

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Gregory Holder,

Appellant,

v.

Case No. 08-IDS-06-0252

Department of Mental Retardation and Developmental Disabilities,
Warrensville Developmental Center,

Appellee.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED**, pursuant to O.A.C. § 124-1-03(A) and O.A.C. § 124-3-02.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

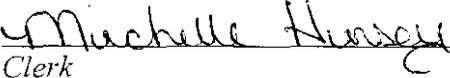


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 5, 2008.



Clerk

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

11.5.08

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Gregory Holder,

Case No. 08-IDS-06-0252

Appellant

v.

September 19, 2008

Department of MR/DD, Warrensville
Developmental Center,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant's June 5, 2008, filing of an appeal of his involuntary disability separation. Appellee asserted, in its Response to this Board's August 5, 2008, Procedural Order and Questionnaire, that the notice of involuntary disability separation provided to Appellant was sent by certified mail on May 2, 2008, and returned to Appellee unclaimed. Appellee further asserted that a copy of the notice of involuntary disability separation was also sent to Appellant by regular U.S. Mail on May 2, 2008, and provided an affidavit to support such assertion. Appellant filed no memorandum *contra*.

Ohio Administrative Code Section 124-3-02 provides that when an order of involuntary disability separation served by certified mail is returned as refused or unclaimed, service may be made by ordinary mail. An order of involuntary disability separation served in such a manner is deemed served on the third calendar day after the order is mailed. In this instance, that date would have been May 5, 2008. As previously noted, Appellant's appeal was filed with this Board on June 5, 2008.

Accordingly, based upon the uncontroverted evidence contained in the record, I find that the State Personnel Board of Review is without jurisdiction to hear this appeal because the appeal was not filed within ten (10) calendar days after Appellant received notice of his involuntary disability separation, as required by Ohio Administrative Code Section 124-1-03(A)

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Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: