

**Decision and Award in the Matter of Arbitration between:**

**State of Ohio  
Department of Mental Health and Addiction Services:  
Summit Behavioral Healthcare**

**and**

**Ohio Civil Service Employees Association  
Local 11, AFSME  
AFL-CIO, Union**

**Grievance #: DMH-2019-01775-14**

**Grievant: Stephen Gilmore**

**Arbitrator: Jack Buettner**

**Date of Hearing:** December 20, 2019

**Date Briefs Received:** January 31, 2020

**Date Decision Issued:** March 2, 2020

**Advocate for the Employer:**

Laurie E. Spolarich  
Labor Relations  
Office of Human Resources  
30 East Broad Street, 11<sup>th</sup> Floor  
Columbus, OH 43215

**Advocate for the Union:**

Mal Corey, Staff Representative  
390 Worthington Road, Suite A  
Westerville, OH 43082-8331

By mutual agreement the Hearing was convened on December 20, 2019, at 9:00 AM. The Hearing was held at Summit Behavioral Healthcare in Cincinnati, Ohio. Jack Buettner was selected by the parties to arbitrate this matter as a member of the panel of permanent umpires pursuant to Article 25 of the Parties' respective Collective Bargaining Agreement (CBA) effective May 12, 2018 to February 28, 2021.

The parties submitted the following stipulations:

1. This grievance is properly before the Arbitrator.
2. The Grievant was hired by Summit Behavioral Healthcare on August 16, 1993.
3. At the time of his removal, the Grievant was employed as a Financial Associate.
4. May 7, 2019, the Grievant was removed from his position.
5. Per the removal letter, the Grievant was removed for violation of HR-22: Code of Conduct and General Work Rules, violation of Work Rule 2.6-Failure to perform work assignments/duties.
6. At the time of the termination, the Grievant had an active 5-day working suspension, effective pay period ending February 16, 2019, for Code of Conduct and General Work Rules, violation of Work Rule 4.16-Failure to adhere to HIPPA regulations and guidelines.
7. At the time of the termination, the Grievant had an active 3-day working suspension effective pay period ending November 10, 2018, for Code of Conduct and General Work Rules, violation of Work Rule 4.16-Failure to adhere to HIPPA regulations and guidelines.
8. At the time of the termination, the Grievant had an active reprimand dated April 3, 2018, for Code of Conduct and General Work Rules, violation of Work Rule 4.1-Failure to follow policy and procedure; Rule 4.15-Actions that could potentially harm an employee, patient, or a member of the general public; and Rule 4.16-Failure to adhere to HIPPA regulations and guidelines.

The Parties each stipulated to the statement of the issue, a series of background facts, and the admission of joint exhibits. The Parties have also agreed to the arbitration of this matter. No issues of either procedural or jurisdictional arbitrability have been raised, and the matter is now properly before the arbitrator for a determination of the merits.

**In attendance for the Employer:**

Laurie Spolarich	MHAS-Labor Relations Advocate
Melissa Brock	HR Director, SBH
Chris Haselberger	OCB
John Eardley	Chief Operating Officer, SBH
Amanda Parson	Revenue and Reimbursement Manager, MHAS Central Office

**In attendance for the Union:**

Mal Corey	OCSEA Staff Rep- First Chair
Stephen Gilmore	Grievant
Anissia Goodwin	OCSEA Ops Director
Carlton Townsend	Union Representative

The parties were asked to submit exhibits into the record.

**The following were submitted as Joint Exhibits:**

Joint Exhibit #1	State of Ohio and OCSEA Labor Agreement: May 12, 2008- February 28, 2021
Joint Exhibit #2	Grievance Trail: DMH-2019-01775-14: Stephen Gilmore
Joint Exhibit #3	Termination letter effective May 7, 2019
Joint Exhibit #4	Prior Discipline: 5-day Working Suspension, effective pay period ending February 16, 2019
Joint Exhibit #5	Prior Discipline: 3-day Working Suspension, effective pay period ending November 10, 2018

Joint Exhibit #6	Written Reprimand, dated April 3, 2018
Joint Exhibit #7	Due Process Trail
Joint Exhibit #8	Report of Investigation
Joint Exhibit #9	Statement from Stephen Gilmore, dated March 27, 2019
Joint Exhibit #10	Email from J. Eardley, "AFA submittals to FABS"
Joint Exhibit #11	Email from Amanda Parsons, "FABS Billing Tab Missing Data"
Joint Exhibit #12	Email from John Eardley, "SBH AFA vs Admit vs Audit"
Joint Exhibit #13	Email from Amanda Parsons, "AFA Compliance"
Joint Exhibit #14	SBH Audit FY 19
Joint Exhibit #15	Email from Amanda Parsons, "AFA submittal to FAB timeline"
Joint Exhibit #16	Position Description Acknowledgement with Position Description for Financial Associate
Joint Exhibit #17	FABS: Financial Billing System
Joint Exhibit #18	Fiscal Investigator Process
Joint Exhibit #19	HR22: Code of Conduct and General Work Rules
Joint Exhibit #20	Training Record
Joint Exhibit 21	Employee History Report

**The following was submitted as a Management Exhibit:**

Management Exhibit #1	Ohio Department of Mental Health and Addiction Services Application for Financial Assistance
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**The following were submitted as Union Exhibits:**

Union Exhibit #1	OHMAS/Revenue & Recovery--Unredacted
Union Exhibit #2	Email from L. Spolarich- Subject: Requested Information with S. Gilmore time record
Union Exhibit #3	S. Gilmore Manager Evaluation, Annual Review—7/1/2016-6/15/2017

**Background:**

Summit Behavioral Healthcare (SBH) is a 200-bed forensic psychiatric hospital. It is one of six regional hospitals run by the Department of Mental Health and Addiction Services (MHAS). The Grievant, Stephen Gilmore, was hired there on April 16, 1993. He was removed May 7, 2019, for a violation of the Code of Conduct and General Work Rules, Rule 2.6: Failure to perform work assignment/duties. The Grievant was a Financial Associate at the time of his removal and had held that position for twelve years. He had three prior active disciplines.

**Issue:**

Was the Grievant, Stephen Gilmore, removed for just cause and if not, what shall the remedy be?

**Management Position:**

Management contended that the Grievant was removed for just cause. The Grievant failed to complete work duties in an accurate and timely manner thus violating the Code of Conduct and General Work Rules, Rule 2.6. As a Financial Associate, one of the Grievant's main functions was to interview newly admitted patients and gather financial

information to complete the Application for Financial Assistance (AFA) form. This form must then be uploaded into the Financial and Billing System (FABS) in order to process billing and to receive payment for patient care.

Amanda Parson, Central Office Revenue and Reimbursement Manager, testified that the expectation for completion of the AFA is within 72 hours of a patient being admitted. If it is not able to be completed within 72 hours, two or more attempts were to be made within 10 to 14 days of the patient's admission to complete the form. This information was relayed to the Grievant via email from Ms. Parson as well as a discussion with the Grievant's supervisor, Chief Operating Officer (COO) John Eardley.

Audits on the accuracy and timeliness of the uploaded AFAs for January and February of 2019 showed that the Grievant was not meeting the timelines. There were 37 admissions at SBH in January yet no AFAs were uploaded to FABS for that month. There were 24 admissions in February yet no AFAs were uploaded to FABS for that month. Further, in an email from Ms. Parson dated March 8, 2019 (Joint Exhibit #13, p. 2) she states: "There are 0 AFA uploaded for the actual months, January had 68 backlogged ones uploaded and February had 2 backlog ones uploaded." Ms. Parson testified that none of the AFAs uploaded in January were from January and some were from admissions dating back to August through November of the previous year.

A review of the AFA forms completed by the Grievant was shown in Joint Exhibit 14, page 2. Twenty-five (25) AFAs were reviewed. A zero (0) in a particular column indicated a part that was not completed. The column labeled "Income" shows 17 out of 25 as a zero (0). The directions specifically state, "If income = 0, please explain how supported." No supporting information was given. The Grievant's work showed noncompliance in sixteen (16) sections of the AFA forms reviewed.

The Union argued that Ms. Parson told the Grievant he had a 60-day window to upload AFAs into FABS. Ms. Parson testified that she did not state that. She told the Grievant that the AFAS should be uploaded as soon as they are completed, but no later than the end of the month when possible since billing is completed on the 1<sup>st</sup> and 15<sup>th</sup> of each month.

Since the Grievant failed to ensure the AFA forms were completed as required and failed to upload those forms into FAB in a timely manner, Management felt they had just cause to remove Mr. Gilmore.

### **Union Position:**

The Union contended that the Grievant was removed without just cause from his employment. In Joint Exhibit #14, p. 2, Management cited under the column labeled “Timely first attempt” that the Grievant had a 19 out of 25. Six accounts, however, were for patients who had been admitted during the week the Grievant was on vacation leave, making it impossible for him to meet with patients within the first 72 hours of admission.

The Union brought up a procedural issue that occurred during the pre-disciplinary hearing. Management presented an un-redacted copy of the form outlining the accounts audited by Management used to support their position against the Grievant. The Union received only the redacted copy. The Union requested a copy of the un-redacted document and a 3-day extension to allow the Union time to investigate. The extension was denied and the hearing continued. The Union did receive an un-redacted copy three (3) days later. This information substantiated that the Grievant was on vacation leave at the time of several of the alleged infractions.

The Union contended that the Grievant’s supervisor was not clear on the timelines for completing AFAs. Therefore Mr. Gilmore should not be held accountable for following directions of a supervisor who was himself unclear of the expectations.

### **DISCUSSION AND DECISION:**

In reviewing the issue, I have analyzed the testimony and all evidence put forth by both sides. The job of an Arbitrator, in a disciplinary case, is to evaluate the evidence and determine if “just cause” exists to support the action taken by Management. An Arbitrator generally must determine whether an employer has clearly proven that an

employee has committed an act warranting discipline and that the penalty of discharge is appropriate under the circumstance. [*Hy-Vee Food Stores, Inc. and Int'l Brotherhood of Teamsters, Warehousemen, and Helpers of America*, 102 LA 55 (Bergist 1994)].

This Arbitrator concludes that the Grievant did, indeed, commit an act warranting discipline. Management presented clear and convincing evidence that Mr. Gilmore did violate HR-22 Code of Conduct and General Work Rules, Rule 2.6: Failure to perform work assignments/duties. It was alleged that the Grievant “failed to accurately and timely complete, submit, key in data, and upload all Summit Behavioral Healthcare newly admitted patient Applications for Financial Assistance (AFA) informational forms to the Financial Billing System (FABS) within the established timelines” (Joint Exhibit #6). The allegations were twofold. The first issue was that of completing the AFA form in a timely manner and the second was uploading that information into FABS in a timely manner.

The Union only addressed the first issue, that of obtaining the AFA information. In referring to Joint Exhibit #14, p.2, an audit done on the AFA forms for January and February of 2019, the Union noted that in the column labeled “Timely/1<sup>st</sup> attempt” the Grievant had a 19 out of 25. The union also pointed out that the Grievant was on vacation leave during this time so he could not have done the initial intake of the six patients scored as 0 in a timely fashion. While this may be accurate, Management pointed out that the rest of the audit showed incomplete areas. For example, in the column labeled “\*If Income = 0 Explain” the Grievant had a 7 out of 25. If the income equaled 0, an explanation needed to be included and there were no explanations. Overall, the Grievant had a 77.9% accuracy score. Ms. Parson, who oversees the billing for all six of the other buildings stated that other audits from other buildings showed an accuracy of over 90%.

During the pre-disciplinary hearing, the Union raised a procedural concern about the audit document that Management used to support their allegations. The Union only received a redacted form. When the Union requested an un-redacted form and a three-day extension to review and investigate this information, Management denied the



request. According to the CBA, Article 24.05--Pre-discipline (Joint Exhibit #1), "If the Employer becomes aware of additional witnesses or documents that will be relied upon in imposing discipline, they shall also be provided to the Union and the employee prior to the meeting. In the event the Employer provides documents on the date of the meeting, the Union may request a continuance not to exceed three (3) days." The document that Management used during the pre-disciplinary hearing was not a *new* or *additional* document. It was an un-redacted form of the same document that the Union had received. Thus, there was no procedural error.

The second aspect of this issue is that of uploading the AFA information into FABS. The Union did not speak to this issue which would seem to this Arbitrator to be the most disconcerting. MHSA cannot bill until the AFAs are uploaded in FABS. If the information is not accurate or timely, it impacts patient and facility billing. Central Office uses this information to process billing to ensure MHSA receives payment for patient care. Additionally, if that AFA is selected as a part of a Medicare audit, there is a potential for lost revenue in the form of imposed penalties.

Management presented evidence that the Grievant did not upload the AFAs in a timely manner. Joint Exhibit #14, p.1, showed an audit for January and February of 2019 dated March 7, 2019. Ms. Parson stated that there were 37 admissions at SBH for the month of January. None of the AFAs for those January admissions were uploaded into FABS in January. There were 24 admissions in February and the Grievant did not upload any AFAs into FABS for those February admissions. Additional research showed that the AFAs that the Grievant did upload in January were for admissions from August through November of the previous year.

The Union argued that the Grievant was unsure of the timelines, had a supervisor who was unsure of the timelines, and was told by Ms. Parson that he had 60 days to upload information. Ms. Parson testified that she never told the Grievant there was a 60-day window. She testified that she informed him that the AFAs should be uploaded as soon as they are completed but no later than the end of the month to facilitate billing. If a patient is admitted near the end of a month, it was possible that the AFA would be

uploaded in the next month. The Grievant's previous supervisor may have been unclear as to the expected timelines, but Mr. Gilmore was informed on several occasions of the timelines. On September 26, 2018, Ms. Parsons sent an email (Joint Exhibit #10, p. 2) to him that discussed the procedures for completing AFAs and uploading them. It also contained training materials. On December 10, 2018, an email from COO Eardley (Joint Exhibit #11, p. 2) was sent stating that the standard for submission of an AFA was 72 hours after admission. On March 8, 2019, Ms. Parson and COO Eardley both sent emails (Joint Exhibit #15, p.3) which again clarified the timelines. Ms. Parson sent another email on March 8, 2019 (Joint Exhibit #13, p. 2) showing data that 0 AFAs had been uploaded for the actual month of admission for January and February of 2019.

Management did follow the steps of Progressive Discipline as outlined in the CBA, Article 24.02-Progressive Discipline. (Joint Exhibit #1). The steps are:

- a. One (1) or more written reprimand(s);
- b. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days shall be issued by the Employer.
- c. One (1) or more day(s) suspension(s). A minor suspension is a one (1) day suspension, a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) day suspension. No suspension greater than five (5) days shall be issued by the Employer.
- d. Termination

The Grievant received a written reprimand dated April 3, 2018 (Joint Exhibit #6). The Grievant received a 3-day working suspension effective November 10, 2018 (Joint Exhibit #5). The Grievant received a 5-day working suspension, a major working suspension, effective February 16, 2019 (Joint Exhibit #4). HR-22, Progressive Discipline, allows the employer use of discretion in following these steps. Also, the Grievant was made aware of the consequences of his failure to accurately complete and file the forms.

The penalty of discharge is very serious and not to be taken lightly. As in all discipline/discharge cases, the Arbitrator evaluates Management's actions against the Seven Tests as written by Arbitrator Carroll Daugherty [Brand, N. & Biren, M. H. (Eds.) (2015). Chicago, IL: American Bar Association. Discipline and discharge in arbitration, third edition.] The questions an Arbitrator must consider:

1. Did the employer give notice?
2. Was the rule reasonably related to operations?
3. Was there an investigation prior to discipline?
4. Was the investigation fair?
5. Was there sufficiency of proof?
6. Were the rules applied in a nondiscriminatory way?
7. Was the penalty appropriate?

In each instance, this Arbitrator can answer yes. The Grievant did receive notice, a fair investigation was conducted, Management supplied sufficient proof to substantiate the allegations, and the rules were applied in a nondiscriminatory fashion. The rule was certainly related to the operations of the facility. Noncompliance could and has resulted in financial penalties. Thus, the penalty of discharge is appropriate.

**AWARD:**

The hearing record shows that the Employer has proven by a preponderance of evidence that the Grievant, Stephen Gilmore, violated Work Rule 2.6 of the Code of Conduct and General Work Rules. For the reasons stated above, the grievance is denied.

This closes the arbitration.

Respectfully submitted this 2<sup>st</sup> day of October, 2020,

John F. Buettner, Arbitrator

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that one (1) copy each of the Arbitration report was delivered via email on the 2nd day of March 2020, to

Ms. Laurie Spolarich, Advocate for the Employer

and

Mr. Mal Corey, Advocate for the Union

*Jack Buettner*

Jack Buettner