderance of the evidence that the Appellant, Ms. Knapp, was guilty of dishonesty regarding statements made to the director and immediate supervisor regarding her absences. Ohio revised Code Chapter 124. Nowhere defines "dishonesty". However, Black's Law Dictionary defines "dishonesty" to mean:

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

Therefore, 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 deceiving and untrustworthy.

It is clear from the testimony and evidence presented, that the Appellant violated and/or was guilty of dishonesty when she left voicemails on the voicemail and her immediate supervisor's voicemail on June 1, 2010 and June 3, 2010. The Appellant when questioned testified that when she called in she did have a zero sick leave hours available, and that she was basically calling into work absence without leave. Further, the evidence revealed when first introduced, a transcript of the two voicemails in question, the Appellant agreed to the accurate description of her voicemail's she had left on the dates in question. However, only to later change her testimony, which the undersigned found as disingenuous. Regarding the voicemail dated June 1, 2010, wherein the voicemail stated that "the doctor's got me off work today and tomorrow"; it was found to be dishonest as Ms. Knapp had not been to the doctor's office that day, nor had the doctor excused her at that time for Wednesday, June 2, 2010, as well. Additionally, regarding her voicemail message which the Appellant left on Ms. Julie Thacker's voicemail on June 3, 2010, wherein it is stated "that the doctor wrote me off for all of this week and that I would be back Friday", was also found to be dishonest, as Ms. Knapp had not been to the doctor, as well. Again, the above noted charge of dishonesty was proven by a preponderance of the evidence.

Insubordination

The Appellee proved by a preponderance of the evidence that the Appellant, Ms. Knapp, was guilty of insubordination regarding her failure to conduct group intake meetings as directed. Ohio Revised Code Chapter 124 does not define "insubordination." However, Black's Law Dictionary does define "Insubordination" to mean:

.... Refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. Black's Law Dictionary 801 (Deluxe 6th Ed. 1990).

Additionally, it is clear from the testimony and evidence presented, that the Appellant violated or was guilty of insubordination by failing to conduct group intake interviews as directed by her supervisor after having been given notice approximate month and a half prior to the date they were to be performed, which you failed to do, which just by coincidence occurred on the same day that her injury occurred. Further, the Appellant attested that as an Eligibility Referral Specialist 2 she determined eligibility for Medicaid, public assistance, food stamps and cash assistance, along with handling group intake interviews. Furthermore, Ms. Knapp recalled that she attended in April 7, 2010, meeting wherein it was discussed that she was to plan to schedule and do group intakes on May 27, 2010, which she admittedly failed to do. Thus, the above noted charge was proven by a preponderance of the evidence.

Failure of Good Behavior/Dishonesty

Appellee proved by a preponderance of the evidence that Ms. Knapp was guilty of failure good behavior/dishonest regarding the altering of an excuse slip from a doctor's office visit. Again, Ohio Revised Code Chapter 124 does not define "failure of good behavior, nor dishonesty." However, Black's Law Dictionary does define "failure of good behavior" to mean:

... Behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct (further citations omitted) Black's Law Dictionary at page 594 (Deluxe 6th Ed. 1990).

Therefore, for the Appellee to establish the employee violated and/or was guilty of failure of good behavior, the Appellee must demonstrate that the behavior question was contrary to the recognized standards of propriety and morality or that the employee demonstrated or participated in misconduct or wrong conduct.

However, Black's Law Dictionary defines "dishonesty" to mean:

... Disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. Lack of honesty, probity or integrity and principle; lack of fairness and

straightforwardness; disposition to defraud, deceive or the betray. (Further citations omitted). Black's Law Dictionary at page 468 (Deluxe 6th Edition 1990).

Therefore, 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 deceiving and untrustworthy. The altering of excuse slip from a doctor's office visit was the most serious charge that was brought before this Board. Not taking into consideration the dishonest statements of Ms. Knapp made on both the aforementioned voicemails on June 1 and June 3, 2010, the facts remain that Ms. Knapp went to the doctor's office only on May 27, 2010 and June 6, 2010, the May 27, 2010 doctor's excuse only excused Ms. Knapp from work until June 1, 2010 (see testimony of Ms. Penny Benner), the June 6, 2010, doctor's excuse (see Appellee's Exhibit 12) excused Ms. Knapp for June 1-4, 2010. These facts are coupled with the fact that Ms. Knapp, by her own admission, thought that she had turned in the two aforementioned excuse slips on June 7, 2010 her return to work date, only to find out later one slip had been turned into Ms. Thacker that had been altered to reflect that the doctor had excused Ms. Knapp (see Appellee's Exhibit 13) from May 27, 2010 to return to work on June 7, 2010. Moreover, the fact remained that Ms Knapp on June 8, 2010, when learning from Ms. Benner that Ms. Knapp's supervisor had been questioning these excuses, came into Ms. Thacker's to turn in the June 6, 2010 doctor's excuse. Thus, the fact remained that only one excuse was turned in on June 7, 2010. However, the question remained had that excuse been altered by the Appellant prior to turning in the excuse, or by Ms. Thacker her supervisor.

The law works in this instance in probabilities, not possibilities. As in any case before this Board any charge of misconduct must be proven by a preponderance of the evidence, not by a clear and convincing standard, nor by a standard of reasonable doubt. In the case at bar, the undersigned when considering the fundamental question of the altered document, finds and concludes that the Appellant, Ms. Angie Knapp, altered the excuse, as it is more probable that she performed this act of misconduct. Although the Appellant had previously testified that there would've been any reason for her to alter the excuse in question, the undersigned concludes that the Appellant had explained in her previously left voicemails to the director and to her direct supervisor that she had been to the doctor's office on a couple of different dates in between May 27, 2010 and June 6, 2010, and if she turned in just two excuses, it stands to reason that it would have

been discovered that she never went to the doctor's office as she had previously told her direct supervisor and the director. While detractors would state Ms. Knapp had in her possession upon her return two doctor's excuses, the fact remained she only turned in one excuse, an altered one. (See Appellee's Exhibit 13). On the other hand, considering if Ms. Knapp had only turned in the one excuse dated for May 27, 2010 through June 1, 2010, and she did not turn in the second excuse, the agency could have brought her up on charges of failing to supply an adequate doctor's excuse for the time she had taken off. Additionally, one also has to take into consideration in this case the dishonest statements that had been made in the previously left voicemails for both the director and immediate supervisor which were deceiving in nature that called Ms. Thacker's attention to the altered excuse to question Ms. Benner. Further, it would have been more probable for Ms. Thacker, in consideration of the voicemails which had been left, that no doctor's excuse slips were dated for June 1, 2010 and June 3, 2010, to check into the manner in which she did, as Ms. Knapp had left voicemails explaining that she had been to the doctor's office those dates.

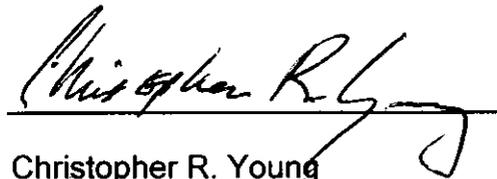
Thus, the undersigned concludes that Ms. Knapp was guilty of dishonesty/failure of good behavior regarding the altering of an excuse slip from a doctor's office visit.

However, the question 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. It appears to the undersigned Administrative Law Judge that the Appellant was not taking any meaningful steps to comply with her supervisor's directives or better fulfill her duties as an Eligibility Referral Specialist 2 as expressed to him by his supervisors. 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 June 30, 2010, removing the Appellant from the position of an Eligibility Referral Specialist 2 be **AFFIRMED**, and the Appellant's appeal be **DENIED**.

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A handwritten signature in black ink, appearing to read "Christopher R. Young". The signature is written in a cursive style and is positioned above a horizontal line.

Christopher R. Young
Administrative Law Judge

CRY: