

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Jane W. Burt,

*Appellant,*

v.

Case No. 09-REC-04-0197

Stark County,  
Department of Job and Family Services,

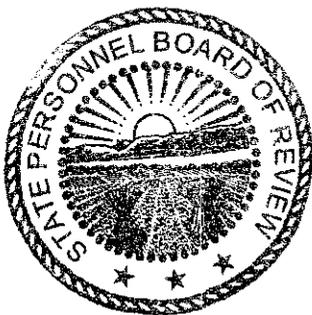
*Appellee.*

**ORDER**

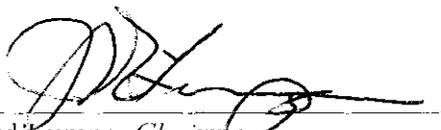
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** due to Appellant's failure to comply with the requirements set forth in O.A.C. §§ 124-11-07(A)(2), (C) and 124-1-03 (C).



Lumpe - Aye  
Sfalcin - Aye  
Tillery - 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, August 26, 2009.

  
\_\_\_\_\_  
Clerk

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

8-26-09

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

Jane W. Burt,

Case No. 09-REC-04-0197

*Appellant*

v.

July 16, 2009

Stark Co., Dept of Job & Family Services,

*Appellee*

Christopher R. Young  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellee's motion to dismiss filed on and July 1, 2009, requesting this Board to dismiss the Appellant's appeal for lack of a timely filing of the appeal. The motion contained a memorandum in support; an Affidavit of Valerie Nash, the Director of Human Resources for the Stark County Department of Job and Family Services and various accompanying documentation. The Appellant was provided with the requisite time to file a memorandum contract to Appellee's motion to dismiss, but, to date has not done so.

For clarification, the Appellee stated that on or around January 24, 2008, it filed a personal action form with the state of Ohio which resulted in a notice of a reassignment of the Appellant documenting her reclassification from the position of a Social Services Supervisor 2 to an Administrative Assistant Supervisor. See, the personal action form 4100 attached as exhibit A. On or around May 21, 2009, nearly 16 months after the filing of the personal action form with the state of Ohio the Appellant filed a notice of appeal with the State Personnel Board of Review on the grounds that her former position was reclassified.

Ohio administrative code section 124-1-03 (C) states in pertinent part:

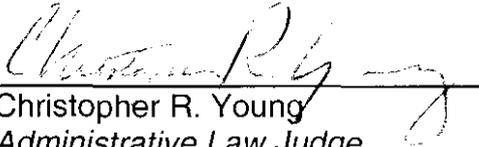
Appeals of reclassification is shall be filed, in writing, within 30 calendar days after receiving the notice of the results of the audit. A copy of the audit decision letter shall be attached to the appeal.

Jane W. Burt  
Case No. 09-REC-04-0197  
Page 2

The notice of the appeal, dated May 21, 2009, was filed a full 484 days after the personal action at issue was filed. As a result, the Appellant did not file the instant appeal in a timely manner.

Ohio Administrative Code section 124-11-07 sets forth the motions practice before this Board. Ohio Administrative Code section 124-11-07(A) (2) indicates that when a party files a dispositive motion, then an adverse party must respond affirmatively and show that there is a genuine issue in dispute. Ohio Administrative Code section 124-11-07 (C) sets forth a ten-day timeframe to respond to dispositive motions, such as the instant motion to dismiss. The Appellant has failed to file the required response to Appellee's motion to dismiss and thus, has failed to comply with Ohio Administrative Code section 124-11-07. Furthermore, Appellee's jurisdictional arguments addressing the above caption appeal appears to also have merit.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above caption appeal for Appellant's failure to comply with the requirements set forth in Ohio Administrative Code sections 124-11-07 (A) (2), (C) and 124-1-03 (C).

  
Christopher R. Young  
Administrative Law Judge

CRY: