**OCB AWARD NUMBER: 2109**

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| **SUBJECT:** | **ARB SUMMARY # 2109** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20100826-0132-04-01** |
| **DEPARTMENT:** | Dept. of Public Safety |
| **UNION:** | Ohio State Troopers Association |
| **ARBITRATOR:** | E. William Lewis |
| **GRIEVANT NAME:** | Phet Phong |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Hershel M. Sigall |
| **ARBITRATION DATE:** | October 25, 2010 |
| **DECISION DATE:** | December 27, 2010 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 19.01—Standard; Article 19.05—Progressive Discipline |
| **OCB RESEARCH CODES:** | Dishonesty-In General—118.6481; Last Chance Agreements—118.75; Progressive Discipline—118.301  |
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**HOLDING: Grievance DENIED. The Arbitrator found that there is a preponderance of evidence and testimony regarding the creditability between the Grievant and supervisor that supports the supervisor’s allegation and to justify the Grievant’s removal.**

The Grievant was a nine year employee and was assigned to Post 57, Dayton, at the time of the alleged incident. On May 21, 2010, the Grievant failed to answer repeated check-ups during his tour of duty. A Police Officer was sent to the Grievant’s location and told the Grievant to contact his dispatcher. The Grievant met with his supervisor concerning his failure to respond to Post check-ups. The Grievant denied that he was sleeping during this meeting, but admitted to sleeping during the administrative investigation. The Grievant was charged with violating Rule 4501:2-6-02(E), false statement, truthfulness. The Grievant was on a Last Chance Agreement (LCA) and was terminated as a result of the violation.

The Employer arguedthat the Grievant was terminated for violating his LCA that he signed on February 19, 2010. The Grievant’s immediate supervisor claimed that the Grievant failed to answer check-ups and instructed dispatch to contact local police to check on the Grievant’s location. When the Grievant answered the check-up, he was told to meet his supervisor. During the meeting, the Grievant told his supervisor that he was not sleeping. The Miamisburg Police Department’s responding officer that was sent to the Grievant’s location stated that the Grievant was sleeping when he arrived. The Employer argued that the Grievant lied to his direct supervisor, and the Grievant failed to modify his unacceptable behavior. Therefore, the grievance should be denied in its entirety.

The Union arguedthat the Employer did not prove by a preponderance of evidence that the Grievant lied to his direct supervisor. The Union argued that it would be irrational for the Grievant to lie to his direct supervisor when the Miamisburg PD responding officer confirmed that he was sleeping. The Grievant admitted to sleeping on May 21, 2010, during the administrative investigation. Therefore, the grievance should be granted.

The Arbitrator foundthat the Grievant’s direct supervisor contacted the Miamisburg PD responding officer after meeting with the Grievant. The fact that the Grievant’s direct supervisor had to contact the Miamisburg PD to confirm Grievant’s story is strong evidence that the Grievant initially denied he was sleeping. The Grievant could not remember what he told his supervisor in regards to whether he was sleeping, but could remember other answers during the same conversation. The Arbitrator determined there was no convincing testimony or evidence submitted, to support the allegation that the Grievant’s supervisor was “out to get” the Grievant. Therefore, the grievance was denied.