

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

TWANNA BOGGS,

*Appellant,*

v.

Case No. 11-REM-02-0042

OHIO STATE UNIVERSITY,

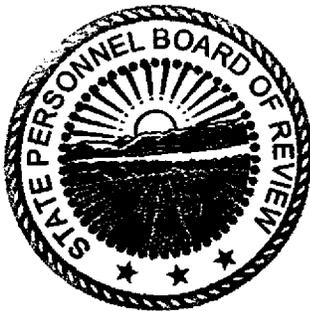
*Appellee*

**ORDER**

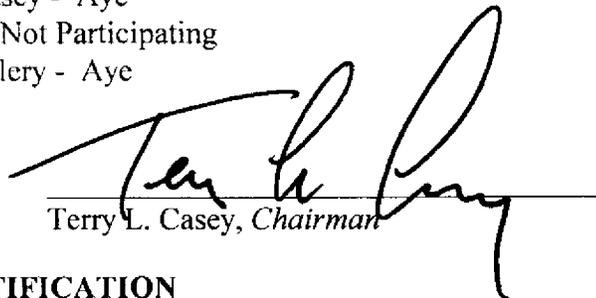
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's removal from employment with Appellee is **AFFIRMED**.



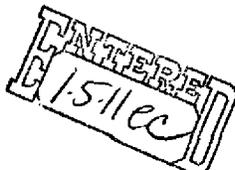
Casey - Aye  
Lumpe - Not Participating  
Tillery - Aye

  
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, January 05, 2012.



  
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**

Twanna Boggs,

Case No. 11-REM-02-0042

*Appellant*

v.

October 5, 2011

Ohio State University,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her removal from employment with Appellee. A record hearing was held in the instant matter on June 30, 2011. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, Assistant Director Heidi Al-Sahsah, and was represented by Mahjabeen F. Qadir and Joseph N. Rosenthal, Assistant Attorneys General.

The R.C. 124.34 Order of Removal provided to Appellant listed as ground for her discipline:

Neglect of Duty: You received a Level Three Notice on September 30, 2010, for violation of the College of Dentistry Time and Attendance Policy. Since that time, you have been tardy nine (9) times between September 14, 2010 – December 8, 2010.

**STATEMENT OF THE CASE**

Appellant testified that prior to her removal from employment she was employed by Appellee in the Dental Faculty Practice (DFP) at Appellee's College of Dentistry. She confirmed that her immediate supervisor was Heidi Al-Sahsah. Appellant indicated that she began her employment with Appellee in January 2007 as an Office Associate and at the time of her termination in February 2011 held the position of Medical Claims Specialist.

Appellant explained that the DFP was normally staffed by six to eight dentists. She recalled that hygiene patient appointments usually started at 7:30 a.m., and the first patients began checking out around 8:15 a.m. Appellant testified that her initial hours of work were 7:30 a.m. to 4:30 p.m., but noted that Ms. Al-Sahsah adjusted her shift to begin at 8:00 a.m., in an effort to help her get to work on time more frequently.

Appellant noted that one of her primary duties was to enter care slips, and acknowledged that she also served as a back-up for the window staff who checked patients in and out and filled in at the cashier's desk. She agreed that it was essential that she be at work on time and ready to work at the beginning of her shift.

Appellant confirmed that she received a written reprimand in January 2009 for excessive tardiness. She acknowledged that she was informed at that time that being tardy in the future would result in progressive discipline and noted that she received another written reprimand for several issues, including tardiness, in June 2009. Appellant testified that she received a one-day working suspension in March 2010 for missing all or part of multiple work days; was disciplined in September 2010 for being tardy thirteen times between March 24, 2010, and September 8, 2010; and was removed in February 2011 for being tardy an additional nine times between September 14, 2010, and December 8, 2010.

Appellant confirmed that she is familiar with the College of Dentistry's time and attendance policy and agreed that the policy states that eight or more instances of tardiness within a rolling six-month period constitutes a violation of policy. She noted that the policy defines tardiness as not being present and ready for work. Appellant acknowledged that she had been counseled in her 2008, 2009, and 2010 performance appraisals that she needed to address issues with tardiness and attendance (Appellee's Exhibits 8, 9 and 10).

Appellant claimed that all of her absences during the time period under review, with the exception of one, were either ADA or FMLA related. She stated that she had paperwork on file with Appellee for each of the dates.

Heidi Al-Sahsah testified that she is presently employed by Appellee as Assistant Director of Appellee's College of Dentistry, and has held that position since July 2008. She confirmed that she was Appellant's immediate supervisor prior to Appellant's removal from employment.

The witness recalled that Appellant's original work schedule was 7:30 a.m. to 4:30 p.m. She observed that she changed Appellant's hours to 8:00 a.m. to 5:00 p.m. in November 2008, in an attempt to help her avoid being tardy, but the change in hours did not solve the problem.

The witness testified that Appellant was required to log in and out through Appellee's computerized timekeeping system and typically "clocked in" on her own computer, although she could also have used others in the area. She explained that in order to take into account problems with the computer system, employees were able to sign in up to four minutes late without being counted as tardy. Ms. Al-Sahsah further explained that if the computerized timekeeping system was not functioning, or if an employee forgot to clock in or out, he or she could fill out an exception form to record the incident. She observed that it is the employee's responsibility to submit an exception form, and that she cannot change an employee's time in the system without the form, as there is an audit process that requires all adjustments to have accompanying paperwork. The witness noted that exception forms are processed each week in conjunction with payroll and that she was not aware of any exception forms ever having been lost.

Ms. Al-Sahsah testified that she created a report through the timekeeping system to track the number of times Appellant had logged in at 8:04 a.m. or later. She noted that the report reflected that Appellant had been tardy on nine occasions between October 14, 2010, and December 8, 2010. The witness observed that although Appellant was only tardy by a few minutes each time, the policy refers to the number of occurrences rather than the amount of time.

Ms. Al-Sahsah explained that Appellant was primarily responsible for patient billing, but also assisted with checking patients out, entering care slips, collecting money and serving as the backup cashier. She noted that when Appellant was not present, the checkout process was delayed and patients had to wait in line. The witness testified that Appellant's frequent tardiness and resulting unreliability resulted in her duties being reassigned to co-workers, which affected their morale.

#### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Prior to her removal from employment, Appellant held the position of Medical Claims Specialist in the Dental Faculty Practice (DFP) at Appellee's College of Dentistry; her work hours were 8:00 a.m. to 5:00 p.m. Appellant was employed by Appellee from January 2007 until February 4, 2011.

Appellant received a written reprimand in January 2009 for excessive tardiness, a written reprimand in June 2009 for several job performance issues (including tardiness), a one-day working suspension in March 2010 for missing all or part of multiple work days, and was disciplined in September 2010 for being tardy thirteen times between March 24, 2010, and September 8, 2010. Appellant's September 2010 was later rescinded by Appellee. Appellant's 2011 removal was based upon her being tardy on nine occasions between September 14, 2010, and December 8, 2010.

Appellee's time and attendance policy states that eight or more instances of tardiness within a rolling six-month period constitutes a violation of policy. The policy defines tardiness as not being present and ready for work.

### **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, 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 of the enumerated infractions listed in R.C. 124.34 and on 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 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 the opportunity to participate in a pre-disciplinary hearing. I find that Appellant had notice of the charges against her and an opportunity to respond to those charges. Accordingly, I find that Appellant's due process rights were observed.

Testimony and evidence contained in the record is sufficient to establish that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant. The R.C. 124.34 Order of Removal filed in this matter indicates that Appellant's removal was based on neglect of duty, specifically that Appellant was tardy nine times in the six-month period of September 14, 2010, through December 8, 2010, in excess of the College's attendance policy threshold. Appellant testified that she was familiar with Appellee's attendance policy and evidence established that she had received discipline in the past based upon her repeated tardiness. Appellee's attendance policy specifically provides that employees may be subject to corrective action if, within a rolling six-month period, an employee has eight or more occurrences of tardiness. Appellant did not dispute that she was tardy nine times within a period of six consecutive months. I find, therefore, that sufficient evidence exists in the record to support a conclusion that Appellee had an established standard of conduct with regard to tardiness, that the standard was communicated to Appellant, that Appellant's conduct violated that standard of conduct.

Accordingly, the Board may proceed to consider whether or not removal from employment was an appropriate discipline to be imposed upon Appellant. Appellee presented testimony and evidence at record hearing regarding Appellant's prior discipline related to tardiness. Appellant's employment history demonstrated that she had been counseled and disciplined multiple times for being tardy. Appellant argued in mitigation that all but one of her tardies during the six-month period reviewed were covered by ADA and/or FMLA leave, however, she produced no evidence to corroborate her claim that she had filed the appropriate paperwork with Appellee and conceded that she may have exceeded the allowable time limits.

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Appellant's tardies were undisputedly over the permissible number allowed by Appellee's attendance policy. In light of Appellant's failure to correct her attendance problem, despite clear and continuing notice that such behavior was not acceptable, and in light of Appellant's failure to support her claim of mitigating circumstances, I find that removal was an appropriate discipline in this matter.

Therefore, I respectfully **RECOMMEND** that Appellant's removal from employment with Appellee be **AFFIRMED**.

  
Jeannette E. Gurn  
Administrative Law Judge

JEG: