**OCB AWARD NUMBER: 2149**

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| **SUBJECT:** | **ARB SUMMARY # 2149** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110307-048-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Jason Fantone  |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin Miller |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | September 9, 2011 |
| **DECISION DATE:** | December 9, 2011 |
| **DECISION:** | Grievance is Modified |
| **CONTRACT SECTIONS:** | Article 19—Disciplinary Procedure |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.634—Off-Duty Misconduct; 118.06—Back Pay Awards  |
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**HOLDING: The Grievance is MODIFIED. The Arbitrator reduced the termination to a 90 day suspension with restoration of the Grievant’s employment and benefits following the application of the suspended time. Mitigating factors were: the unintended outcome resulting from the Grievant overmedicating himself with an anti-depressant and then consuming alcohol and numerous instances where similar State Trooper actions resulted in job retention and lesser discipline.**

The Grievant was a Trooper for approximately seven years at the time of his termination. He was scheduled to work the 11pm-7am shift at the Canfield Post on January 1-2, 2011. He asked and was granted off the second half of that shift to attend a football game.

A few months earlier, the Grievant was prescribed 20mg of an antidepressant by his family physician. He had been weaning himself off the medication by taking only 10mg a day instead of the prescribed 20mg. Before going to the game, the Grievant took 20mg of his medicine to cover up that he was taking an antidepressant. He had taken 10 mg only 4 hours earlier upon finishing his work shift. While tailgating at the football stadium, the Grievant drank approximately five beers and a small amount of hard liquor. The Grievant and his companion went to their seats at the stadium.

The Grievant thought he recognized a Deputy Sheriff as his brother in law. He began to throw peanuts at a Deputy as a prank. The Deputy, who was not his brother in law, approached the Grievant and the Grievant became verbally belligerent. When the Grievant’s brother-in-law, who is a Deputy Sheriff, was called to the scene, he tried to calm the Grievant down. By this time, the Grievant, under the apparent influence of the large dosage of the anti-depressant and the alcohol, did not even recognize his brother-in-law and remained agitated. The Grievant was placed in a holding cell at the stadium as is the normal practice with patrons who become unruly while intoxicated. While detained, the Grievant needed to go to the bathroom and kicked open the door of the holding cell causing damage to the door. The Grievant was arrested for disorderly conduct and held in custody overnight. A charge of felony vandalism was filed the next day.

The Grievant was terminated on February 28, 2011 from the State Patrol for having brought discredit to the Patrol in violation of work rule 4501:2-6-02(I)(1), Conduct Unbecoming an Officer.

The Employer arguedthat the Grievant’s behavior must be met with severe consequences. The Grievant’s behavior damaged the State’s reputation when news of that behavior was reported by the media. The excuse of “the alcohol and drugs made me do it” is unacceptable for a highly-trained Ohio State Trooper. The Grievant ignored the warning signs of mixing drugs and alcohol. The Employer contended that the Grievant purposely took the extra dose of the anti-depressant to enhance the effects of the alcohol he intended to consume at the game. The Grievant was taught in the Academy his behavior both on- and off-duty must be exemplary because law enforcement officers are held to a higher standard than the public. The Drug-Free Policy is not applicable, because the Grievant was terminated for bringing discredit to the Division, not for being intoxicated and/or impaired. The Grievant’s conduct was so egregious, mitigation is not warranted.

The Union arguedthat the Grievant was an exceptional trooper. Numerous awards and citations were presented. The Union contended that the Grievant’s doctor did not discuss the interaction of the drug with alcohol when prescribing the antidepressant, but acknowledged that the pill bottle contained the standard warning the drug should not be taken with alcohol. The Grievant had never experienced serious negative effects from drinking alcohol while taking the drug. While the Grievant was verbally profane and abusive toward the Deputies, he was not overtly threatening or physically abusive. The Grievant was not drunk. The alcohol, interacting with an expanded dose of the antidepressant, caused the irrational behavior that resulted in the Grievant being charged criminally. The Union argued that if the Grievant was simply drunk, or charged with off-duty DUI, he would not have been fired. The media coverage was inaccurate and overstated. Other Troopers have brought discredit to the Division, through the media, and have been put on a Last Chance Agreement. The Grievant should face no more than a three- or five-day suspension. His seniority and lost benefits should be restored.

**The Arbitrator found** that the Grievant’s behavior brought discredit to the Division. Termination on the other hand, was an improper remedy in this matter for two reasons: 1) the record demonstrates the Grievant did not intend to embarrass himself at the game; and 2) some Troopers who have engaged in equal or worse misconduct have brought discredit to the Division but have received lesser penalties or have been returned to work via arbitration. There is no evidence that the Grievant intentionally took an extra dose of medicine to enhance the effect of the alcohol. The lack of intent to bring discredit to the Division mitigates against termination. The lesser penalties meted out to other Troopers and even a Sergeant for bringing discredit to the Division equal to if not worse than that caused by the Grievant convinced the Arbitrator the State did not have just cause to terminate the Grievant. The termination is to be converted into a ninety-calendar-day unpaid suspension. The Grievant is to be reinstated to his position with back pay, seniority, and benefits restored but for the period of the ninety-day suspension.