**OCB AWARD NUMBER: 2671**

SUBJECT: Arb Summary # 2671

TO: All Advocates

FROM: Rachel Dornoff

OCB GRIEVANCE NUMBER: DMR-2020-01080-4

DEPARTMENT: State of Ohio, Department of Developmental Disabilities Columbus Developmental Center

UNION: OCSEA

ARBITRATOR: Howard D. Silver, Esquire

GRIEVANT NAME: Dieudonne Tabot

MANAGEMENT ADVOCATE: Jill M. Harlan

UNION ADVOCATE: Michael Tenney

OCB REPRESENTATIVE: Victor Dandridge

ARBITRATION DATE: May 6, 2021

DECISION DATE: July 7, 2021

DECISION: Grievance DENIED

CONTRACT SECTIONS 24.01

OCB/BNA RESEARCH CODES: 113.04; 118.01; 118.315; 118.6513

KEYWORD SEARCH TERMS: Resident Abuse; Just Cause for Termination; Physical Violence

**HOLDING: Grievance DENIED**. The abuse was proven by the evidence in the hearing record through the support of video and other testimony by staff members. The Grievant perpetrated physical violence against a resident of the facility and provides just cause for their termination.

**Facts:** The grievant was a 5-year employee who worked as a Therapeutic Program Worker at the Columbus Developmental Center with no past discipline. On the morning of January 8, 2020, an independent contractor present to draw blood of some residents heard a slap coming from a resident’s room. She stopped and looked inside to see the grievant slapping a resident across the face. She reported the incident, and the Employer completed an internal investigation. Upon completion of the investigation the grievant was fired for abusing a resident.

**The Union argued:** The Employer failed to complete a full and complete investigation and did not provide clear and convincing evidence in support of the grievant’s termination. The Union claimed the Employer should have interviewed the resident who was hit as well as the independent contractor in order to conduct a complete and through investigation. They also argued against the credibility of the only eyewitness of the event, claiming her report and testimony were full of inconsistencies. The Union claimed the inadequate investigation by the Employer, lack of physical evidence and reliable testimony to the events require the grievance to be granted.

**The Employer argued:** There was just cause for termination because of reliable eye-witness testimony recounting the grievant physically abusing a resident. The witness reported the incident immediately and had no reason to lie or fabricate events. When the grievant engaged in unacceptable care by slapping a resident, the grievant forfeited his claim to continuing employment. The physical abuse perpetrated by the grievant provided just cause for removal.

**The Arbitrator found:** The Employer was required to prove by a preponderance of the evidence that there was just cause for terminating an employee. The grievant was terminated for cause because there was sufficient proof in the hearing record to find the grievant abused a client under his care. Based on the evidence presented at the arbitration, the arbitrator believed the witness who reported the abuse to be credible. Her timeline left no room for error, aligned with the video footage available, and was supported by other testimony by staff. Therefore, the grievance is **DENIED.**