

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

David Davis,

*Appellant,*

v.

Case No. 08-REM-08-0473

Athens County Athens Hocking Solid Waste Authority,

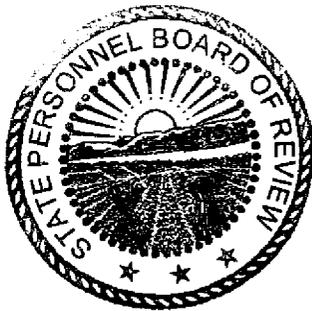
*Appellee*

**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** for untimely filing, pursuant to O.A.C. 124-1-03 (A).



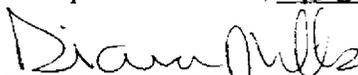
Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

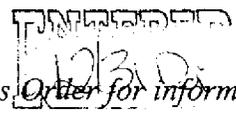
  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

**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 constitutes ~~(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, December 31, 2008.

  
\_\_\_\_\_  
Clerk

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

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

David Davis,

Case No. 08-REM-08-0473

*Appellant*

v.

November 3, 2008

Athens Co.,  
Athens Hocking Solid Waste District

*Appellee*

Christopher R. Young  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration November 3, 2008, upon Appellant's filing of an appeal of his removal on August 8, 2008, and upon the Appellant's and Appellee's response to the previously issued Procedural Order and Questionnaire filed with this Board on September 30, 2008, and October 10, 2008, respectively, and upon the Appellee's Motion to Dismiss filed with this Board on October 10, 2008 and upon the Appellant's motion contra to Motion to Dismiss filed on October 31, 2008.

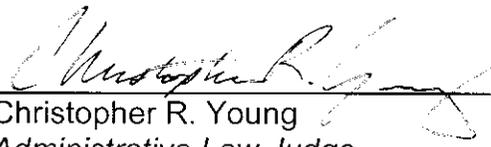
Based upon the evidence contained within the case file, I find that the Appellant was served via hand delivery an Ohio Revised Code section 124.34 Order of Removal on July 22, 2008. Further, I find that the Appellant did not file his appeal to this Board until August 8, 2008. The Appellant's assertions that someone at the State Personnel Board of Review told him on August 3, 2008, when he contacted the same, to file an appeal and it would in fact be accepted is not persuasive, as the Appellant was already late when he contacted the State Personnel Board of Review. It should be noted that the Board does not receive all O.R.C sections orders of removals, and thus when individuals contact the Board there is no way to confirm or deny their assertions, whether they are timely or not over the phone.

Ohio Administrative Code section 124-1-03(A) sets forth the time limits for filing an appeal from a "section 124.34 orders", which reads in pertinent part as follows:

A) Except as set forth below, appeals from "section 124.34 orders," including disability separations, shall be filed, in writing, within ten calendar days following the date the order is served on the employee.

Consequently, 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 following the date on which the order of removal was served on the employee, as required by Ohio Revised Code Section 124.34.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED**, as not being timely filed with this Board pursuant to O.A.C. 124-1-03(A).

  
\_\_\_\_\_  
Christopher R. Young  
*Administrative Law Judge*

CRY: