**OCB AWARD NUMBER: [2638]**

SUBJECT: Arb Summary # 2638

TO: All Advocates

FROM: Tom Dunn

OCB GRIEVANCE NUMBER: DMR-2019-02148-04

DEPARTMENT: Ohio Department of Developmental Disabilities

UNION: OCSEA

ARBITRATOR: Craig Allen

GRIEVANT NAME: Angela Taylor

MANAGEMENT ADVOCATE: Andy Bower

UNION ADVOCATE: Mal Corey

OCB REPRESENTATIVE: Tom Dunn

ARBITRATION DATE: February 25, 2020

DECISION DATE: April 3, 2020

DECISION: Denied

CONTRACT SECTIONS 24

OCB/BNA RESEARCH CODES: Just Cause

 AWOL

 Job Abandonment

 Exhaust

 Attendance

**HOLDING:** The Arbitrator found that the Employer met its burden and had just cause to terminate the Grievant. The Arbitrator found that the Grievant had exhausted all accrued leave benefits and was not eligible for FMLA. The Arbitrator recognized that the nature of the Grievant’s job makes attendance a high priority. Finally, the Arbitrator agreed with the Employer’s argument that “a salvageable employee would care enough about her job to appear at her grievance arbitration.” The Arbitrator found that the Employer had just cause. Therefore, the grievance is **DENIED.**

**Facts:** The grievant was removed for violation of DODD work rules, Job Abandonment, A-1, No call/no show without proper authorization (unauthorized leave/AWOL) for three (3) consecutive shifts or more.

On March 21, 2019 the Grievant contacted the HR Manager at SODC requesting assistance in filling out and RFL and to obtain disability forms. The Grievant indicated her physician advised her to remain off work until May 21, 2019. On March 22, 2019, the Grievant had exhausted all leave accruals, did not qualify for FMLA, had exhausted her lifetime maximum 2080 hours of disability leave, and was considered Absent Without Leave (AWOL). On April 16, 2019, Grievant received and signed for a letter giving her a direct order to return to work on Friday, April 26, 2019, at 6:00 a.m. As of May 7, 2019, the Grievant had not returned to work or contacted the center regarding her return, so a pre-disciplinary packet was mailed to the grievant, which she received and signed for. The pre-disciplinary meeting was scheduled for May 15, 2019. On May 13, 2019, SODC received a fax stating the Grievant was cleared by her doctor to return to work on May 14, 2019. Grievant returned to work on May 14, 2019 after being in an unauthorized leave status for thirty-five consecutive days, totaling 280 hours.

**The Union argued:** The Grievant is an 18-year employee with no active discipline. The Grievant has received great performance evaluations. The Union further argued that management was aware of the Grievant’s condition and that the grievant was under doctor’s care because in the letter containing the direct order, management made reference to the Grievant not being medically able to return to work until May 21, 2019. The Union argued the absence was not voluntary, there are numerous mitigating factors, the grievant medically could not return to work by the date set by management, and the grievant was in an approved unpaid leave of absence. Further, management allowed the grievant to be at work on the clock for 3-weeks before termination.

**The Employer argued:** The grievant exhausted all leave accruals, her lifetime maximum of disability, and did not qualify for FMLA. Further, the grievant never requested an unpaid leave of absence. The grievant tried reapplying for disability but was denied. The grievant knew she had no benefits/time left to utilize. The grievant received a direct order to return to work and failed to comply. The grievant was AWOL for 35-consecutive days. Upon receiving the direct order and the pre-disciplinary packet, the grievant made no attempt to contact management regarding the situation. A first offense violation of work rule A-1, per the discipline grid, is removal. Management satisfied just cause.

**The Arbitrator found:** The Grievant was removed by the Employer for just cause as the Grievant had exhausted all accrued leave benefits, was not eligible for FMLA, was not in any type of Leave of Absence and had not requested such, and failed to report to work in violation of the Ohio Department of Developmental Disability’s policy. The Employer referenced their Disciplinary Grid, Job Abandonment A-1 No Call/No Show, which states that the penalty for a violation of A-1is automatic removal. A witness for the employer testified that the Grievant was never in a leave of absence with non-pay status and had never requested to be placed into such status. Further, the Grievant never submitted any documentation showing an inability to return to work. The testimony provided by the Employer’s witness was uncontradicted. Therefore, the Arbitrator found that the Employer had just cause to terminate the Grievant. Therefore, the Arbitrator **DENIED** the grievance.