**OCB AWARD NUMBER: 2231**

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| **SUBJECT:** | **ARB SUMMARY # 2231** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130605-0050-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sandra Mendel Furman** |
| **GRIEVANT NAME:** | **Rufus V. Irby III** |
| **MANAGEMENT ADVOCATE:** | **Lt. Charles Linek** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **12-18-2013** |
| **DECISION DATE:** | **1-6-2014** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article: 19.00** |
| **OCB RESEARCH CODES:** | **118.08 Suspensions- In General** |

**HOLDING: Grievance DENIED. The suspension was upheld. Grievant’s condition caused him to fall asleep on the job. But despite the Grievant’s awareness of the problem, the Grievant did nothing to help himself or to alert the patrol. Sleeping on the job is a prohibited activity that cannot be tolerated.**

The Grievant was a Motor Vehicle Inspector Trooper in the Wilmington District. His primary duties included school bus and roadside vehicle inspections. On January 28, 2013, Grievant was determined to be sleeping at the school bus garage site for the Mt. Healthy school district. Grievant admitted to being asleep. During the investigation, it was determined that the Grievant was asleep at the bus garage several days a week. On February 13, 2013, Grievant was also allegedly sleeping on the job. Grievant admitted that he was sleeping at work on this date as well. Grievant claimed that his coworkers also slept on the job. On February 14, 2013, Grievant was found asleep again. He was released to work light duty on February 25, 2013. After, additional sleeping on the job occurred on March 18, 19, and 20 of 2013. Sometimes the Grievant would be asleep for up to two hours. Grievant was given a three-day suspension.

The Employer contended that the Grievant brought discredit to the Patrol when he was found asleep. Further, the Employer followed the disciplinary grid. Grievant was found asleep on 5 different occasions in only a two-month span. During these sleep sessions, members of the public were able to view him. Grievant was aware that he would fall asleep at work but he came to work anyway.

The Union argued that the Patrol did not treat the Grievant as someone who was ill. The photographs taken of the Grievant were disrespectful and mocking. Grievant was not napping. The explanation for his sleeping habits has been redacted. Further, the Grievant deserved empathy not discipline. Therefore, there was not just cause for the suspension.

The Arbitrator found that the Grievant had direct awareness about his sleeping condition and did nothing to mitigate the problem, either by helping himself or alerting the patrol. Grievant has been an employee for 33 years. Due to medical conditions, the Grievant falls asleep on duty. In a deep sleep, it often took a significant effort to wake him. Sleeping on duty had been practiced for years, acquiesced by his coworkers. Despite the lack of care his fellow workers displayed toward him, the Grievant was still on notice for sleeping on the job. And sleeping on the job is prohibited conduct. Therefore, the grievance was denied.