

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

ANDERSON WILDER,

Appellant.

v.

Case No. 11-REM-03-0081

OHIO STATE UNIVERSITY,

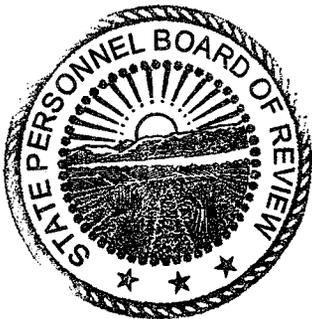
Appellee

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 Appellee's **REMOVAL** of Appellant be **AFFIRMED** pursuant to R.C. 124.34.



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, October 20, 2011.





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**

Anderson Wilder

Case No. 11-REM-03-0081

Appellant

v.

September 13, 2011

Ohio State University

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 June 7, 2011 and June 16, 2011. Present at the hearing were the Appellant, Anderson Wilder, appearing *pro se* and Appellee, The Ohio State University designee Ruth Boll, Staff Nurse with the OSU Medical Center East, represented by Assistant Attorneys General Lee Ann Rabe and Lisa G. Whittaker.

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

Appellant Wilder was removed from his position of Office Associate, effective March 15, 2011. The removal order states as follows, in pertinent part:

The reason for this action is that you been guilty of Dishonesty and/or Insubordination and/or neglect of duty: You received a written reprimand on April 30, 2010 for neglect of duty. Since that time, you were found to have left your assigned work location on November 10, 2010 without prior authorization from your supervisor and falsified your payroll timekeeping forms regarding your daily attendance. Despite previous instructions given to you, you failed to follow established office procedures in regards to completing required attendance paperwork and processing the scheduling of patients. On January 10, 2011, you demonstrated inappropriate workplace behavior and acted in a hostile and threatening manner.

Appellant Wilder filed a timely appeal of his removal with this Board.

STATEMENT OF THE CASE

Appellee's first witness was Appellant Wilder, as if on cross examination. Appellant Wilder testified he was employed by The Ohio State Medical Center as an Office Associate in the Interventional Radiology Office. He testified he was subject to a pre-disciplinary hearing on January 6, 2011, and identified Appellee's Exhibit 6 as a notice rescheduling the hearing for that day.

Appellant Wilder testified there was an incident on January 10 and 27, 2011 and he identified Appellee's Exhibit 9 as the notice of hearing regarding the incident that took place on January 27, 2011. He stated there was a hearing on January 27, 2011 and he was given a chance to present his side of the story.

Appellant Wilder confirmed that he was removed from employment on March 9, 2011, and he identified Appellee's Exhibit 1 as his termination notice which he received. He testified that the notice included dishonestly, insubordination, and neglect of duties as reasons for his termination.

Appellant Wilder denied leaving his work area on November 10, 2010 without prior authorization from his supervisor. He denied falsifying his payroll attendance forms on November 10, 2010, and he denied failing to follow office procedures for filling out his attendance paperwork. Appellant Wilder denied failing to follow office procedures for scheduling patients. Finally, he denied displaying a hostile and threatening manner on January 10, 2011.

Appellee's Exhibit 3 was identified by Appellant Wilder as a written reprimand he received on April 30, 2010 for incidents that occurred on April 26 and April 28. Appellant Wilder testified that the written reprimand was issued for activities that took place on April 26, 2010, which included wearing fatigues at work and showing up late for work. He testified that the reprimand was issued for April 28 because he was unavailable during working hours. He identified page 3 of Appellee's Exhibit 3 as a written plan for his improvement. He also testified that he was disciplined for actions that concerned his co-workers.

The improvement plan stated that Appellant Wilder was to maintain availability throughout his entire work shift. He also testified that he was put on notice to submit requests to the nurse manager in advance for all time not worked, including vacation, sick time, breaks, and flex schedule. Appellant Wilder confirmed he was on notice that he should assume that all requests are denied until approved. He testified he was also on notice that he should use appropriate language and restraint in the work place. Finally, Appellant Wilder confirmed he was put on notice that if he continued to neglect his duties he could receive further corrective action, including termination.

Concerning the incidents that occurred on November 10, 2010, Appellant Wilder denied being away from work between 10:45am and 1:40pm. He testified that he did see a note left for him by Ruth Boll on November 10, 2010, but he went to her office after co-workers told him she wanted to see him. Appellant Wilder testified he initially told Ms. Boll that he was out to lunch when she was looking for him earlier in the day. He testified he did not recall admitting to Ruth Boll that he was at class. He also testified that he did not recall stating he was tacking on his morning and afternoon breaks to his lunch hour.

Appellant Wilder admitted he had made a request to his previous supervisor to take classes but that the request was denied because the office did not have enough staff. He identified Appellee's Exhibit 16 as an email sent June 19, 2010, in which his request to take classes was denied. He identified Appellee's Exhibit 15 as Appellee's enrollment and credit policy for taking class. Appellant Wilder confirmed that the policy states that employees needed to check with their supervisors to determine if they could take classes during regularly scheduled work hours.

Appellant Wilder admitted to talking to Ms. Boll about taking classes but stated he did not complete the form requesting to take classes in the fall of 2010. He admitted Ms. Boll denied his request to take classes and he admitted to taking classes during fall quarter. Furthermore, Appellant Wilder admitted going to class during his lunch period. He admitted that his class was forty-eight minutes and his lunch break was thirty minutes. Appellant Wilder also stated he did not fill out any applications for leave to cover the time period while he was in class.

Appellee's Exhibit 17 was identified by Appellant Wilder as applications for leave that he had filled out in May, 2010. He stated each application contained

statements that the requested time off was not to be combined with lunch or in lieu of lunch without authorization from Ruth Boll. He admitted that he did not "clock out" when he went to class. In addition, Appellant Wilder stated he tacked his morning and afternoon break onto his lunch break when he was at class. He identified Appellee's Exhibit 12 as Appellee's attendance policy which required workers to "clock out" when not working. Appellant Wilder admitted he did not clock out on November 10, 2010 and that he was gone longer than thirty minutes. He further admitted that he did not clock out when he left on break.

Appellee's Exhibit 11 was identified by Appellant Wilder as a checklist that was to be followed to ensure that patients were properly scheduled. He testified he did make errors in scheduling and he corrected them. He testified he did not remember having a meeting with Ruth Boll and Diane Dierckman concerning the errors.

Concerning the incident on January 10, 2011, Appellant Wilder testified that Julie Ready, Assistant Nurse Manager, brought him his personnel file and a copy of his position description. Appellant Wilder identified Appellee's Exhibit 10 as a copy of the position description that Ms. Ready brought him on January 10, 2011. He testified that he refused to sign it and that he did not give Ms. Ready the file when she asked for it, but instead headed down the stairs to take the file to Human Resources. Appellant Wilder stated he stopped at the landing of the stairs because Julie Ready threatened to have him arrested. He came back up the stairs, went to the staff lounge, and did not give the file to Julie Ready. Diane Dierckman arrived after a while and asked for the file as well. He admitted he did not give it to her and that she tried to grab the file out of his hands. Ms. Dierckman took him to her office where he tried to call Human Resources. He admitted he still did not give her the file and Ms. Dierckman threatened to call security if he did not return the file. Appellant Wilder denied stating "It's not like I have a gun." He admitted that after she asked for the file again, he left Ms. Dierckman's office leaving the file behind.

Judith Ready testified she is currently employed by The Ohio State University Medical Center and that she has been employed there for approximately four years. She is currently employed as a Staff Nurse and has been employed in that position for three weeks. Prior to that, she was employed as an Assistant Nurse Manager in Interventional Radiology. She testified she held that position for approximately two years.

Ms. Ready testified that as an Assistant Nurse Manager, she reported to Ruth Boll. She explained that as Assistant Nurse Manager, she was responsible for staffing, helping with evaluations, and helping to enforce policy and procedures. She testified she was one of Appellant Wilder's supervisors.

Ms. Ready testified she needed Appellant Wilder to sign his job description on January 10, 2011, because the Joint Commission was at the facility. She explained that Joint Commission is an entity that audits and accredits hospitals. Ms. Ready testified that Appellant Wilder was in his office when she brought him his personnel file and told him that she needed him to sign his position description. She testified Appellant Wilder did not respond to her request, but she had to leave to answer a page. After she got back to her office, she received a call from Jamie Mattox, an Office Associate, telling her that Appellant Wilder was looking at his file. She went back to Appellant Wilder's desk and found him looking at the file, but the job description was still not signed. She asked him to sign it again, with no response. Appellant Wilder then got up out of his chair and started down the stairs. He turned and came back up the stairs when she threatened to call security. He still refused to return the file to her and he then went to the Radiology break room. He was making calls on his cell phone asking for Human Resources. Ms. Ready testified she called Diane Dierckman to come and help with the situation. When Ms. Dierckman arrived, she requested the file from Appellant Wilder and then tried to grab it from him. He jerked the file back. Ms. Ready testified she left at that point.

On cross-examination by Appellant Wilder, Ms. Ready conceded that it was possible that she did not hear Appellant Wilder say he was going to Human Resources because of his stutter. She also agreed that the stairwell landing was part of the hospital. Ms. Ready explained that there were problems with Appellant Wilder's job description as found in Appellee's Exhibit 10. For example, she stated Appellant Wilder was not in the College of Medicine and Ruth Ball was not the Assistant Administrator. She stated that the mistakes were due to the fact that there was an organizational switch and there was some confusion as to what was the correct job description; however she denied that she was hiding material from the Joint Commission. Ms. Ready further testified that she did not feel Appellant Wilder acted in a hostile manner.

On redirect examination, Ms. Ready stated that another employee, Jamie Mattox, signed her position description with no difficulty. She testified she was not involved with the decision to discipline Mr. Wilder.

Diane Dierckman is currently employed by Appellee as Director of Nursing for Diagnostic Services. She has held that position for approximately eleven years and has been employed with Appellee for thirty-one years. She is responsible for the financial and patient care aspects, nursing support and the supervision of approximately seventy-five staff.

Ms. Dierckman testified that after September 2010, Appellant Wilder reported indirectly to her through Ruth Boll. She identified Appellee's Exhibit 10 as the position description for Appellant Wilder, explaining that this was Appellant Wilder's old position description, but because the Radiology unit was undergoing a transfer to a different department, the job description had not yet been completely updated.

Ms. Dierckman explained that Appellant Wilder worked with two registered nurses as well as two other office associates. They were responsible for scheduling approximately twenty to forty procedures a day.

She testified she met with Ruth Boll and Appellant Wilder in April, 2010, to discuss Appellant Wilder leaving the hospital without prior approval and discarding request forms. Ms. Dierckman stated Appellant Wilder was given a written reprimand as a result of that meeting and she identified Appellee's Exhibit 3 as the written reprimand. She testified that subsequent to the written reprimand, Ruth Boll still came to her with issues regarding Appellant Wilder. These issues included his leaving the hospital without permission. Ms. Dierckman identified Appellee's Exhibit 12 as the medical center's attendance policy which applied to Appellant Wilder. She identified page two of the exhibit as describing the "Badge-In" procedures that employees are supposed to follow. Ms. Dierckman explained that if employees left the medical center for non-work related duties, the employees were required to "Badge-Out." She stated that the time recording system was a time-sheet based system during the period when the unit was transferring. She thought that the paperless "clock-in" system came into place sometime in the fall of 2010.

Appellee's Exhibit 5 was identified by Ms. Dierckman as a request for corrective action drafted by Ruth Boll. She testified that this corrective action resulted in a pre-disciplinary hearing for Appellant Wilder on January 6, 2011, where he admitted taking classes during the autumn quarter, although he stated he did not

remember how many classes he took. Ms. Dierckman testified that employees need permission to take classes during working hours.

Ms. Dierckman testified that on January 10, 2011, she entered the staff lounge and saw Ms. Ready and Appellant Wilder. Appellant Wilder was on the phone, holding his personnel file. She asked Appellant Wilder for the file and reached for it but Appellant Wilder pulled the file back. She asked Appellant Wilder to come to her office and on the way to her office, she asked him for the file and told him it was needed for the Joint Commission. Appellant Wilder did not give her the file. When they were in her office, she permitted Appellant Wilder to use her phone to try to reach Human Resources. Ms. Dierckman once again told Appellant Wilder that he needed to give her the file back. His response was to turn, open his coat, and say "it is not like I have a gun." Ms. Dierckman testified she was concerned about this statement. Appellant Wilder eventually left her office and left his file in her office. He did not have any other contact with Ms. Dierckman that day.

Ms. Dierckman identified Appellee's Exhibit 8 as the request for corrective action which she wrote in response to the incident on January 11, 2011. She identified Appellee's Exhibit 9 as a letter advising Appellant Wilder that the department requested corrective action against him. Appellee's Exhibit 1 was identified as the document that was served on Appellant Wilder upon his termination.

Appellee's Exhibit 2 was identified as a summary of the events, written by Ms. Boll and Ms. Dierckman, that took place when Appellant Wilder was given his termination documents. Ms. Dierckman testified that he took approximately fifteen to twenty minutes to read the two pages of the document and when she looked into his desk while he was removing items, he started displaying to her each item removed from the desk. She also testified there was a scuffle between Appellant Wilder and a security officer after Appellant Wilder tried to remove a key from the desk. Ms. Dierckman testified she was frightened by Appellant Wilder's actions.

On cross examination Ms. Dierckman testified she clearly remembered Appellant Wilder telling her at the meeting in April, 2010, that he did not need to keep the request forms because other people should be doing their jobs. She testified that the reason she remembers his statement is that the purpose of the meeting was to talk specifically about why Appellant Wilder was not using and

keeping the request forms. Concerning the incident of January 10, 2011, Ms. Dierckman stated she interpreted Appellant Wilder's actions of talking on the phone and pulling the file away from her as hostile behavior. She confirmed that Appellant Wilder's position description did not need to be signed that day.

Ms. Dierckman restated that while Appellant Wilder was in her office, she asked for the file, and Appellant Wilder replied that, "it is not like I have a gun." Appellant Wilder entered a recording to impeach the witness. In the audio tapes, Appellant's Exhibit B, Appellant Wilder stated on the tape, in reference to the tape, "I'm not holding it at gunpoint." Ms. Dierckman testified that Appellant Wilder's recording (which she did not know she was being recorded) did not capture everything she remembered from the conversation she had with Appellant Wilder in her office. She testified she did not hear the portion of the conversation where Appellant Wilder said, "It is not like I have a gun." She also stated that the portion of the conversation discussing why she was going to call security was not in the recording.

Ruth Boll testified she is employed by Appellee as a staff nurse and has held that position since March 14, 2011. Before her current position, she was a Nurse Manager in the Interventional Radiology section for a little over two years. Ms. Boll explained that as a Nurse Manager, she supervised approximately fifty employees including Registered Nurses, Office Associates, and Radiologists. She testified that the two Office Associates she was responsible for were Appellant Wilder and Jamie Mattox. She explained that the Office Associates were responsible for scheduling procedures for patients. Ms. Boll stated that the staff had attended training to try to improve the scheduling process. She identified Appellee's Exhibit 11 as the checklist the staff were to use when scheduling. Ms. Boll described the office as being very busy. She explained that sometimes it was necessary for the Office Associates to leave their desks to ask physicians for advice in scheduling and there was an expectation that the office staff would communicate with each other concerning their whereabouts.

Ms. Boll testified she became Appellant Wilder's official supervisor sometime in September or late October, 2010. Prior to that date, she had assumed some supervisory role over Appellant Wilder because of the transition and because there were some scheduling issues. She testified she was given the responsibility of signing time sheets and in doing so, noticed that Appellant Wilder's time sheet was inconsistent with the hours he was in the office.

Ms. Boll testified that on April 26, 2010, Appellant Wilder was late to work because he was exercising with the ROTC. On April 28, 2010, she testified she received a phone call from one of the physicians saying that no one was in the scheduling office. She testified that there were attendance issues with Appellant Wilder after April 28, 2010. These involved not being in the office and failing to answer phones. Ms. Boll stated she received emails from co-workers concerning Appellant Wilder's absences. She identified Appellee's Exhibit 20 as examples of these emails she received from the staff. She stated that the emails came to her unsolicited.

Ms. Boll testified she kept a flash drive containing information about each employee she supervised. She explained that she used this information in her yearly evaluations of the employees. Appellee's Exhibit 22 was identified as the information on Ms. Boll's flash drive pertaining to Appellant Wilder.

On November 10, 2010, Ms. Boll testified that Appellant Wilder was not at his desk from 11:45 a.m. until 2:00 p.m.. She testified that when she questioned Appellant Wilder about his absence, he admitted he was at class during that time and said he was tacking his breaks onto his lunch period. Ms. Boll identified Appellee's Exhibit 5 as a request for corrective action concerning the November 10, 2010, absence. She testified that Appellant Wilder had asked about taking classes before this incident and she denied his request due to staffing issues. Ms. Boll testified that Appellant Wilder did not clock out when he left for classes nor did he fill out a leave request. She identified Appellee's Exhibit 17 as an application for leave for Appellant Wilder dated on May 21, 2010. She explained that she placed a note on that leave application indicating that the leave time was not to be combined with lunch or break time.

Appellee's Exhibit 12 was identified as the attendance policy. Ms. Boll testified that the attendance policy requires that the employee document non-worked time and clock in and out of work. She testified that Appellant Wilder did not follow this policy on November 10, 2010.

Ms. Boll testified that Appellant Wilder made comments that the new scheduling procedures were a waste of time. She testified that Appellant Wilder would sometimes schedule patients out of sequence, which would cause scheduling problems with other patients. Ms. Boll stated that one of the doctors complained

about Appellant Wilder's performance. She identified Appellant's Exhibit 21 as a complaint about patient scheduling that was due to Appellant Wilder's mistake. She testified that Appellant Wilder was not using the checklist to schedule patients and that she had meetings with him concerning these mistakes. Ms. Boll testified she and Ms. Dierckman met with him concerning the errors, as that was what the April, 2010, meeting was about. She explained it was Appellant Wilder's computer user-name associated with the mistakes.

Ms. Boll testified she was on vacation on January 10, 2010, when she received a call from Troy, Tyler, and Jamie, the other Office Associates who worked with Appellant Wilder. They told her that Appellant Wilder had his personnel file and would not return it, causing a big upheaval and that they were fearful he was going to "blow them away". She stated she told them that if they were truly fearful, they should call security. Ms. Boll testified that Appellant Wilder was good at intimidating people and making them feel uncomfortable, as he has long periods of silence, which makes his co-workers feel threatened and that he has a background in psychology.

Ms. Boll testified she was present the day Appellant Wilder was removed. She stated he just stared at the documents and then stared at her and Ms. Dierckman for approximately fifteen minutes.

On cross examination Ms. Boll testified she identified Appellee's Exhibit C as a time sheet she approved that included the November 10, 2010 date. She explained she approved Appellant Wilder's time that day even though he was not present for the entire day because she just mass approved the time sheets and that one was included.

On redirect examination Ms. Boll testified she did not have the authority to change timesheets and that no action could be taken anyway until there was an investigation. She did state however, that she could have disapproved Appellant Wilder's timesheet and that she had previously told her supervisor that she did not feel comfortable signing Appellant Wilder's time sheet. Ms. Boll also testified she felt she had given Appellant Wilder many opportunities to improve his behavior. She reiterated that at the time of the November 10, 2010 incident, she was responsible for managing close to fifty people.

Jamie Mattox testified she was employed by Appellee for six years and is currently an Office Associate and has held that position for two years. She explained that her responsibilities include answering phones, managing calendars, and scheduling patients among other things. She described the environment as busy and that she schedules approximately twenty to forty procedures a day.

Ms. Mattox identified Appellant Wilder as her former co-worker. She testified that Appellant Wilder made scheduling mistakes and that she had to fix his errors on a daily basis. She testified she had to scramble to keep up because of his mistakes and that she told Ruth Boll, Julie Ready and Ms. Dierckman several times about the mistakes made by Appellant Wilder.

Appellee's Exhibit 11 was identified as a patient checklist developed to help resolve problems with the scheduling of patients. She testified that Appellant Wilder claimed it was "stupid" and a "waste of paper." Ms. Mattox also testified that Appellant Wilder routinely came in late and took long lunches, stating that the reason he was taking long lunches was because of class. Ms. Mattox identified Appellee's Exhibit 20 as an email she sent to Ruth Boll and Angie Dingess concerning Appellant Wilder's absences and his work performance.

Ms. Mattox testified she was present during the January 10, 2011 incident. She stated Ms. Ready came into the office and told Appellant Wilder he needed to sign his job description but Ms. Ready was called away, leaving Appellant Wilder with his personnel file. Appellant Wilder started looking at the file and when Julie Ready returned and asked for the file, Appellant Wilder stiffed armed her and ran out the room. Ms. Mattox testified she called her Management Office, Human Resources and security. She also called Ruth Boll, who was on vacation, to describe the incident.

Ms. Mattox testified that the basis of her fear was that Appellant Wilder displayed aggressive behavior in the past. She stated he would routinely mutter and slam his phone when he was aggravated and he would yell at his computer screen. She also testified that he looked at military and gun content online at work.

On cross examination Ms. Mattox testified that Julie Ready asked her to sign her job description on January 10, 2010 and that she did so even though it contained some errors. As for the January 10, 2011 incident, she testified she was concerned that Appellant Wilder was looking through his file because she thought it

contained her complaints against him, stating she was unaware of Appellee's policy of keeping work performance complaints separate from an employee's personnel file. Ms. Mattox testified that when she called Ruth Boll, she did say something regarding her fear that Appellant Wilder might use of a gun to kill people.

Ms. Esquivel-Gonzalez testified she has been employed with Appellee for approximately seventeen years. Her current title is Program Director and her working title is Employment Law and Compliance Manager; a position she has held for six years. She testified she received and reviewed the information concerning Appellant Wilder from a hearing officer. Appellee's Exhibits 19, 5, and 8 were identified as part of the disciplinary packet she received concerning Appellant Wilder.

Ms. Esquivel-Gonzales explained that when she receives a packet, she establishes criteria to resolve the issue. She looks at the nature of the behavior, the impact of the behavior, the seriousness of the infractions, whether there were notice issues, and whether there were mitigating factors. She testified that Appellee's Exhibit 5 indicated that Appellant Wilder had notice of time keeping procedures and how to schedule patients. She explained that Appellee's Exhibit 8 stated how Appellant Wilder was insubordinate and threatened his co-workers.

Ms. Esquivel-Gonzales testified Appellant Wilder received notice concerning time recording policies in April, 2010. She explained Appellant Wilder was not following this procedure in November, 2010, and that the impact of his absence was noticeable because of the small number of employees in Appellant Wilder's office. She also testified that Appellant Wilder needed to be at his job the entire time in order to accomplish his work responsibilities of scheduling patients. Therefore, his absences had a negative impact on the performance of the office as a whole.

As for the correct time sheet policies, Ms. Esquivel-Gonzales stated that improper time sheets could have implications with respect to the Fair Labor Standards Act ("FLSA"). She testified that an employee who took classes had to receive permission from a supervisor as required by Appellee's policies. She testified that Appellant Wilder's attending classes demonstrated both falsification of time records and insubordination.

Appellee's Exhibit 17 was identified by Ms. Esquivel-Gonzales as an application for leave form that was filled out by Appellant Wilder. She testified that there was no matching form for Appellant Wilder's absence on November 10, 2010. Concerning his scheduling issues, Ms. Esquivel-Gonzales testified that the impact of Appellant Wilder's behavior harmed the patient and increased the liability of the university. With regard to the January 10, 2011 incident, she testified she understood that Appellant Wilder did not sign his job description and he refused to return his folder. In addition, she testified that Appellant Wilder made some inappropriate comments, which impacted his co-workers and supervisors. Ms. Esquivel-Gonzales explained that workers are expected to follow the requests of their supervisors, and therefore, insubordination is serious. She testified that Appellee's Exhibit 3 gave Appellant Wilder notice to act appropriately at work. Ms. Esquivel-Gonzales testified that Appellant Wilder's use of the word "gun" in the work place was not appropriate. She testified that when she reviewed all the information and actions of Appellant Wilder, the appropriate action was termination.

On cross examination Ms. Esquivel-Gonzales identified Appellee's Exhibit 4 as Appellant Wilder's response to the April 30, 2010 reprimand. She explained she felt his response indicated that he did not feel that the allegations were very serious. She identified Appellee's Exhibit 18 as stating the correct procedure with respect to hearings, which was for the appointing authority to issue decisions within ten calendar days of the hearing unless considerable investigation or a second hearing is necessary. Ms. Esquivel-Gonzales admitted the termination letter sent to Appellant Wilder on March 8, 2011 did not follow the policy because it was the result of a hearing held on January 27, 2011.

On redirect examination, Ms. Esquivel-Gonzales testified that the hearings policy was followed when viewed from the point of the January 10, 2011 incident. She explained that this second incident made it necessary to conduct further investigation and, therefore, the delay was in line with OSU policy. She testified that the January 6, 2011 hearing decision was not released within the ten day time frame because the January 10, 2011 incident needed to be investigated.

FINDINGS OF FACT

Based on the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. At the time of his removal, Appellant Wilder was classified as an Office Associate in Interventional Radiology. His immediate supervisor was Ruth Boll and his duties included scheduling patients for various procedures within Interventional Radiology.
2. Appellant Wilder was removed from his position, effective March 15, 2011. At the time of his removal, he had previous discipline consisting of a written reprimand. The written reprimand occurred on April 30, 2010, in response for actions that included failure to be present at work, wearing inappropriate attire, and using inappropriate language.
3. Appellant Wilder was not at work from approximately 11:45 a.m. to 2:00 p.m. on November 11, 2010 because he was taking classes. Appellant Wilder admitted that he was at class during that time period. The evidence established that class was forty-eight minutes in length and that it took approximately fifteen minutes each way to get to class. Appellant Wilder was denied permission to take classes during his regularly scheduled work time.
4. Appellant Wilder was aware of Appellee's policies that required him to obtain permission from his supervisor prior to taking classes during working hours.
5. On January 10, 2011, Appellant Wilder was asked to sign his job description by Assistant Nurse Manger, Julie Ready. Appellant Wilder did not sign the job description and he refused to return his personnel file when asked to do so by Ms. Ready. In addition, Appellant Wilder initially refused to return his personnel file to Diane Dierckman, Director of Nursing for Diagnostic Services. After being escorted to Ms. Dierckman's office, he eventually left his personnel file in Ms. Dierckman's possession.

CONCLUSIONS OF LAW

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

The removal order states the reasons of Appellant Wilder's termination as "[d]ishonesty and/or [i]nsubordination and/or neglect of duty." These are causes for removal pursuant to section 124.34 of the Ohio Revised Code. In addition to these charges, the removal form stated that Appellant Wilder acted in a hostile and threatening manner. Based on the evidence presented at the hearing, Appellee has met its burden of showing that Appellant Wilder acted dishonestly, displayed insubordinate behavior, and neglected his duty. Appellee did not meet its burden of proving that Appellant Wilder acted in a hostile and threatening manner, but, according to administrative rule 124-3-06 of the Ohio Administrative Code, "Failure to prove all of the allegations contained in an order does not, as a matter of law, require disaffirmance of an order."

Dishonesty

Appellant Wilder exhibited dishonest behavior by taking classes during the fall quarter. Appellant Wilder admitted to taking classes during working hours without receiving proper authorization from his supervisors. This authorization was required per the policies of Appellee and Appellant Wilder testified that he was familiar with the Enrollment and Credit Policy as identified in Appellee's Exhibit 15. Furthermore, he admitted that one of his supervisors, Ms. Boll, had denied an informal request from him to take classes. As for Appellant Wilder's statement that he was taking the classes during his lunch break and "tacking on" his morning and afternoon breaks, Appellant Wilder did not address the fact that the evidence established that the classes were forty-eight minutes long and there was at least fifteen minutes travel time each way to and from classes. Using these figures, it would be impossible for Appellant Wilder not to miss work even if he took an hour off of work combined with his breaks. As indicated by Ms. Esquivel-Gonzales, this dishonest behavior with respect to recording of time could negatively affect Appellee under the Fair Labor Standards Act. Furthermore, this activity could be viewed as

theft and illegal. For this dishonest behavior alone, his termination was the appropriate.

Appellant Wilder was placed on notice as of May 21, 2010, that his vacation time was not to be combined with his lunch time or in lieu of lunch without first seeking approval to do so by Ms. Boll. This was evidenced by notes to that effect on the bottom of leave slips turned in by Appellant Wilder, marked as Appellee's Exhibit 17.

It is not clear from the evidence as to whether Appellant Wilder had notice that he should not "tack" his morning and afternoon breaks together with his lunch break. Appellee Exhibit 3 includes a written reprimand sent to Appellant Wilder on April 30, 2010. The written reprimand states that Appellant shall "maintain appropriate availability through the entirety of the shift, except were [sic] scheduled for lunch and approval for breaks have been received from the Nurse Manager." Nothing in this letter indicates that the practice of tacking approved breaks together is prohibited. Appellee's Exhibit 17 states Appellant Wilder is not to tack approved vacation hours with his breaks. Again, this does not give notice to the Appellant that he should not tack breaks and lunches together in the course of a normal day. Even though Appellant Wilder probably did not have notice concerning the prohibition against tacking his breaks and lunch together, this lack of notice is not relevant when examined along with the other facts of this case. Appellant Wilder still violated policy because he did not obtain permission from his manager to take classes. In addition, the evidence is clear that he was absent from work longer than the time period allowed even if he did tack his lunch breaks with his other breaks.

Neglect of Duty

The evidence established a history of discipline for Appellant Wilder due to neglect of duty. Appellee's Exhibit 3, dated April 30, 2010, put Appellant Wilder on notice that he was not to neglect his duties by not being available during his shift. The November 10, 2010 incident in which Appellant Wilder was not present during working hours again inherently meant that Appellant Wilder was neglecting his duties. As Ms. Mattox indicated, the office environment where Appellant Wilder worked was extremely busy and his absence caused obvious disruptions in the work flow of the office. Because Appellant Wilder had notice he should be available during working hours, his removal for neglect of duties due to his absence while

taking classes was appropriate. There was also evidence that Appellant Wilder's co-workers complained about his absences and Ms. Mattox testified she had to do a lot of Appellant Wilder's work since he was away from his desk so often. Ms. Boll had documentation from others complaining about no one being in the office and scheduling mistakes which Appellant Wilder made. Appellant Wilder did not present any evidence to rebut the testimony concerning the errors that he made. Therefore, Appellee did meet its burden of proof on the allegation of neglect of duty.

Insubordinate Behavior

Appellant Wilder's taking classes also demonstrated insubordinate behavior for failure to follow established procedures. Appellant Wilder testified he was aware of Appellee's policy with respect to taking classes during working hours. Furthermore, he admitted to registering and taking classes during working hours when he was informally denied permission from his supervisor. Therefore, his actions did amount to insubordination.

As for the January 10, 2011 incident, Appellant Wilder's failure to return his personnel file when asked by two supervisors was also insubordinate behavior. Although there were mistakes in the job description, a reasonable response would have been a refusal to sign the description and to return the file until it was corrected. Alternatively, a reasonable response would have been to correct the description, sign it, and return it. Appellant Wilder's refusal to return the file while walking around the hospital was unreasonable.

Hostile and Threatening Manner

There was conflicting testimony as to whether Appellant Wilder acted in a hostile and threatening manner during the January 10, 2010 incident. Ms. Ready testified Appellant Wilder did not act hostile and did not physically assault her. In contrast, Ms. Mattox testified Appellant Wilder stiffed armed Ms. Ready. Ms. Dierckman testified Appellant Wilder stated, "It is not like I have a gun on me" when she asked him to return the file. Appellant Wilder introduced a tape recording of the same conversation. The tape recording played by Appellant Wilder did not corroborate Ms. Dierckman's testimony, as it recorded Appellant Wilder saying he "was not holding the file at gun point".

The evidence did not establish that Appellant Wilder ever made a verbal threat to any of his co-workers nor his supervisors. During the incident of January 10, 2011, Appellant Wilder did act inappropriately by taking his file and refusing to return it; however, he did return from the stairwell when asked and he did go to Ms. Dierckman's office when asked. The testimony indicated his co-workers and supervisors were afraid of him due to the fact that he looked at guns and the military on-line, but that was explained by Appellant Wilder that he was working out with the ROTC and was considering enlisting in the military. There was also testimony that Appellant Wilder's co-workers voiced their concerns about some of his behaviors at work, although none of the testimony or evidence established that any of his behaviors were actual threats or hostile to any worker. The complaints concerned him slamming down his phone or yelling at his computer. His actions while cleaning out his desk were similarly alleged to have been threatening, but once again, no threats were made. He took a while to read the removal order given to him and he slowly removed items from his desk. The evidence established that Appellant Wilder was not acting hostile toward anyone but instead it appeared that he was perceived to be hostile because of his past actions.

Given the fact that Appellee had an incident over the last year or so of a disgruntled employee appearing and shooting people, it is understandable why Appellant Wilder's co-workers and supervisors were a bit "on edge" by some of Appellant Wilder's behaviors. While he may have acted inappropriately in some of the circumstances, the evidence did not establish that his actions were hostile and threatening. Appellee did not meet its burden of proof with regard to this particular allegation.

Procedural Problems

Although Appellant Wilder did have notice and was properly terminated, there were noticeable problems with some of Appellee's procedures. In particular, the notices of corrective action as found in Appellee's in Exhibits 6 and 9, did not state with specificity the allegations against him. The general phrases such as "dishonesty," "insubordination" and "neglect of duty" without a description of the date and time of the incidents giving rise to those allegations, make it difficult for an employee to be able to respond to such allegations. Appellant Wilder did attend the hearings and was given an opportunity to speak, which is all that is required; however, Appellee should take measures to provide specific information in its notices.

The other procedural problem that came to light was the fact that Ms. Boll signed Appellant Wilder's timesheet for November 10, 2010. While the evidence reflected that she could not change the timesheet, she certainly could have disapproved it. Ms. Boll testified that she signed it during a mass approval of the timesheets for all employees under her supervision and she did not think about Appellant Wilder's timesheet. While it was proven that Appellant Wilder falsified his timesheet as he admitted such, Ms. Boll should have disapproved his timesheet and she should have taken the time to "think about it" especially since she testified she expressed a concern earlier about being uncomfortable approving his timesheet.

Appellee's handling of the incident of January 10, 2011 also could have been managed better. To begin with, the evidence established that Appellant Wilder should never have been asked to sign his position description that day, as it was not required and Appellee knew that it was wrong. When he refused to sign his position description and he asked if he could talk with Human Resources, he should have received an explanation that his position description was wrong, as that is what he seemed to be concerned about. He should have been permitted to call or set up an appointment with Human Resources to discuss his personnel file, as it is a public record and he is entitled to view and copy his file. Perhaps it was because the Joint Commission was in the building, but it seems as if the whole incident was blown out of proportion. If Appellee would just have taken the time to ask Appellant Wilder why he would not sign his position description and explain to him that he was correct, instead of demanding that he sign it, perhaps the whole incident would not have taken place. Appellant Wilder's actions exacerbated the situation and while Appellee was wrong in presenting the file to him in the first place, his actions were also inappropriate as discussed above.

Inasmuch as Appellee has met its burden of proof on the majority of the allegations and since Appellant Wilder did not put on any evidence rebutting much of the evidence, it is my **RECOMMENDATION** that Appellee's removal of Appellant Wilder for neglect of duty, dishonesty and insubordination be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge