**OCB AWARD NUMBER: 2157**

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| **SUBJECT:** | **ARB SUMMARY # 2157** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **24-13-20101108-0037-01-04** |
| **DEPARTMENT:** | DODD |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David M. Pincus |
| **GRIEVANT NAME:** | Melissa J. Perin |
| **MANAGEMENT ADVOCATE:** | Cornell Hale |
| **2ND CHAIR:** | Jessie Keyes |
| **UNION ADVOCATE:** | James J. Hauenstein |
| **ARBITRATION DATE:** | April 25, 2011 |
| **DECISION DATE:** | February 2, 2012 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24—Discipline; Section 24.01— Standard |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.6462—Client Abuse-MRDD & MH |
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**HOLDING: Grievance DENIED. The Grievant was removed patient abuse. Section 24.01 of the collective bargaining agreement precludes an arbitrator from modifying a removal if the removal was the result of an employee abusing a patient in the care or custody of the State of Ohio. Because the Arbitrator concluded that the Grievant did abuse a patient, the removal was upheld and the grievance was denied.**

The Grievant had been employed at Tiffin Developmental Center as a Therapeutic Program Worker (TPW) since May 8, 2000. On August 18, 2010, the Grievant was asked by a co-worker to supervise a patient who required “eyesight” at all times. Because the Grievant also had to supervise a patient who required “eyesight,” she positioned herself in the hallway in order to monitor two patients at the same time. When the co-worker returned, she noticed that a door was hanging from only one hinge and debris was on the floor. The co-worker asked the other employees what had happened to the door, but no one provided a response. The Grievant suggested that the door could have been damaged the previous evening. Later in the day, other employees indicated that the Grievant had thrown a patient into the door and caused the observed damage. This information was relayed to supervisors and an investigation resulted. A removal order for the Grievant was issued on October 15, 2010.

The Employer argued that the evidence showed that the Grievant abused a patient. Another TPW, Jessica Vallejo, witnessed the abuse but did not report the incident immediately because she was afraid that the Grievant would retaliate. Two other workers, a TPW and a carpenter, both testified about the condition of the door after the alleged incident. The co-worker who asked the Grievant to watch the patient maintained that the door was not damaged prior to her leaving her work area. The Employer also argued that the Grievant was inconsistent and evasive when providing her version of events.

The Union argued that the Employer failed to support its claims with conclusive evidence and that there was no just cause for the removal. The Union pointed to the lack of any physical injuries sustained by the patient allegedly thrown into the door, as well as the physical discrepancy between the Grievant and patient as evidence that the abuse did not occur. The Union also argued that the testimony provided by TPW Vallejo was untrustworthy because she did not report the incident in a timely manner, and that the testimony was the result of a conflict between Vallejo and the Grievant. The Union further argued that the exact nature of the damage to the door, as well as when the damage occurred, could not be fully known.

The Arbitrator found that the allegations of abuse were factual. Because the Arbitrator concluded that abuse of a patient in the care or custody of the State of Ohio had occurred, the CBA did strictly prohibited authority to modify the termination. The finding that abuse occurred was therefore sufficient to maintain the removal. The Arbitrator concluded that the damage sustained to the door could only have resulted from some form of extreme action initiated by the Grievant. The Arbitrator also concluded that TPW Vallejo, and not the Grievant, provided a more credible version of events. The Arbitrator determined that because abuse of a patient occurred, the removal was warranted.