STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Nicola Roberts

Appellant

Case Nos. 2023-RED-03-0057
2023-MIS-03-0058

v.

Public Health Dayton Montgomery County

Appellee

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 the two instant appeals are **DISMISSED**, pursuant to R.C. 124.03, R.C. 124.14, O.A.C. 124-1-02, and O.A.C. 124-5-02.

Casey - Aye
McGregor - Aye
Strahorn - 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 05, 2023.

Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. After the board has received the deposit, the transcript and copies of the file will be prepared and the cost of those items will be calculated. If the deposit exceeds the costs of these items, then a refund of the excess will be issued; if the deposit does not cover the full amount, then the appealing party will be billed for the outstanding balance. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system. The State Employment Relations Board Fiscal Office will initiate the ISTV after receipt of the Notice of Appeal. The Fiscal Office can be contacted at (614) 466-1128.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE October 12, 2023. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2023-RED-03-0057/0058

Transcript Costs: $852.00 Administrative Costs: $25.00

Total Deposit Required: * $877.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: October 20, 2023

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Nicola Roberts

Appellant

v.

Public Health Dayton Montgomery County

Appellee

Case Nos. 2023-RED-03-0057
2023-MIS-03-0058

July 27, 2023

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on for consi n upon a thorough review of the records. The above-referenced appeals were filed by Appellant with this Board on March 17, 2023. That review culminated in a Record Hearing held on June 21, 2023. By agreement of the parties, Post-Hearing Briefs were filed on July 7, 2023 and the instant records were thereafter closed.

Appellant was present at Record Hearing, represented by James J. Leo, Attorney at Law. Appellee was present through its designee, Human Resources (HR) Senior Manager Dana Fernandez, and was represented by Montgomery County Assistant Prosecutor Todd M. Ahearn. Appellant's immediate supervisor, Children with Medical Handicaps (CMH) Program Supervisor Helene Hill, and Director of Nursing Yevetta Hawley were also present at Record Hearing. Both, in addition to Ms. Fernandez and the Appellant, presented testimony as witnesses.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant has been employed by Appellee, Public Health Dayton Montgomery County (DPH), for approximately 29 years. She has been classified as a Medical Records Technician (MRT) for the majority of her tenure, becoming an MRT 2 in or around 2000 or 2001. Appellant is assigned to the CMH Program, which provides public health nurse-assisted in-home care and support services for families with children that have special healthcare needs.

Following a study conducted amid compensation restructuring sometime between 2019 and 2021, Appellant's position was reclassified as Office Assistant 2. Appellant requested an audit of her position under R.C. 124.14 (D) (2) in October 2021, and on February 22, 2022, she was notified that this classification

was correct.

She then filed an appeal of the results of the audit with this Board on the same day. In that matter, Case No. 2022-REC-02-0036, the Board ordered that Appellant be reclassified once more as an MRT 2, upon the recommendation of the assigned Administrative Law Judge. The Report and Recommendation of that case was released on November 15, 2022, and the Board's final Order was effective January 12, 2023.

DPH preempted the Board's final Order on the matter and notified Appellant of her reclassification on December 21, 2022. Appellee also gave backpay in the amount of $529.60, to compensate Appellant due to the upgrade.

As Appellant's initial matter in 2022-REC-02-0036 proceeded before the Board, Appellee dealt with a budget crunch. In a presentation concerning the 2023 operating budget on December 7, 2022, DPH acknowledged a $4,500,000 deficit. The presentation addressed an "Action Plan" for the forthcoming year, aiming to reduce costs by, among other things, "Reduc[ing] Overhead by Consolidating Facilities," "Monitoring Staffing and Repurposing Vacancies as Needed," and "Reduc[ing] Supplies." Pursuant to these goals, Appellee planned to move the CMH Program and its staff out of its workspace in the Montgomery County Job Center and into the Reibold Building, where other components of DPH are located, such as the Medical Records Department.

CMH staff were told in a February 16, 2023 meeting that they would be moving into the office space labeled 311 (with the exception of Ms. Hill, being given room 308). This area has generic workstations that are meant to be used by CMH's public health nurses when they come in on their hybrid work schedules and are shared with other remote nurses from Appellee's Communicable Disease Clinics. Moreover, one nurse from each respective division now works full-time in this area. Testimony further reflects that approximately half of 311's roaming workstations are filled on any one day.

However, despite the initial representation that Appellant would be working with the rest of the CMH Program, Appellant was separately notified on February 28 that she would be working out of the Medical Records Department. Sue Suther, an Office Assistant with CMH, was similarly informed that her workspace would be in a separate area, and, on March 10, Ms. Suther was notified of her needed transfer to the Communicable Disease division.

Appellant first reported to work at the Reibold Building on March 13, 2023 and has since been working out of the Medical Records Department. She remains assigned to the CMH Program, although cross-training to assist the

Medical Records Department was apparently discussed with her supervisor.

This arrangement has created a variety of issues and concerns for both Appellant and her supervisor, CMH Program Supervisor Hill. Ms. Hill testified that she found the circumstances to be challenging for effective communication. This is because the Medical Records Department is a secured area and Ms. Hill did not have access to it until late April, weeks after CMH moved into the Reibold. This restriction prompted Ms. Hill to request that Appellant send her an email each morning to ensure that Appellant was at work.

Similarly, the absence of Ms. Suther from the Program—with whom Appellant often shared job duties—caused a great amount of apprehension in Ms. Hill that Appellant would find herself overworked. This was particularly the case with respect to the processing of letters of approval (LOAs).

Appellee has recently shifted the archiving of its medical records from paper files to an electronic database. Testimony reveals that, prior to the move to the Reibold Building, Appellant and Ms. Suther would alternate the weekly task of processing the LOAs into DPH's system. According to the prior Findings of Fact adopted by the Board in Case No. 2022-REC-02-0036, this task covered from 100 to 200 LOAs per week and constituted about 80 percent of Appellant's work time.

After the move and Ms. Suther's transfer out of the CMH Program, this responsibility fell solely on Appellant. Ms. Hill consequently requested that her nurses start to copy Ms. Hill on all emails containing tasks that they send to Appellant, such as various letters to format (or "type"), print, and mail to patients. The processing of these nurses' letters (which are confidential medical records) was another duty shared between Appellant and Ms. Suther prior to the move; Appellant must now solely handle these tasks on behalf of all eight (8) of the CMH Program's nurses.

CMH Program Supervisor Hill began and continued a log of Appellant's total daily tasks throughout the month of May. This log shows that, in addition to numerous assigned letters, Appellant had to process up to 123 LOAs per week. Ms. Hill expressed direct concern over the workload to Appellant two days after beginning the log. It should be noted that Appellee considered this monitoring of Appellant's workload to be Ms. Hill's "responsibility" in the context of Appellant's potential cross-training.

With respect to Appellant herself, testimony reflects that the recent changes in work life have caused her concern. They appear to have resulted in Appellant's perception that her prior success in her reclassification appeal before

this Board prompted Appellee to undertake a retaliatory campaign, ultimately reducing her in pay and position. Appellant raises multiple examples of new practices to bolster this assertion.

First, Appellant voiced concern over her supervisor's new habits of requiring daily check-in emails and auditing her workload. Similarly, she claims that her job duties have been reduced, beginning with Ms. Hill's revisions of the staff manual pertaining to the processing of LOAs. In her February 27 notification to the whole CMH staff, Ms. Hill made it known that because of the new electronic entry of medical records *(i.e.*, no longer a requirement for the physical destruction of confidential client documents), the Program's nurses would be handling case dismissals directly. Appellant is likewise dissatisfied with the new process itself, finding it to be little more than a "digital drag-and-drop" process as compared to the prior procedure under the paper system, which required (among other intricacies) the opening of patient records. Notwithstanding these grievances however, Appellant makes no claim that she no longer processes LOAs on behalf of the CMH Program.

In addition to this, Appellant raises the fact that she has been physically separated from her Program and placed within another department's work area. She claims that this separation has prevented her from performing other functions of her position, such as executing orders for office supplies or maintenance requests, handling CMH's incoming mail, and checking the Program's "urgent line," all of which she did while working at the Job Center. Her work hours have also been shifted to 8:00 a.m. to 4:30 p.m. to her displeasure, which Appellee contends was for the purpose of aligning her with her supervisor, the other MRTs working in the Medical Records Department, and most others at the Reibold Building.

Appellant further claims that Appellee's paid lunch policy was improperly applied to her on April 13, 2023, when she participated in the mandatory telephone Pre-Hearing for the two instant appeals. The policy states that DPH staff "scheduled to work" more than six (6) hours per day may "normally" take an hour lunch break, 30 minutes of which are paid. While Appellant was scheduled to work 8 hours on April 13, she actually worked 4.5 hours and used 3.5 hours of vacation time to participate in the Pre-Hearing. Because she did not work a full 6 hours that day, she was later informed by her supervisor that the policy did not apply to her situation, but that, at Ms. Hill's discretion, she would nonetheless receive the paid 30-minute break. Ms. Fernandez stated that the policy "indirectly means actively working," as supported by the policy's use of the word "normally."

Finally, Appellant maintains that DPH did not reclassify her to the correct

pay step following her previous proceedings before the Board. In restructuring the compensation scheme prior to those proceedings, Appellee used a relatively complicated system of review that was further complicated by a budget-mandated temporary halt to step increases in 2021. Appellant claims this procedure was not accurately applied after her successful appeal.

Based on these concerns over retaliation, Appellant filed the two instant appeals on March 17, 2023, separately claiming "Reduction in Pay or Position" and "Retaliatory Discipline." Appellant claims that notice of these actions occurred on February 27, citing to Ms. Hill's aforementioned email concerning revisions to the LOA manual. According to Appellant, the reduction and retaliation were first effective March 13, the day she first reported to work in the Reibold Building.

CONCLUSIONS OF LAW

Appellee DPH is a General Health District organized pursuant to R.C. Chapter 3709. Its employees are generally in the classified "state service." R.C. 124.01 (B) through (C). For the purposes of this analysis, "pay" means the "annual, non-overtime compensation due an employee," and "position" means "a group of duties intended to be performed by an employee." O.A.C. 124-1-02 (Q), (S).

Appellant, through her two appeals, essentially makes three claims: (1) that she was improperly reduced in position; (2) that she was improperly reduced in pay; and (3) that she was the subject of retaliatory discipline over which this Board has jurisdiction. Each claim will be assessed separately.

I. Reduction in Position

Employees in the classified civil service of the state may only be reduced in position or pay for disciplinary reasons, such as unsatisfactory performance, dishonesty, and "discourteous treatment of the public." R.C. 124.34 (A). The Revised Code stipulates that such reductions must be accompanied by an order stating the reasons for the action (among other requirements), served upon the employee. R.C. 124.34 (B); O.A.C. 124-3-01 (A). When an employee appeals an alleged reduction and no "section 124.34 order" has been served, the employee must prove, by a preponderance of the evidence, that the reduction did occur. O.A.C. 124-5-02. This specifically means that, for a reduction in position, the employee must show that the employer took action that diminished his or her duties "to the extent an audit of [his or her] position would result in a reclassification to a classification assigned a lower pay range." O.A.C. 124-1-02 (Z).

Appellee acknowledges that no R.C. 124.34 Order was served on Appellant. Appellant must therefore meet her burden of proof within the confines of an argument that would she undergo another job audit, her position would be reclassified to a lower pay range. Helpfully, some of the relevant analysis can be borrowed from the Report and Recommendation from Appellant's preceding reclassification case.

The primary criteria for this Board to consider when determining a proper classification are the position's specifications, including "the job duties outlined" and the "percentages of time to be devoted" to each job duty. *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). However, an employee need not perform every outlined duty for the position to fall within a particular classification. *Id.* Likewise, the Board need not consider solely the position's specifications, being able to recognize other relevant facts and evidence submitted by the parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988). Generally, an employee is only required to perform his or her mandatory duties for 20 percent of his or her work time to be considered in the right classification. *See* O.A.C. 123:1-7-15.

As adopted by the Board in Appellant's preceding appeal, the position description for an MRT 2 states that incumbents "are responsible for opening, maintaining, and closing medical records; verifying for accuracy all components of the medical record [; and] tracking and documenting all transactions for paper and electronic medical records files." The description's Essential Functions section establishes the following primary duties, requiring the majority of an MRT 2's work time:

> "Compiles confidential client information and utilizes software application(s) to create and update medical records by prepping, sorting, scanning and indexing chart documentation into the electronic medical record (EMR) and OnBase. Verifies record accuracy by performing quality analysis of scanned documents and correcting errors, ensuring documents in EMR are labeled accurately with correct client name, date of birth, medical record number, etc. Retrieves physical files from filing area and documents transaction. Purges client records per [DPH's] outlined retention policy and procedures from internal/external storage."

This position description was originally used to support a finding that Appellant performs the duties of an MRT 2. A review of the testimony and evidence in these appeals leads to the same conclusion: Appellant's work duties

are still most accurately described by the MRT 2 classification.

Appellant claims that notice of her alleged reduction came when Ms. Hill revised the staff manual for handling LOAs, the processing of which was the decisive factor to Appellant's prior success before the Board. Although the introduction of Appellee's electronic recording system shifted or eliminated certain aspects of this duty (such as no longer requiring access to physical patient files and allowing the Program's nurses to handle dismissals themselves), it remains uncontroverted that pursuant to the job description, Appellant is still maintaining medical records and indexing documentation into the electronic database.

This is likewise the case with the nurses' letters. Appellant has the responsibility of compiling this form of confidential client information and updating the client's respective medical records after Appellant formats, prints, and mails them at the direction of the CMH nurses. Looking to Ms. Hill's log of Appellant's daily tasks throughout May 2023, the near complete work time of Appellant is constituted by these two responsibilities.

Indeed, the log does *not* provide evidence that Appellant has been performing the more clerical aspects of her job since the move to the Reibold Building (processing mail, executing supply orders, etc.). However, these "general office duties" (as described in the preceding Report and Recommendation) are not in the MRT job description and, in fact, were referenced as miscellaneous when it was recommended that she be reclassified. Likewise, in that appeal, the Administrative Law Judge conceded that Appellant's workplace at the Job Center was separate from the other MRTs at the Reibold; this was a "flaw," albeit not a fatal one to her reclassification. As a result of the CMH Program's move to the Reibold Building, these flaws in the prior analysis have been remedied.

Finally, with respect to both of her key practical duties, Appellant's responsibilities have only increased since the Program's move to the Reibold Building. Where before she was alternating the weekly task of processing LOAs and only taking assignments from half of CMH's nurses, she now handles often more than a hundred LOAs every week and performs work on behalf of all nurses. The Administrative Law Judge in Case No. 2022-REC-02-0036 estimated that prior to Appellant's reclassification (and while she was still at the Job Center), Appellant "perform[ed] the duties of the MRT position" for 80 percent of her work time. Now, with the increase in work and absence of the "general office duties" of her previous workplace, this estimate is likely well higher. It therefore follows that the same conclusion should be met here as in Appellant's reclassification appeal: that Appellant performs duties sufficient to

place her in the Medical Records Technician 2 classification.

Accordingly, Appellant has not met her burden of proof that an audit of her position would reclassify her to a lower pay range. She has not been reduced in position.

II. Reduction in Pay

As cited above, when an employee appeals an alleged reduction and no "section 124.34 order" has been served, the employee must prove, by a preponderance of the evidence, that the reduction still occurred. O.A.C. 124-5-02. For a reduction in pay, this means that an Appellant must argue that his or her employer took action which diminished his or her pay. O.A.C. 124-1-02 (Y).

Appellant makes two separate claims regarding pay. First, she alleges that upon being reclassified by Appellee in December 2022, she was not placed at the correct pay step. Appellee moved its employees to a new, condensed wage scale in 2020—thirty-three (33) steps to twenty (20). For each employee, a three-step process was used.

First, DPH placed the employee at a pay step on the new scale that was equal to or just higher than his or her current wage. Next, DPH consulted a matrix to ensure that employees placed at step 21 or higher on the outgoing scale were placed at step 3 or higher on the incoming one. An adjustment was made if this was not the case automatically. Finally, if two employees of the same classification were placed on the same step, a separate matrix was consulted that ultimately separated those employees by their years of service.

Prior to being moved to the new wage scale, Appellant was a step 23 MRT 2, making $21.50 per hour. Upon proper reclassification as ordered by this Board, effective to the first date of the pay period following her request for a job audit, DPH placed her initially at a step 4, making $21.73 per hour (an increase).

During this year-long interim time frame, however, Appellant would have ordinarily received a step increase, which would have factored into the initial calculation and resulted in a higher wage. This step increase did *not* occur though, nor did it for any DPH employee during this time frame (2021) for budgetary reasons. Only a cost-of-living wage adjustment was given at the beginning of 2022, which was represented in an explanatory table that HR Senior Manager Fernandez provided to Appellant. Further, Appellant did receive a step increase in 2022, and this was also represented in that table.

Because Appellant did not receive a step increase in 2021, her placement

at step 4/$21.73 per hour—the next higher on the new scale to her initial $21.50 per hour from 2020—was correct. The first matrix confirms this, as her being an original step 23 requires that she be placed at least at step 3. The final step to Appellee's process was not needed: no other MRTs were at step 4, with Appellant being the highest paid of the classification.

As Appellee placed her at the correct initial step pursuant to this Board's final Order and additionally calculated the wage increases brought on by the 2022 cost-of-living increase and her 2022 step increase, Appellee did not diminish her pay or, indeed, place her at the incorrect step. There is additionally no dispute that backpay was paid.

Second, Appellant alleges that DPH's 30-minute paid lunch policy was incorrectly applied when she used vacation hours to participate in the April 13 telephone Pre-Hearing for the two instant appeals. As stated above, though she was told that the lunch policy did not apply to her situation, Appellant's supervisor adjusted Appellant's hours at her discretion and gave her the paid 30 minutes. Because there was no injury, this issue is moot before the Board.

The Administrative Code is nonetheless instructive regarding the total work time she did sacrifice to participate in Board proceedings. It provides: "employees shall be paid by their appointing authority for the time they are absent from their jobs to attend hearings before the [B]oard, provided they . . . were parties to the action." O.A.C. 124-11-18 (A). Although Appellant is a party to this action, the April 13 telephone conference did not constitute a Hearing. Appellee is not obligated to reimburse her for her participation on April 13, and therefore has not diminished her pay.

III. Retaliatory Discipline

This Board has the authority to hear appeals relating to allegations of retaliation within three contexts. The first is on behalf of employees in the civil service (classified or unclassified) whose employers take retaliatory action against them as a result of them having filed a whistleblower complaint under the Revised Code. R.C. 124.341 (D). The second is for public employees whose employers discriminate against them for a good faith filing of a complaint pursuant to Ohio's Public Employment Risk Reduction Program or OSHA procedures. R.C. 4167.13 (B) (1), (4). Appellant's Miscellaneous appeal falls in neither of these initial two categories—she does not allege that she filed either a whistleblower or health & safety complaint.

The third and final context is with respect to reclassification appeals where "changes have been made in the duties and responsibilities" of an employee for

"political, religious, or other unjust reasons." R.C. 124.14 (D) (2). While this case centers primarily on an alleged reduction and not a reclassification, the analysis has turned on whether Appellant's responsibilities as an MRT 2 have been diminished to the extent a job audit would result in a reclassification. O.A.C. 124-1-02 (Z). Thus, the standard under R.C. 124.14 (D) (2) may be appropriate to consider in the present appeal, as certainly it would be unjust for Appellee to reduce Appellant in position as retribution against this Board's lawful order. *See* 42 U.S.C. § 1983 (establishing a cause of action for the deprivation of privileges secured under state law). *See also* R.C. 124.62 (prohibition against violating civil service rules); R.C. 124.99 (penalty for such violations). However, Appellant must first prove, by a preponderance of the evidence, that she was indeed effectively reduced in position. O.A.C. 124-5-02. This, she has not done.

Notwithstanding this impediment, the record in Appellant's Miscellaneous appeal was developed to allow the Board to glean insight into why the undisputed changes to Appellant's job duties and work life have occurred. As this is intertwined with her reduction argument, Appellant bears the burden of proof. *Id.*; O.A.C. 124-1-01 (C). While Appellant claims the changes are retaliation, each circumstance she cites maintains a wider context. As stated before, Appellant believes that Appellee's alleged retaliatory campaign began when her supervisor revised the LOA manual, displacing certain aspects of that duty which she was familiar with. Ms. Hill's February 27 notification, however, was directed to the entirety of the CMH Program's staff, and the changes that were made did not solely impact Appellant. In that email, Ms. Hill stated that *both* Appellant and Ms. Suther would no longer handle case dismissals. Furthermore, Ms. Suther was not informed of her transfer away from CMH until March 10; there is no evidence that Ms. Hill had advance knowledge of this either at the time she revised the manual.

Appellant's move into the Medical Records Department and the discussion of cross-training were likewise not isolated occurrences. Without her input, Ms. Suther was completely removed from the CMH Program during the transition to the Reibold Building, and prior to that, she had been told that she would be working in a separate area. Furthermore, these actions aligned with DPH's Action Plan concerning their budget shortfall. Appellant finding herself no longer executing supply orders is similarly congruous with the "Reduc[ing] Supplies" portion of the Action Plan.

Regarding Appellant's new work hours, there is no evidence that this change was made because of her recent reclassification. Ms. Suther's hours were reset to 8:00 a.m. upon her transfer from CMH, and testimony from multiple witnesses suggests that most, if not all, people working at the Reibold have the hours of 8:00 a.m. to 4:30 p.m.

Finally, Appellant has not presented evidence that the recent logging of her work or requirement of daily check-in emails came about because of animus over the reclassification appeal. To the contrary, Appellee has established that because of the absence of Ms. Suther from the Program, Ms. Hill was deeply concerned that Appellant would find herself overworked, now having to handle both the weekly task of processing LOAs and performing assignments on behalf of CMH's entire nursing staff. Indeed, during the first week of May alone, Appellant was tasked by the nurses with 121 separate letters to format, send to clients, and index into DPH's medical records. This concern, coupled with the necessity to track Appellant's workload to see if cross-training was even feasible, seems the more likely explanation for this behavior.

Ms. Hill also testified that the requirement for daily check-ins is one that she has begun to apply to each her staff for managerial purposes. This makes sense in light of the fact that most of her nurses work remotely; that when she began requesting these emails from Appellant, she did not have physical access to Appellant's work area; and that although Appellant swipes her badge to access her workspace each day, Ms. Hill does not have access to the relevant data logs. The weight of the evidence greatly favors the conclusion that Ms. Hill is simply trying to ensure adequate communication between herself and the people she supervises.

RECOMMENDATION

The foregoing analysis shows that, had Appellant been able to prove the alleged reduction, she would not be able to establish that it was done for retaliatory purposes. Because Appellant cannot, by a preponderance of the evidence, establish that she was reduced in position or pay (the issue of retaliation thereby being moot), I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the two instant appeals, pursuant to R.C. 124.03, R.C. 124.14, O.A.C. 124-1-02, and O.A.C. 124-5-02.

James R. Sprague
Administrative Law Judge