

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

CHANDRA Y. MONTGOMERY,

*Appellant.*

v.

Case No. 11-REM-07-0249

REHABILITATION SERVICES COMMISSION,

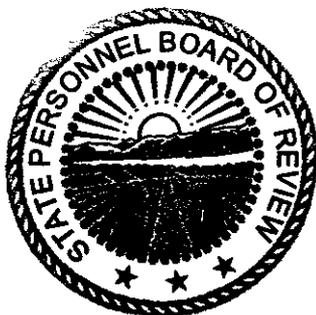
*Appellee.*

**STAY ORDER**

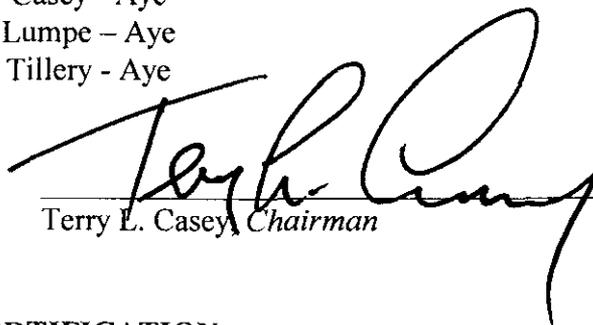
This matter came on for consideration on March 28, 2012, on the Opinion of the Full Board in the above-captioned appeal.

Having reviewed the entirety of the record in this matter, and in consideration of the Opinion, attached hereto and incorporated herein, the Board hereby STAYS the final Board Order in this matter for a sufficient period of time to evaluate Appellee's response to this Board's instructions contained within the attached Opinion and any response thereto timely filed by Appellant.

Wherefore, it is hereby **ORDERED** that this matter be **STAYED** for a sufficient period of time from the mailing of this Stay Order, as set forth, above.



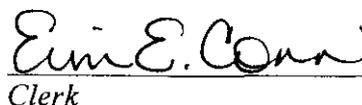
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

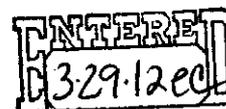
  
Terry L. Casey, *Chairman*

**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 the foregoing is (~~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, March 29, 2012.

  
Erin E. Conn  
Clerk



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

CHANDRA Y. MONTGOMERY,

Case No. 11-REM-07-0249

*Appellant*

v.

March 29, 2012

REHABILITATION SERVICES COMMISSION,

*Appellee*

*Full Board*

**OPINION**

From the State Personnel Board of Review:

This cause came to be heard on February 15, 2012 at 65 East State Street, Columbus, Ohio, 43215, 12<sup>th</sup> Floor, Hearing Room #2. Present at the hearing was Appellant, who was represented by Marc E. Myers, Attorney at Law. Appellee, Ohio Rehabilitation Services Commission, was represented by Julie B. Smith and E. Linda Ubokudom, Assistant Attorneys General, with three additional staff members attending from the Ohio Rehabilitation Services Commission.

This cause comes as a result of Appellant's timely filing of an appeal for her removal from the position of Administrative Assistant 3 with Appellee. The pertinent Order of Removal was effective June 30, 2011. The parties had discussed settlement options on a limited basis. However, the parties were not able to resolve their differences and the matter then went to hearing, as noted and detailed below before the Full Board.

Jurisdiction over the subject matter of this appeal was established pursuant to Ohio Revised Code Sections 124.03 and 124.34.

**CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT**

In the June 30, 2011 Order of Removal, two specific violations of Ohio Revised Code Section 124.34 were cited as the reasons for Chandra Y. Montgomery being terminated from her job after eleven years working for the Ohio Rehabilitation Services Commission and five years as an Administrative Assistant 3. Those violations cited were:

*A violation of 124.34 of the Ohio Revised Code by an act of nonfeasance for violating work rule 18-Failure to follow policies or procedures, or use poor judgment in carrying out a work assignment and 28 Violations of the Ohio Revised Code Section 124.34. You were given a directive by the Assistant Deputy Director to complete a project by May 27, 2011 in which you did not complete as instructed. The information you provide was incomplete and confusing. You were told to correct it by the end of the day, which you failed to do. Due to your actions the assignment had to be reassigned to other staff for*

*completion. It was proven as well that you continued to fail to perform schedule and calendar maintenance for the Deputy Directors office. It was shown you double book them multiple times causing major disruptions to their work day.*

This summary focuses on these two issues:

**I. REPORT/RESEARCH FAILURE:**

On doing and preparing a “*work assignment*”, the Appellant allegedly failed to “*follow policies or procedures, or use poor judgment in carrying out a work assignment*”.

**II. POOR SCHEDULING:**

The violation involved a failure “*to perform schedule and calendar maintenance for the Deputy Directors office . . . causing major disruptions*”.

At the all-day, in-depth hearing held by this Board starting at 10 am on Wednesday, February 15, 2012, the three Board members were present to hear witnesses for both sides on these two issues as outlined in the original June 30, 2011, removal order. At hearing, Appellee called five witnesses: Appellant, Chandra Y. Montgomery; Labor Relations Manager Bobby Johnson; Deputy Director Daniel Connors; Deputy Director Susan Pugh; and Assistant Deputy Director Rose Reed.

At hearing, Appellant called one witness: Chandra Y. Montgomery, Appellant.

Attorneys for both sides made opening, summary statements and were allowed to ask questions, both direct and on cross-examination.

The February hearing followed a December 14, 2011 pre-hearing conducted by this Board where we heard summary viewpoints of this case from both sides and discussed with each party these two issues and questions related to alleged failures by Ms. Montgomery, witnesses to be called, evidence to be presented, etc. At the end of the February 15, 2012, hearing, attorneys for both sides were allowed to summarize their positions and the important points for the Board’s final and summary consideration. Both sides were allowed to submit any additional briefs and/or evidence that would be pertinent to the facts, evidence and law on this case. The Attorney General’s office requested added time and was granted it in order to have a full transcript prepared and an additional brief filed that arrived in our office late on the afternoon of Friday, March 9, 2012.

Under Ohio law and this Board’s standards, the burden of proof on these two allegations falls to the Appellee, the Ohio Rehabilitation Services Commission, to document and prove their case in order to be sustained on their removal of this employee.

**A. MULTIFUNCTION DEVICES RESEARCH PROJECT:**

This project, upon which a large part of this case has been built, involved Appellant being given a request to pull together information on the multifunctional devices (or MFD’s) that the Rehabilitation Services Commission had in various offices and locations around Ohio. This assignment was given on Thursday, May 19, 2011, via an e-mail. This project was to be completed by Friday, May 27. On the first two days, Thursday and Friday of her allowed time to start and

complete this research, Ms. Montgomery was on a previously-scheduled vacation period and then was busy on her first returning day of Monday, May 23, catching up on other work projects, doing her normal daily duties in serving eight staff members directly and approximately twelve other persons indirectly. Ms. Montgomery commenced work on this project that Tuesday and by the end of the week had assembled much of the needed information on these various machines. This information is contained in transcript pages 206-219 and 226-227, plus other pages.

As was testified to by one of her supervisors, this report was not as complete as desired. Among the "deficiencies" cited were that this report did not have the age of each machine purchased/used listed in a number out to the tenth of a decimal point. Due to using an Excel spread sheet, her report did showed the exact day, month and year that the machine was acquired, but this software showed in another column the age in whole years with a negative sign in front of it. Our Board examined the physical product presented in the format she had available for her use through the office software. Much was made by a witness/supervisor of this one column for age in years being rounded to a whole number with a negative sign in front of this data. While this Board is not composed of computer programming experts, our conclusion is that this employee is being blamed personally for a technical aspect of a report summary software that she did not purchase or create.

On this allegation, there are several, larger policy questions.

1. Ms. Montgomery had been hired and was working as an Administrative Assistant 3. She was not hired, trained and/or experienced to be working and functioning as an Administrative Management Analyst. As testimony noted and confirmed, this was the first time she had ever been asked to prepare this type of report and make these types of Analyst reviews.
2. Ms. Montgomery was delayed in getting certain key data, as one of the vendors with such information was not available until that Friday, May 27, 2011.
3. Ms. Montgomery sought added time to gain additional data and to make changes as her supervisor requested, but the Appellant was not given sufficient time, with all of her other duties and persons she served and supported. This request for added, reasonable time was denied.
4. There was no testimony presented to indicate that Ms. Montgomery's supervisors showed proper leadership and assistance in giving her the needed time, training and format model for doing this type of research and analysis. Without some type of model, direction, training and proper timing, how would an employee be able to research, assemble, prepare and present such a report in a short time period?

**CONCLUSION:** While the testimony on pages 168 through 204 from Assistant Deputy Director Rose Reed indicated that she was unhappy with what Ms. Montgomery produced, there was no testimony to show this supervisor being an effective leader in guiding, helping and directing an employee, doing something out of her expertise, job category and background. Accomplishing these new duties in a reasonable time period required more time, as indicated by what then happened when the remaining part of this work was re-assigned to two other employees to complete. The work done by these two other employees was completed in mid June, more than two weeks after the original

“must-have”, inflexible deadline set by a supervisor. In fact, during the many pages of testimony by Rose Reed, there were many different “I don’t recall” and “I just don’t remember” in her statements when asked a series of questions to determine whether this employee was the cause of these problems or the victim of poor management communications and supervision. Our Board’s conclusion is that any problems perceived or alleged on Ms. Montgomery’s failure of performance on this project were in larger measure not of her making or fault to merit such a removal from her position.

#### **B. SCHEDULING RESPONSIBILITIES & DUTIES:**

The second half of this case centers upon the question of whether there were problems and confusion created in how the schedules were managed, maintained and monitored for the two Deputy Directors, their top assistants in this office and other staff members. It is clear from the various witnesses and the pages of testimony that there were problems and issues. The challenge for this Board, independent from the Ohio Rehabilitation Services Commission office, is to determine how significantly were these problems a failure directly caused by Ms. Montgomery in not doing her job in an efficient and effective manner. Among the key factors that came out during testimony were these:

1. There was a practice, not determined or chosen by Ms. Montgomery, to have what was called “**blind acceptance**” for allowing any and all schedule requests for meetings, conferences, and appointments with these various officials to be accepted and placed on a schedule. The practice seems to have been to place these many and varied items on the schedule and then at a later point, it would be determined which specific ones merited how much time and the level of involvement by one of the Deputy Directors and/or one of the Assistant Deputy Directors and/or another staff member.
2. This “blind acceptance” practice made things very easy and simple, upfront, at the start of the process. Most all requests were placed on the schedule. BUT, at a later point, some serious thought and determination needed to be done to decide the merits and priorities for each of these varied requests. During part of the testimony, it was noted that Ms. Montgomery was responsible for “**monitoring**” these various schedule requests and items. Then, at a later point in time from the testimony, it was indicated that she was expected to be “**managing**” or fixing any and all of these various calendars and their details.
3. There is a major and significant difference between merely “monitoring” various schedules versus “managing” them to clear up and solve any and all conflicts, priority determinations, assigning of value judgments for the importance of each requested meeting, etc. When there were six to twenty different people involved in having their schedules go through Ms. Montgomery, directly and indirectly, it is impossible at her level of being an Administrative Assistant 3 to know ALL of the various program needs and policy differences to make those levels of time and value judgments herself within a major agency such as this one.
4. The agency’s Director and/or Deputy Directors are paid more and given the powers and responsibilities to know where the precise time allocations go and which meetings merit more or less or no time. These higher officials are in and at a “policy level” to see and know the overall

needs of the agency, their various vendors and contract providers and how all of those many layers of issues impact those blind, disabled and otherwise affected for the services required to be provided by federal and state law. The Ohio Rehabilitation Services Commission has a special responsibility to protect those who are least able to care for themselves. We take administrative notice of the website of the Ohio Rehabilitation Services Commission, which indicates that this agency's mission is to "*ensure individuals with disabilities achieve quality employment, independence and disability determination outcomes through integrated services, partnerships and innovation*". (emphasis added) The Ohio Rehabilitation Services Commission website proclaims their values as "*accountability, compassion, integrity, partnerships, quality outcomes and respect*". (emphasis added)

5. As it affects this employee, it was not, however, her decision to do such "blind acceptance" of any and all requested meetings, appointments, conferences and programs. That was a management decision by those higher above her position and pay-grade. On transcript page 27, lines 14-16, an e-mail from Deputy Director Pugh indicated that a "*divide and conquer*" strategy would be used for who attends or does not participate in these many meetings and conferences. Ms. Pugh stated to this Board that she was concerned with how missing any meeting or being late would reflect on her "professionally". In the original removal order, it was stated that Ms. Montgomery's failures were "causing major disruptions to their work day". There was testimony on confusions and minor personal inconveniences happening, but detailed documentation was not presented on the alleged "major disruptions" occurring and/or any serious consequences resulting therefrom. Another e-mail indicated and detailed that Deputy Director Pugh did not want to be bothered by looking in advance at or in reviewing printed copies of her overall schedule and taking any effort to make suggestions in a meeting with Ms. Montgomery for fine-tuning any of these scheduling issues, questions and/or potential conflicts (transcript page 28, lines 16-20).
6. There were many other "smaller" issues raised and blame assigned to this one employee for failing in one case to not list the exact address on a schedule copy for the Youngstown office, one of the seventeen offices that the Ohio Rehabilitation Services Commission has in the state. This address was listed on the Deputy Director's schedule when this meeting was originally planned. Based on the testimony presented to this Board, it is a location and office the Deputy Director had visited previously. In order to program her GPS in her car, the Deputy Director wanted this specific address to be listed on a more current schedule listing. Maybe this "failure" by her Administrative Assistant 3 was viewed as major and fatal by the Deputy Director at this moment in time; however, this Board views this type of complaint to be more of a question of proper communication and organization between a manager and a staff member. It would have been easy to have placed one phone call to clarify and obtain that exact Youngstown office address if the Deputy Director had forgotten its location from her previous visit or visits there. Another smaller issue covered in the testimony was about any problems that came up of a technical nature on telecommunications equipment during a teleconference and if any of that would have been the fault of the Administrative Assistant 3. Another area cited was blaming Ms. Montgomery for computer server issues involving the Commission's scheduled meetings. In this case, there was testimony and questions on the lack of an ideal interface between the two scheduling and computer networking systems.

7. During the testimony by Deputy Director Susan Pugh, she told our Board how incredibly busy and important was her schedule as she had to deal with multi-million-dollar contracts and being involved hour-after-hour in back-to-back meetings, etc. But, at another point, she placed all of the blame on Ms. Montgomery for not dropping into her office on a regular basis to gain any and all clarifications for which meetings were more or less important, which staff members were the best to attend the various appointments, etc. If one of the bosses was so rush-rush and important, how could a lower-level person ever get the needed time to go in and get the proper guidance to unscramble all of the scheduling over-laps that were created by “blindly” placing all requests on the schedule and seeking to follow a “divide and conquer” strategy in allocating top personnel for such meetings, conferences and appointments?
8. On page 20 of the transcript (lines 1-6), testimony was given that Ms. Montgomery was responsible for the schedules of Deputy Directors Susan Pugh and Dan Connors, plus Assistant DD Rose Reed and four other persons. That is a total of seven different persons where there was a need for Ms. Montgomery to deal with, monitor and/or manage schedules.
9. As noted, there was various other testimony presented that indicated that monitoring and/or managing of these various schedules was not Ms. Montgomery’s only responsibility. Testimony indicated that she also had a variety of other duties, including dealing with issues raised and connected with reviews by the Auditor of State’s office, contracts with vendors, billings and processing paperwork for these various employees in this office, etc.
10. In earlier filings, during the pre-hearing and at the hearing, plus in a post-hearing brief, much has been asserted by the Attorney General’s office that Ms. Montgomery has been subject to previous discipline action and that she had received “in-person and written instruction and guidance”. The files claim that Ms. Montgomery was “given ample opportunities to show that she was capable of performing her job duties, but her poor performance made her completely ineffective and unreliable”. The Attorney General’s office was allowed to present evidence into the record at hearing concerning this area; despite strenuous objections from Appellant’s counsel regarding the relevance of this evidence and regarding Ms. Montgomery’s lack of any previous meaningful due process opportunity to vet and refute same. Ultimately, however, since these earlier allegations were not cited in the June 30, 2011 Order of Removal, our Board cannot fully evaluate the merits, validity and substance for each and all of those allegations by management against this employee.

**CONCLUSION:** While it is possible that Ms. Montgomery was not as forceful and direct in communicating back to her bosses that their scheduling plan was leading to and creating added confusion and chaos, the larger problem seems to be a failure of top management to recognize an impossible scheduling system that was of their own design and creation. State employees, especially at the Administrative Assistant 3 level, have not received “mind-reading” courses to be able to decipher the exact hierarchies of importance on all of these various meeting and appointment requests and priorities. Only higher managers are in possession of the appropriate information and background to know which priorities of importance these different requests deserve on the final schedules. Those in higher-ranking management would know these issues, on a week-to-week basis, and best understand the merits for how much time and attention would be applied by each of these

top managers and their assistants. Within an agency that values and proclaims “accountability, compassion, integrity, partnerships, quality outcomes and respect”, it would be reasonable for a high-ranking Deputy Director to take some limited time on a weekly basis to review and communicate with her Administrative Assistant how these various upcoming schedules could and should be adjusted to reflect the proper priorities and needs of this agency as they evolve on a week-to-week basis. Using “blind acceptance” and “divide and conquer” do not seem to fit within the context of “accountability, compassion, integrity, partnerships, quality outcomes and respect” that this important agency claims as its values. Since Deputy Director Pugh was appointed to her current position in October 2009 and has background and education in rehabilitation and as a counselor, it would be good for her to evaluate her management style and approach on how this scheduling plan was designed and managed.

### **C. CHAIN OF DUTIES, RESPONSIBILITIES:**

On transcript pages 228-234, there were detailed questions from Board Member Dwight Tillery that explored the confusing environment and large number of people to whom Ms. Montgomery was to respond, help and provide assistance. The bottom line was that there were eight staff members directly to be served and from whom Ms. Montgomery would get requests and a total of twenty people, directly and indirectly, making requests to her. This testimony included (per page 230, lines 2-3) that Deputy Director Dan Connors told her “it was inappropriate for me to ever tell someone no”. From an outside viewpoint, this type of “organizational structure” would seem to create a serious challenge for how an employee can function effectively and serve well all of these managers.

### **CONCLUSIONS OF LAW**

For Appellee to prevail in a disciplinary appeal before this Board, Appellee must demonstrate the validity of a sufficient number of the factual allegations contained in the pertinent R.C. 124.34 Order to justify its discipline of the pertinent employee. In the instant appeal, Appellee has not met its burden for either of these two allegations.

R.C.124.34 provides for the removal of a classified employee for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer’s or employee’s appointing authority, violation of R.C. Ch. 124. or the rules of the director of administrative services or of a pertinent civil service commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.

The main thrust of Appellee’s argument on the first charge is that Appellant failed to prepare an analysis and report in a manner desired and failed to complete it in the style and timing sought.

First, and as found, above, the testimony presented and evidence admitted show that such an analysis was not in the normal scope of her job position and beyond her scope of training and experience.

Secondly, there is a question as to whether or not this report was assigned in such a short time period without proper guidance as a way to “make her fail” in order to build a case to justify a

removal from her position.

The main thrust of Appellee's argument on the second charge is that Appellant failed to keep and manage the various schedules in a manner desired and failed to complete these tasks in the detailed style sought.

First, and as found, above, the testimony presented and evidence admitted show that many of these issues and problems were caused by management failure by higher-ranking officials in having a scheduling system based on "blind acceptance" and a "divide and conquer" approach.

Secondly, there is no testimonial or other evidence to support an allegation that Appellant failed to monitor these scheduling overlaps. Her alleged "failure" was in not being at a management level of knowledge and skill to grasp the overall priorities in order to assign properly the various key officials, week-by-week, to the various meeting, conferences, appointments, etc.

Finally, Appellee terminated Appellant in a manner inconsistent with its own stated policies and values including "compassion, integrity, partnerships, quality outcomes and respect".

Appellant was employed by Appellee for over a decade. There is simply no evidence of previous problems that have been independently verified and affirmed before this one Deputy Director assumed her top management position that would merit this most serious level of discipline.

Certainly, Appellee has a legitimate interest in wanting operations performed in an efficient and effective manner. These managers in high-ranking positions have a responsibility, however, to communicate clearly those needs and establish a fair and honest system that is practical and reasonable for those at lower operational levels to follow and in which to perform to the best of their abilities.

### **DISPOSITION**

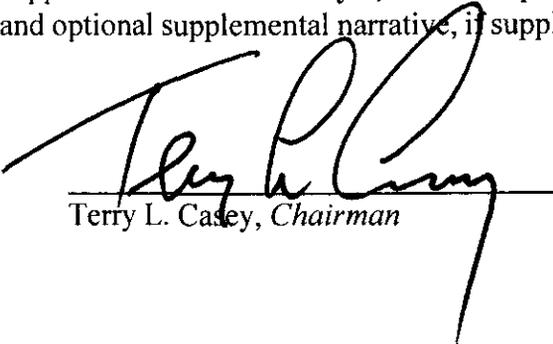
Therefore, the State Personnel Board of Review **DISAFFIRMS** Appellee's **REMOVAL** of Appellant from her position of Administrative Assistant 3, pursuant to R.C. 124.03 and R.C. 124.34.

A review of all evidence and testimony presented reveals that Appellee has not demonstrated by a preponderance of the evidence that just cause existed for Appellant's removal and that Appellant's removal was not effectuated in accordance with R.C. 124.34. Therefore, the State Personnel Board of Review hereby **DISAFFIRMS** the removal of Appellant and orders her reinstatement to a position as Administrative Assistant 3. Because Ms. Montgomery failed to be more aggressive in detailing and outlining problems to her superiors regarding management's scheduling system, Appellant should be suspended for one week without pay.

From the testimonial and other evidence, it is clear to this Board that there is a point of conflict and/or miscommunication between Ms. Montgomery and Deputy Director Pugh. Accordingly, this Board will hold this case open pending a submission by the Appellee of a mutually-agreed plan regarding in what area of the agency Ms. Montgomery would be placed and any action that will be taken by management to protect and insure that she is not subject to any

retribution, harassment and/or retaliation for exercising her legal right by appealing to the Board and its resulting decision.

Therefore, the Appellee is ordered to submit a follow-up report and plan (and optional supplemental narrative as needed) for Ms. Montgomery's re-instatement within the agency to be filed with this Board and with Ms. Montgomery **on or before April 20, 2012**. Thereafter, Ms. Montgomery may file with this Board and with the Appellee **on or before May 4, 2012** her optional reply to the Appellee's follow-up report and plan, and optional supplemental narrative, if supplied.



Terry L. Casey, *Chairman*