**OCB AWARD NUMBER: 2156**

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| **SUBJECT:** | **ARB SUMMARY # 2156** | | |
| **TO:** | **ALL ADVOCATES** | | |
| **FROM:** | **DAVID LONG** | | |
| **OCB GRIEVANCE NUMBER:** | **27-05-20101020-0088-02-11** | | |
| **DEPARTMENT:** | Ohio Department of Rehabilitation and Correction | | |
| **UNION:** | SEIU - 1199 | | |
| **ARBITRATOR:** | Nels E. Nelson | | |
| **GRIEVANT NAME:** | Robert Dalton | | |
| **MANAGEMENT ADVOCATE:** | Ashley Hughes | | |
| **2ND CHAIR:** | Buffy Andrews | | |
| **UNION ADVOCATE:** | Josh Norris | | |
| **ARBITRATION DATE:** | August 16, 2011 | | |
| **DECISION DATE:** | October 28, 2011 | | |
| **DECISION:** | DENIED | | |
| **CONTRACT SECTIONS:** | 8.01 – Discipline Standard; 8.02 – Progressive Discipline | | |
| **OCB RESEARCH CODES:** | 118.01 – Discipline-In General; 118.301 – Progressive Discipline; 118.6521 – Insubordination; 118.655 – Medical Information-Failure to Submit to Exam | | |
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**HOLDING: Grievance DENIED. The Arbitrator found that there was just cause for the Grievant’s removal because he did not complete a required evaluation. The Employer was justified in requiring the Grievant to undergo an IME or face disciplinary action. The Arbitrator found no merit to the Union’s claim that the Employer did not investigate the Grievant’s complaints or that these complaints were justified.**

Grievant, Robert Dalton, worked as a Psychology Assistant for the Department of Rehabilitation and Corrections at the Mansfield Correctional Institution. The Employer sent the Grievant for an IME based on workplace observation and placed the Grievant on administrative leave. Grievant refused to take part in the entire evaluation, believing parts were unnecessary. Following a pre-disciplinary meeting, Grievant was alleged to have violated Rule 7 (not following orders) and 24 (lying or failing to cooperate in an official investigation). After finding Grievant failed to cooperate with the evaluation and refused to submit to parts of the test, he was terminated.

Employer argued that Grievant’s removal was justified under the progressive discipline scheme and the IME was necessary. Grievant received a letter regarding the exam which specified that disciplinary actions would occur if the evaluation was not completed; thus, because Grievant only participated in part of the evaluation, he violated Rules 24 and 7. Employer further rejects allegations that Grievant’s behavior was acceptable under the circumstances. Finally, Employer argued the evaluation was still independent because the evaluator was free to conduct whatever tests he or she deemed necessary.

The Union argued that there was no just cause for removal. First, it argued that Grievant participated in the exam but did not know the entire evaluation was mandatory, and if he had known, Grievant would have complied. Second, it argued that Grievant was never notified that failure to take the exam would result in disciplinary consequences and rejected Employer’s claim that he should have known because of the requirements of his job. Thirdly, the Union argued that because Employer suggested the IME it was not independent. Finally, the Union claimed that Grievant’s complaints that led to the IME were justified and should have been investigated as these complaints support the fact that he was targeted by Employer.

The Arbitrator found that the Employer met the burden of proving that Employer was justified in terminating Grievant. Grievant had notice that he was required to comply with the IME from the letter. Therefore, under the disciplinary grid given Grievant’s disciplinary history, termination was appropriate. The Arbitrator also found that under the circumstances, i.e. Grievant’s job description, he was on notice that he was required to complete the evaluation. Additionally, given the nature of Employer’s work, Employer was in a position to require an IME. Because Employer investigated Grievant’s claims and found them unfounded, suggestions by Grievant that the Employer was “out to get him” were justified. Further, the background, past practice and objective nature of the evaluation supported that the IME was still independently conducted. Finally, the Arbitrator found that Grievant’s failure to submit to the exam justified discipline as it prevented the examiner from providing a definitive opinion.