

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Phillip Love,	:	
	:	No. 12AP-500
Appellant-Appellant,	:	(C.P.C. No. 10CVF07-11221)
v.	:	
	:	(REGULAR CALENDAR)
Ohio State University,	:	
	:	
Appellee-Appellee.	:	

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D E C I S I O N

Rendered on June 18, 2013

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Phillip Love, pro se.

*Michael DeWine*, Attorney General, and *Drew C. Piersall*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by appellant, Phillip Love, from a judgment of the Franklin County Court of Common Pleas affirming an order of the State Personnel Board of Review ("SPBR") in which the SPBR overruled objections to a report and recommendation of an administrative law judge and affirmed an order of removal issued by appellee, The Ohio State University.

{¶2} The following factual background is drawn primarily from the report and recommendation of the administrative law judge, as well as from the trial court's decision. Appellant was employed by appellee from February 2004 to August 2009 as an office

manager for the Office of Student and Alumni Services ("OSAS"), within appellee's School of Physical Activity and Educational Services ("PAES").

{¶3} Appellant's duties included sitting at the front desk and handling requests of undergraduate students for information or appointments, assisting in answering phone calls, providing clerical support to the director of OSAS, and managing and updating the computerized office calendar.

{¶4} Appellee has a written progressive discipline policy. The steps for progressive discipline involve: (1) a documented verbal counseling, (2) a written reprimand, (3) a minor suspension, (4) a major suspension, (5) a second major suspension (depending on years of service), and (6) termination.

{¶5} On August 13, 2007, appellant's supervisor, Jennifer Collis, provided appellant a written performance review for the period from March 2006 to May 2007. In the review, appellant was criticized with respect to "task completion, timeliness, punctual attendance, and supervision of student workers." (State's Exhibit, 14.) On November 19, 2007, appellant received a three-day suspension for insubordination and/or neglect of duty based upon his (1) being tardy on at least 18 occasions, (2) failing to take lunch at the time specified by his supervisor, and (3) difficulty in following through with assignments.

{¶6} On June 23, 2008, Collis provided appellant a written review for the period from May 2007 to May 2008. In that review, appellant was criticized for difficulty in following tasks such as "turning in leave forms in a timely manner, keeping track of time, maintaining appropriate coverage at the front desk, sending 'sign in' emails upon arrival to work in the morning, returning from lunch within a reasonable time period, and maintaining the office calendar." (State's Exhibit, 13.)

{¶7} In July of 2008, Amy Lahmers replaced Collis as appellant's supervisor. Lahmers soon determined there were discrepancies in appellant's reported arrival and departure times as compared to Lahmers' observation of his arrival and departure times. Lahmers determined that an objective method of tracking and documentation would be for appellant to email his arrival and departure times to her. On August 5, 2008, Lahmers sent an email to appellant "requesting that you send me an email to document the times when you come and go from the office." On August 7, 2008, Lahmers sent appellant another email reminding him of the obligation to email his arrival and departure times.

On August 8, 2008, appellant received a written reprimand for reporting to work late, and Lahmers again reminded appellant of his obligation to email his arrival and departure times. Appellant never complied with Lahmers' directive to email his arrival and departure times during the 13 months in which Lahmers was appellant's supervisor.

{¶8} On October 22, 2008, Dr. Chris Zirkle, a faculty member of the PAES, complained to Lahmers that he and one other faculty member had received poor service while interacting with appellant. Lahmers relayed that information to appellant during a verbal counseling session. On October 30, 2008, appellant received a four-day suspension for excessive tardiness, neglect of duty, and insubordination.

{¶9} In November 2008, Lahmers determined appellant had used an excessive amount of sick leave, and that he had taken more sick leave than he had actually earned. On November 21, 2008, Lahmers provided appellant a letter of scrutiny, requiring that he submit medical documentation with requests for sick leave. In that letter, Lahmers again repeated her directive to appellant to email his arrival and departure times. On March 11, 2009, David Hamann, the Human Resources Administrator for PAES, sent an email to appellant reminding him to follow his supervisor's directive to document his time-keeping by emailing his arrival and departure times. On May 21, 2009, Lahmers held a meeting with appellant and discussed several issues, including his attendance, his inefficiency in the performance of tasks, and his refusal to document his time-keeping by email.

{¶10} In June 2009, Lahmers observed appellant at the front desk downloading software programs onto his personal laptop computer during work hours. Lahmers instructed appellant not to use his personal computer at work, nor to utilize the Internet at the front desk. In an email sent by appellant to Lahmers on June 10, 2009, appellant stated that the computer at the front desk was slow. Lahmers reported the matter to a technical staff. On June 15, 2009, Lahmers ordered additional RAM for the front desk computer, which was installed within one week of appellant reporting the problem.

{¶11} In an email dated June 10, 2009, Hamann reminded appellant to submit medical documentation to support his requests for sick leave. Some of appellant's sick leave was subsequently disapproved for failure to provide required documentation.

{¶12} On June 15, 2009, Lahmers sent an email to appellant reminding him that he was required to wear a name badge at the front desk. Several days later, Lahmers

mentioned wearing the name badge to appellant; on June 22, 2009, Lahmers again noted appellant was not wearing the name badge. According to Lahmers, appellant never followed the directive to wear the badge at work.

{¶13} On June 30, 2009, Lahmers provided appellant a written performance review for the period of June 2008 to May 2009. In that review, appellant was criticized for excessive tardiness, insubordination, failure to complete his timesheets accurately or in a timely manner, failure to maintain staff calendars, conducting personal business at the front desk, and refusing to submit leave request forms for days in which he was late reporting to work.

{¶14} By letter to the Office of Human Resources, dated July 3, 2009, Hamann requested that appellee terminate appellant's employment. Hamann submitted the letter at the request of appellant's supervisor, Lahmers. On July 16, 2009, appellee notified appellant that the department had requested corrective action against him. On August 21, 2009, appellee served appellant with an order of removal, pursuant to R.C. 124.34, on the grounds of inefficiency, insubordination, and neglect of duty.

{¶15} On August 28, 2009, appellant appealed his removal to the SPBR, alleging he was "disparately treated." By order issued on October 14, 2009, an administrative law judge issued an order for appellant to provide appellee with certain discovery information with respect to whether he intended to offer evidence of disparate treatment. Appellant, however, did not notify either appellee or the administrative law judge of his intent to offer evidence of disparate treatment.

{¶16} On February 9, 2010, the administrative law judge conducted a hearing on appellant's appeal. The administrative law judge issued a report on June 2, 2010, recommending that the order of removal be affirmed. Appellant filed objections to the report and recommendation. On July 15, 2010, the SPBR issued an order adopting the recommendation of the administrative law judge and affirming appellant's removal from his employment. Appellant filed an appeal with the trial court from the order of the SPBR. By decision and entry filed May 11, 2012, the trial court affirmed the order of the SPBR.

{¶17} On appeal, appellant, pro se, sets forth the following five assignments of error for this court's review:

1. Judgment and SPBR ruling is not supported by reliable, probative and substantial evidence and was not in accordance with law insofar as The Franklin County Court of Common Pleas erred by failing to take into consideration the witness testimony presented in the SPBR hearing. Witness testimony was provided at the original SPBR hearing which proved that the appellant was efficient and effective as his role of Office Manager in the department of PAES. The witness also provided testimony to the many issues and problems with the office calendar and server system, which had limited the productivity of the office personnel in completing tasks and had a negative impact on the appellant[']s productivity. This witness also provided the SPBR with information and insight into the disparate treatment that the appellant suffered as an employee of the University in the School of PAES.

2. The Franklin County Court of Common Pleas erred by failing to recognize that the Appellant's time out of the office and sick leave had been approved for FMLA, for an injury suffered in May 2009. The appellant provided adequate documentation and medical doctor notices for the time out of the office as requested by his supervisor. The Franklin County Court of Common Pleas erred by not recognizing the appellant[']s sick leave use during that time as rightfully and adequately utilized in accordance with university policy and within the frame of the law.

3. The Franklin County Court of Common Pleas erred in its judgment against the appellant, because it failed to rely on reliable, probative, and substantial evidence to prove that the appellant was insubordinate and neglected his duties. The appellant[']s supervisor stated that she would rely on "a fair and unbiased way" to record time keeping. It was never proven that the email time keeping method was fair and unbiased. There were never any tests ran nor examples provided in 2008 nor 2009 that would show that when an email was sent by an individual and when that same email was received by the recipient, that the times would correspond as exactly the same. Furthermore, with the many well documented issues and problems with the university email server system and the office calendar, email time keeping could not provide a fair and unbiased method of keeping an accurate account of the appellant's arrival and departure times from the office. The appellee provided no evidence that the appellant would not commit to a fair and unbiased method of reporting his time keeping.

4. The Franklin County Court of Common Pleas erred in accepting email evidence from Jae Westfall as reliable, probative and substantial evidence showing appellant[']s insubordination. It was clearly documented by Supervisor Lahmers that it was recognized that there would be deviations in the noon to one pm lunch time due to "unforeseen circumstances." It would take several minutes to clear the desk and to secure important documentation and information before the appellant could leave his area for lunch as noted. Franklin County Court of Common Pleas erred in accepting evidence of Jae Westfal[l's] displeasure of the small deviation of the time for lunch as showing the appellant as being insubordinate and neglecting duty. It should also be noted that Westfal[l's] documented response shows that the appellant did not use his entire lunch hour and returned five minutes early to his position.

5. The Franklin County Court of Common Pleas erred by accepting as reliable, probative and substantial evidence that no other employees by hiring personnel were allowed a flexible schedule. There were two other employees in the department and several classified civil servants under the hiring personnel David Hamann that were allowed flexible work schedules at various times. It should also be noted that these individuals were never scrutinized for their arrival and departure times from the office and allowed several minutes to arrive at the office to be considered late. There were never any documented office policies that stated the procedure for being late to the office nor any documented or stated office policy for what would happen when an office personnel was late to the office.

{¶18} In *Pawloski v. Ohio Dept. of Transp.*, 10th Dist. No. 12AP-161, 2012-Ohio-4907, ¶ 6-7, this court noted the applicable standards of review for a court of common pleas and an appellate court in reviewing an order of the SPBR, holding in relevant part:

In an administrative appeal, pursuant to R.C. 119.12, the common pleas court reviews an agency's order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. \* \* \* In performing this review, the court may, to a limited extent, consider the credibility of the witnesses as well as the weight and probative character of the evidence. \* \* \* This standard of review permits the common pleas court to substitute its judgment for

that of the administrative agency; however, the court must give due deference to the administrative resolution of evidentiary conflicts.

An appellate court's review is more limited than that of the common pleas court. \* \* \* Unlike the common pleas court, an appellate court does not weigh the evidence. \* \* \* Rather, review by the court of appeals is limited to a determination of whether or not the common pleas court abused its discretion in determining that the agency's order is supported by reliable, probative, and substantial evidence. \* \* \* An abuse of discretion implies that a decision is both without a reasonable basis and is clearly wrong. \* \* \* Absent an abuse of discretion, an appellate court may not substitute its judgment for that of the administrative agency or the common pleas court. \* \* \* However, on questions of law, the common pleas court does not exercise discretion and the court of appeals' review is plenary.

(Citations omitted.)

{¶19} Appellant's first and fifth assignments of error are interrelated and will be considered together. Under his first assignment of error, appellant argues that the trial court erred in finding that he failed to provide evidence of disparate treatment. Appellant points to his own hearing testimony as evidence of disparate treatment. Under his fifth assignment of error, appellant contends that two employees in his department were allowed flexible work schedules at various times, and that these individuals were never scrutinized for their arrival and departure times.

{¶20} Ohio Adm.Code 124-9-11 states in part:

(A) The board may hear evidence of disparate treatment between the appellant and other similarly situated employees of the same appointing authority for the purpose of determining whether work rules or administrative policies are being selectively applied by the appointing authority or to determine whether the discipline of similarly situated employees is uniform. Requests for discovery under this rule shall be limited to information relating to specific incidents or persons known to the employee or his representative.

(B) Evidence of disparate treatment will be considered in evaluating the appropriateness of the discipline which was imposed.

{¶21} In general, "[t]he issue of whether employees are sufficiently similar to merit consideration as evidence of disparate treatment is for the trier of fact, i.e. the Board of Review." *Swigart v. Kent State Univ.*, 11th Dist. No. 2004-P-0037, 2005-Ohio-2258, ¶ 37. Further, "[a]lthough the Board of Review has discretion to consider evidence of disparate evidence in evaluating the appropriateness of discipline, the administrative code does not mandate absolute uniformity of discipline. 'An employee's discipline must stand or fall on its own merits.' " *Id.* at ¶ 38, quoting *Green v. W. Res. Psych. Habilitation Ctr.*, 3 Ohio App.3d 218, 219 (9th Dist.1981).

{¶22} In the present case, the trial court rejected appellant's claim that SBPR failed to take into consideration evidence of disparate treatment on the following grounds:

First, despite being ordered to do so by the ALJ, Appellant never notified the University that he intended to offer evidence that other employees in his department performed similar acts for which he was disciplined, but for which they were not disciplined in a similar manner. The ALJ ordered Appellant to provide the names of any such employees, the appropriate dates on which they allegedly performed the same acts for which Appellant was disciplined, and the names of any witnesses in support of such allegations. Appellant never notified the University that he intended to offer evidence of disparate treatment, and he never provided the identifying information to support such allegations.

Second, at the SPBR hearing on February 9, 2010, Appellant did not produce any evidence that other employees in his department performed similar acts for which he was disciplined, but for which they were not disciplined in a similar manner. To the contrary, it was not until this appeal that Appellant attempted to establish, through his briefs, that he was the victim of disparate treatment.

Appellant's failure to raise the issue of disparate treatment at his SPBR hearing resulted in the waiver of that issue for appellate purposes.

{¶23} The record indicates that the administrative law judge issued a procedural order, dated October 14, 2009, which stated in part:

Pursuant to Appellee's request, the Appellant is hereby **ORDERED** to provide the Appellee with the following discovery information:



(1) Do you intend to offer at your hearing in this appeal any evidence concerning "disparate treatment"; that is, do you maintain that other employees within our appointing authority have performed similar acts for which you have been disciplined, but have not been disciplined in a similar manner?

(2) If so, please give the name of each employee, the approximate date upon which each employee allegedly performed the same act for which you have been disciplined, and the name of any witness in support of this allegation.

(Emphasis sic.)

{¶24} As noted by the trial court, appellant did not notify appellee or the administrative law judge that he intended to offer such evidence (i.e., appellant never submitted the names of other employees or dates upon which such employees allegedly performed the same act for which appellant was disciplined). Nor did appellant present evidence during the administrative hearing identifying similarly situated employees who were treated more fairly. In his pro se objections to the administrative law judge's report and recommendation, appellant raised the claim that "[o]thers in the office were allowed to attend educational events, seminars and even university events freely at their request." Appellant did not, however, present testimony on this issue during the hearing, and the trial court did not err in concluding that appellant's failure to submit evidence of disparate treatment at the hearing constituted a waiver of that issue. *See Long v. Ohio Dept. of Job & Family Servs.*, 180 Ohio App.3d 772, 2009-Ohio-643, ¶ 54 (10th Dist.) (appellant's failure to point to specific evidence he presented at administrative hearing pertaining to alleged disparate treatment "constituted a waiver of the issue").

{¶25} Appellant's first and fifth assignments of error are without merit and are overruled.

{¶26} Appellant's second, third, and fourth assignments of error are interrelated and will be considered together. Under these assignments of error, appellant asserts that the findings of inefficiency, insubordination, and neglect of duty were not supported by reliable, probative, and substantial evidence and that the trial court, in considering evidence of insubordination, erred in admitting certain correspondence of Jae Westfall,

an employee of appellee. Appellant also argues that the trial court erred in finding his request for sick leave was disapproved because he failed to provide required documentation; appellant maintains he provided documentation with respect to the Family Medical Leave Act ("FMLA") supporting his need for sick leave during the time period in question.

{¶27} Pursuant to R.C. 124.34, "civil service employees may only be terminated for an enumerated list of reasons." *Wiebusch v. Cleveland, Civ. Serv. Comm.*, 8th Dist. No. 97714, 2012-Ohio-3953, ¶ 25. R.C. 124.34 states in part:

No \* \* \* employee shall be \* \* \* removed, or have the \* \* \* employee's longevity reduced or eliminated, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, \* \* \* insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the \* \* \* employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.

{¶28} The administrative law judge, in considering evidence pertaining to appellee's order of removal on the grounds of inefficiency, insubordination, and neglect of duty, rendered the following conclusions of law:

As was revealed by the testimony and documentary evidence presented, Mr. Love failed to update the office calendar, provide office personnel with important information, and produce his Time Sheets and Leave Forms in an accurate and a timely manner. As noted in his June 8, 2007, Letter of Reprimand, Mr. Love had an "on-going problem with routine task completion with Leave Forms and Time Sheets" and continued to be late and Calendars were not managed appropriately. Similar remarks are found on Mr. Love's 2006 – 2007, 2007 – 2008, and 2008 – 2009 Employee Performance Reviews. \* \* \* While Mr. Love presented mitigating testimony that his computer was slow and that he lacked access to the SIS system, this did not excuse failure to complete the above listed problems. Access to the SIS system was not required to make changes to the office calendar or provide accurate Time Sheets and Leave Forms in a timely manner. \* \* \* Ultimately, these excuses were unconvincing.

\* \* \*

After being tardy to work on August 5, 2008, and with a history of punctuality issues already on record, Ms. Lahmers issued Mr. Love a written reprimand for tardiness that directed him to e-mail her upon Mr. Love's arrival and departure from the office. After several e-mails between Mr. Love and Ms. Lahmers regarding Mr. Love's failure to provide said e-mails, Mr. Love received a four day suspension on October 30, 2008. Ms. Lahmers issued Mr. Love a Letter of Scrutiny in November 2008, in which she once again directed Mr. Love to e-mail her upon his comings and goings from the office. After Mr. Love complained to Mr. Hamann regarding discrepancies in Time Sheet entries, Mr. Hamann suggested Mr. Love follow Ms. Lahmers e-mail directive. Mr. Love testified that not once did he e-mail Ms. Lahmers regarding his arrival or departure from the office. Mr. Love's mitigating testimony regarding slowness of his computer and fear of a faulty timestamp are unconvincing due to his lack of even one attempt to follow Ms. Lahmers directive.

Appellant was also insubordinate in his failure to submit the proper documentation for Leave Forms. After using more sick leave that he had accrued, Ms. Lahmers directed Mr. Love in the November 2008 Letter of Scrutiny to provide "a signed note from a licensed medical practitioner on his or her office stationary, together with [Mr. Love's] completed Application for Leave form, *after* each sick leave absence." (emphasis added). After Mr. Hamann provided Mr. Love with clarification as per this directive, Mr. Love still occasionally failed to provide the proper documentation, even when requested by Ms. Lahmers.

\* \* \*

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant was neglectful of his duties. The documentary and testimonial evidence revealed that the Appellant knew of the established standard of conduct with regards to his scheduled work and lunch hours, submission of Time Sheets and Leave Forms, and following his supervisor's directives. Each of the steps of Mr. Love's progressive discipline at OSAS mentioned at least one of these issues, and at times, all of them. As shown above, Mr. Love continually arrived late to work and at times arrived back from lunch late. Similarly, Mr. Love had consistent

issues completing his Time Sheets and Leave Forms accurately, thus creating more work for Ms. Lahmers and Mr. Hamann. Mr. Love also failed to complete his duty of updating the office calendar in a timely fashion. Mr. Love was aware of his duties regarding his attendance, Time Sheet and Leave Form submissions, and calendar updates; however, he knowingly breached them.

{¶29} A review of the administrative hearing indicates that Hamann, the human resources administrator for PAES, testified as to the corrective disciplinary process with appellant involving various matters, including discrepancies with his timesheets. According to Hamann, there were "frequently errors in the timesheets or the leave applications that Phillip Love submitted, and we found ourselves frequently trying to get resolution to the errors it contained and trying to make sense of the information and try to get it into the system accurately." (Tr. 102-03.) Hamann stressed to appellant "the need to be timely in submitting his timesheet, that when he wasn't timely and when there were inaccuracies on his timesheet or his leave application it created a lot of additional work for the staff in my office, and that it put us at risk." (Tr. 105-06.) Following a reprimand and suspensions, "the same issues were prevailing as far as Phillip's performance problems and discrepancies. He continued to be tardy to work. He continued to take his lunch hour outside the period that was designated and quite frequently. He continued to be tardy returning from work (sic)." (Tr. 109.)

{¶30} Hamann further testified that appellant was insubordinate in failing to follow his supervisor's directive to email when he "came and went from the office. He would not wear his name badge at the front desk. He was inefficient in his support duties which was \* \* \* voiced by the entire professional staff in the O.S.A.S. unit." (Tr. 109.) Hamann testified that appellant "was not proactive in his approach to his work and he was inefficient in managing the calendar system," a matter that was "a frequent topic of conversation." (Tr. 110.) Further, "the same issues continued throughout the progressive discipline process without being corrected or seeing some improvement." (Tr. 110.)

{¶31} Appellant's immediate supervisor, Lahmers, also testified as to her involvement in the disciplinary process involving appellant. According to Lahmers, there was "frequently confusion about when he was coming and going." (Tr. 156.) Appellant's

time and attendance issues created coverage problems at the front desk. On August 5, 2008, Lahmers requested that appellant document through emails his arrival and departure times, as well as lunch times, "as a fair and unbiased way to document his timekeeping." (Tr. 155-56.) Lahmers sent appellant another letter on August 28, 2008, requesting that he document his time-keeping by sending an email. This request was made because appellant was "frequently tardy in reporting to work." (Tr. 157.) Appellant, however, "never sent any of the e-mails." (Tr. 155.)

{¶32} Appellant mentioned various reasons why he did not comply with the request, including "computer issues broadly," but appellant never proposed any alternatives to her directive. (Tr. 157.) According to Lahmers, appellant "didn't want to be singled out as the only person that had to do it, but he was the only person that I supervised that had time and attendance issues, so that was why I asked him to do that." (Tr. 157.)

{¶33} In November 2008, appellant received a four-day suspension for excessive tardiness and refusing to follow directives with respect to sending the requested emails, scheduling meetings, submitting goals, wearing his name badge, and using his personal computer at the front desk. Lahmers engaged in "multiple informal counseling sessions" with appellant in an effort to correct these deficiencies. (Tr. 159.)

{¶34} In appellant's employee performance review for June 2008 through May 2009, Lahmers noted concerns about "time and attendance issues, refusal to follow directives, concerns about work quality and productivity." (Tr. 161.) Lahmers cited appellant's struggles with completing "basic tasks," such as "coming to work on time each day, completing his timesheet, managing staff calendars." (Tr. 163.) Appellant also refused to follow the directive to wear his name badge. Lahmers cited frequent occasions she was "trying to track down medical documentation or correcting discrepancies between leave forms and the timesheet, tracking down the timesheet itself." (Tr. 167-68.)

{¶35} Appellant, who testified on his own behalf, stated that he was frustrated with the manner in which he was treated at the office. When asked why he did not email his arrival and departure times, appellant responded: "I wasn't actually refusing. I just wished there was another way that I could document – we had talked about me coming to

her office and just saying hi." (Tr. 226.) He stated that his concern with email involved "computer problems," that it would be "slow," and that it would "show late." (Tr. 227.)

{¶36} The trial court, in reviewing the hearing evidence, noted that appellant received "many forms of progressive discipline" for various matters, including (1) poor work performance, (2) excessive tardiness, (3) failure to complete tasks in a timely fashion, (4) failure to properly manage the office calendars, (5) failure to submit timesheets and leave forms in a timely fashion, (6) refusal to document his time-keeping by emailing his arrival and departure times to his supervisor, (7) refusal to wear his name badge, and (8) conducting personal business at the front desk. Based upon the record presented, the trial court found reliable, probative, and substantial evidence to support appellee's decision to remove appellant from his employment due to inefficiency, insubordination, and neglect of duty. Upon review, we conclude that the trial court did not abuse its discretion in finding there was reliable, probative, and substantial evidence to support appellee's decision to remove appellant from his employment pursuant to R.C. 124.34.

{¶37} Appellant contends the trial court erred in failing to recognize that his time out of the office and sick leave had been approved under FMLA. The record indicates, however, that appellant did not raise, in his objections to the administrative law judge's report, any argument with respect to FMLA documentation supporting his need for sick leave. Further, in his brief before the trial court, appellant's only argument with respect to this issue was that his supervisor "should have provided information and direction" to utilize FMLA "for his time off."

{¶38} Appellant's contention that he had "insufficient notice" as to his employer's expectations with respect to completing medical documentation is unpersuasive. During the administrative hearing, the state introduced a letter of scrutiny, dated November 21, 2008, from Lahmers to appellant, in which Lahmers directed appellant to submit proper documentation with respect to future requests for sick leave. The directive provided in part that "[f]ailure to provide documentation will result in your time away from the office being disapproved." Lahmers testified that she issued the letter because appellant "was using more sick leave than he was earning." (Tr. 159.) Lahmers testified that appellant's attendance pattern "got worse" after issuance of this letter. (Tr. 160.) Hamann also

testified that appellant had failed to provide "appropriate medical documentation for his sick leave occurrences." (Tr. 104.) In an email from Lahmers to appellant dated July 8, 2009, Lahmers reminded appellant that, "[p]er the letter of scrutiny you received last Fall, medical documentation is required when you plan to use sick leave." The email further stated: "Phil, you have not followed call in procedures for yesterday or today's absences and this is unacceptable."

{¶39} The administrative law judge noted that, after using more sick leave than he had accrued, appellant was directed by Lahmers "to provide 'a signed note from a licensed medical practitioner on his or her office stationary, together with [appellant's] completed Application for Leave form, *after* each sick leave absence." (Emphasis sic.) (Administrative Law Judge Report, 12.) The administrative law judge found that, after Lahmers provided appellant with clarification as per this directive, appellant "still occasionally failed to provide the proper documentation, even when requested by Ms. Lahmers." (Administrative Law Judge Report, 12.)

{¶40} As noted, the record of the administrative hearing contains no documentation with respect to eligibility for FMLA leave, nor did appellant raise this in his objections to the administrative law judge's report. Further, there was reliable, probative, and substantial evidence to support the administrative law judge's finding that appellant was insubordinate in failing to submit proper documentation for leave.

{¶41} Appellant also contends that the trial court erred in admitting into evidence a document from his temporary supervisor, Jae Westfall. During the hearing, Lahmers was questioned about state's Exhibit No. 24, a letter written by Westfall regarding Westfall's supervision of appellant for an approximately two-month period in 2009 when Lahmers was on leave from the office. Appellant, however, did not object to the admission of this exhibit during the hearing. Further, in his objections to the report of the administrative hearing officer, appellant did not raise the issue of admission of the Westfall letter or emails involving Westfall, nor did he mention them in his brief before the trial court. Having failed to afford the administrative hearing officer the opportunity to "avoid and possibly correct" any purported error in the admission of this evidence, appellant's argument with respect to error in the admission of this document is not well-taken. *Gipe v. State Medical Bd. of Ohio*, 10th Dist. No. 02AP-1315, ¶ 48 (the appellant's

failure to object to admission of report generally considered to be a waiver of the objection).

{¶42} Accordingly, appellant's second, third, and fourth assignments of error are without merit and are overruled.

{¶43} Based upon the foregoing, appellant's first, second, third, fourth, and fifth assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, affirming the order of the SPBR, is hereby affirmed.

*Judgment affirmed.*

CONNOR and DORRIAN, JJ., concur.

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