

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

Sharon Young,

Appellant,

v.

Case No. 08-INV-01-0010

Montgomery County Board of Commissioners,

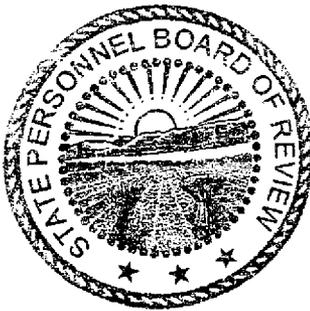
Appellee.

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 request for an investigation be **TERMINATED**, pursuant to O.R.C. § 124.56.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

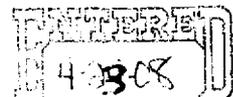
J. Richard Lumpe, *Chairman*

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, April 23, 2008.

Michelle Hursey
Clerk



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

Sharon Young,

Case No. 08-INV-01-0010

Appellant

v.

March 21, 2008

Montgomery County Board of Commissioners,

Elaine K. Stevenson

Appellee

Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's filing of a request for an investigation. On February 21, 2008, a procedural order was issued, instructing Appellant to specify the requirements of civil service law which she alleges have been violated by Appellee. On March 18, 2008, Appellant filed her response, in which she alleges that Appellee took retaliatory action against her for having reported violations of state and federal law and that such retaliation is in violation of R.C. 124.341. Appellant states in her response that the alleged retaliatory acts occurred as follows: (1) In February 2007, Appellant was transferred to another position. (2) In late March 2007, Appellant was prohibited from joining the union despite the fact that her peers belonged to the union. (3) In April 2007, Appellant was denied a bonus awarded to her peers in the bargaining unit. (4) In April 2007, Appellant was barred from returning to work after a brief illness. (5) In April 2007, Appellee placed her on administrative leave when she was cleared by her physician to return to work. (6) In June 2007, Appellant suffered disparate treatment when Appellee presented to her a settlement offer to return to work with a release from liability. (7) Appellant was unlawfully terminated for having filed reports as a whistleblower under R.C. 124.341.

Initially, I note that in addition to the above referenced investigation appeal, Appellant has filed six other appeals with this Board: (1) a suspension appeal, SPBR Case No. 08-SUS-01-0007; (2) a reduction appeal, SPBR Case No. 08-RED-01-0008; (3) a whistleblower appeal, SPBR Case No. 08-WHB-01-0009; (4) a removal appeal, SPBR Case No. 08-REM-01-0011; (5) another whistleblower appeal, SPBR Case No. 08-WHB-01-0012; and (6) another request for an investigation, SPBR Case No. 08-INV-01-0013. The statuses of those appeals are set forth below:

SPBR Case Nos. 08-SUS-01-0007 and 08-WHB-01-0009 have been assigned to the above hearing officer and these appeals have been scheduled for a record hearing on May 9, 2008. SPBR Case No. 08-RED-01-0008 was determined to be redundant and therefore it was recommended that this appeal be dismissed.

SPBR Case Nos. 08-REM-01-0011, 08-WHB-01-0012, and 08-INV-01-0013 have been assigned to Administrative Law Judge Christopher Young (ALJ Young) and these appeals have been scheduled for a status conference with ALJ Young.

Turning to the instant request for an investigation, I note that although Appellant's allegations in this request appear to be untimely filed whistleblower claims under R.C. 124.341 rather than matters that fall within this Board's investigatory powers, Appellant's allegations were considered in the context of this Board's investigatory authority and in the context of Appellant's other appeals pending before this Board. The analysis and conclusions set forth below are based on the information contained in the record of the instant request for an investigation and in the records of SPBR Case Nos. 08-SUS-01-0007 and 08-WHB-01-0009.

Unlike a court of general jurisdiction, the State Personnel Board of Review has authority only where it has been explicitly conferred upon it by the Ohio General Assembly. The Board's primary investigative authority is set forth in R.C. 124.56, which states that the Board shall conduct an investigation when it has reason to believe that:

. . . any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of this chapter of the Revised Code . . .

* * * *

Appellant alleges that she was transferred to another position in February 2007. Appellant alleges that she was prohibited from joining a union and she was denied a bonus awarded to her peers in the bargaining unit. Appellant alleges that she was barred from returning to work after a brief illness and she was placed on administrative leave when she was cleared by her physician to return to work. Appellant alleges that she suffered disparate treatment when Appellee offered her a settlement to return to work and she was unlawfully terminated for having filed reports as a whistleblower under R.C. 124.341.

With respect to Appellant's alleged February 2007 transfer, I note that Appellant did not file a direct appeal from that transfer in accordance with the time limit set forth in O.A.C. 124-1-03(D). Since Appellant had the right to file a direct appeal of the transfer action pursuant R.C. 124.33, I find that it is not appropriate for this Board to conduct a review of Appellant's transfer pursuant to the investigatory authority set forth in R.C. 124.56.

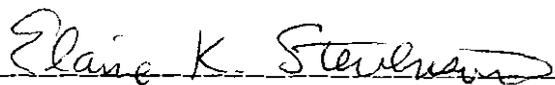
With respect to Appellant's allegation that she was prohibited from joining a union and denied a bonus awarded to her peers in the bargaining unit, I note that this Board does not have authority to investigate allegations concerning union membership or pay parity issues with respect to union and non-union employees. The State Employment Relations Board is charged with investigating unfair labor practices and other issues related to union membership and collective bargaining agreements.

With respect to Appellant's allegation that she was "barred" from returning to work after a brief illness, the information contained in the records of Appellant's above-referenced appeals indicates that this "bar" is related to Appellee's attempt or attempts to have Appellant undergo a medical examination pursuant to O.A.C. 123:1-30-03. Such an action does not constitute a violation of Revised Code Chapter 124. Moreover, the issue regarding Appellant's failure to appear for a scheduled medical evaluation as directed will be addressed in Appellant's direct appeals from her ten-day suspension and her removal.

With respect to Appellant's being placed on administrative leave, the information contained in the records of Appellant's appeals indicates that Appellee had concerns regarding Appellant's health and her ability to perform the essential job duties of her position, and, based on these concerns, Appellee initiated the involuntary disability separation process pursuant to O.A.C. 123:1-33 et seq. Such an action does not violate Revised Code Chapter 124. Appellant was placed on administrative leave on April 30, 2007 pending the outcome of a pre-disciplinary meeting that was scheduled to take place two days later and that concerned Appellant's apparent failure to appear for scheduled medical examinations. Pursuant to R.C. 124.388, an employee may be placed on administrative leave where the health or safety of an employee or of any person or property entrusted to the employee's care could be adversely affected. Such an action does not violate Revised Code Chapter 124.

With respect to Appellee's alleged settlement offer, such an offer does not constitute an appointment, layoff, reduction, suspension, or removal under R.C. 124.56. With respect to Appellant's removal, as noted previously, Appellant has filed an appeal of her removal, a whistleblower appeal related to her removal appeal, and another request for an investigation; those cases have been assigned to ALJ Young and have been scheduled for a status conference. Therefore, Appellant's removal will be reviewed by the ALJ assigned to those cases.

Based on the foregoing, I respectfully **RECOMMEND** that the instant request for an investigation be **TERMINATED**, pursuant to R.C. 124.56.


Elaine K. Stevenson
Hearing Officer