**OCB AWARD NUMBER: 2142**

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| **SUBJECT:** | **ARB SUMMARY # 2142** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **33-00-20101021-0064-01-04** |
| **DEPARTMENT:** | Ohio Veterans’ Home |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Jennifer Grimes |
| **MANAGEMENT ADVOCATE:** | Jessie Keyes |
| **2ND CHAIR:** | Aimee Szczerbacki |
| **UNION ADVOCATE:** | Deborah Bailey  |
| **ARBITRATION DATE:** | July 27, 2011 |
| **DECISION DATE:** | September 15, 2011 |
| **DECISION:** | Modified  |
| **CONTRACT SECTIONS:** | Article 24.04 – Investigatory Interview; Article 24.05 – Pre-Discipline; Article 24.06 – Imposition of Discipline  |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.6561—Work Rules-In General; 118.67—Disparate Treatment  |

**HOLDING: Grievance contesting removal for inappropriate administration of Ativan was MODIFIED. Just cause was found but removal was too excessive. Factors considered were: The agencies’ refusal to repeat steps in progressive discipline, the grievant’s 16 years of employment and a discipline record based only on violations of leave policy with one disputed violation similar to the instant issue.**

The Grievant is a sixteen year employee at the Ohio Veterans’ Home Agency facility in Sandusky, Ohio. On September 9, 2011, the Employer received a complaint from nursing assistants on the unit alleging that the Grievant had inappropriately administered Ativan to a resident because they heard the resident crying, screaming, and refusing to take the medication. An investigation was initiated; it was discovered that all the required documentation was not completed to demonstrate the need to administer the medication to ensure resident safety. The Grievant had attended training on the proper manner to document patient care. In this case, the Grievant did not document her care of the patient in accordance with the form guidelines. The Grievant made notes of the patient’s behaviors in the progress notes but not on the required form. The Grievant’s prior record consisted of: a one day working suspension for exceeding sick leave balances, a two day fine for late notification and failure to follow policy (resident related), and a five day working suspension for late notification of an absence. The Grievant was removed on October 18, 2010 for violations of OVH Corrective Action Standard—Failure to follow policy/procedure (resident related).

The Employer arguedthat it is not disputed that the Grievant failed to properly document her duties inclusive of the administration of medication and behavior of a resident in accordance with form guidelines and policy. The failure to Grievant placed the safety of the resident at risk. The violation is considered a major infraction according to the parties’ collective bargaining agreement. The Grievant had a five day suspension on her record, and the next level is removal. It is the practice of the Employer to move forward progressively through the disciplinary grid without repeating any level discipline. The Grievant was not disparately treated. The Employer requested that the grievance be denied.

The Union arguedthat there was no just cause for removal. The Grievant made clerical mistakes. The Grievant provided enough information on the necessary documents to ensure the safety of the resident. The discipline was not commensurate with the offense. There is a pattern of poor documentation, no documentation and late documentation at the facility without employee discipline. The Union contended that the Board of Nursing recommended education on documentation as an appropriate remedy in these circumstances. The removal was excessive, severe and punitive. The grievance should be granted, and the Grievant be reinstated to her former position with full back pay and all rights and benefits to be made whole.

The Arbitrator foundthat the Grievant violated the policy. The claim of disparate treatment is without merit. In the opinion of the RN manager, the nurses mostly likely read the progress notes first, then the other documents to gather as much information at possible on the resident. The Arbitrator found that removal was excessive because the grievant is a 16 year employee, prior discipline and the progression of that discipline was based almost exclusively on attendance and leave related issues, and the grievant had not been afforded the opportunity to correct her performance as it relates to documentation required for patient safety. The Arbitrator concluded that a five day suspension is appropriate in this case.