

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

Rhonda Rismiller,

Appellant,

v.

Case No. 09-REM-08-0368

Darke County Auditor,

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.R.C. § 124.328 and for lack of jurisdiction over the subject matter of this appeal pursuant to O.R.C. §§ 124.03 and 124.11(A)(8).

Lumpe - Aye

Sfalcin - Aye

Tillery - Aye

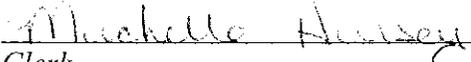


J. Richard Lumpe, *Chairman*

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, January 22, 2010.



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**

RHONDA RISMILLER,

Case No. 09-REM-08-0368

Appellant

v.

December 23, 2009

DARKE COUNTY AUDITOR,

JAMES R. SPRAGUE

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's August 11, 2009 postmarking of a notice of appeal letter and August 12, 2009 filing of a notice of appeal from her layoff from the position of Real Estate Clerk with Appellee, Darke County Auditor. *Appellant received notice of that layoff on July 17, 2009.* In Appellee's letter to Appellant notifying Appellant of her layoff, Appellee also asserts that Appellant's position falls within the unclassified service by operation of R.C. 124.11 (A)(8) as a personal exemption of the Darke County Auditor.

The record was thereafter developed through the issuance of a Questionnaire and the filing of a response and reply thereto. On December 8, 2009, Appellee filed a motion to dismiss, memorandum in support, the affidavit of Darke County Auditor Carol A. Ginn, and various other pertinent documentation. Appellant was provided with the requisite time to file a memorandum *contra* but, to date, has not done so.

O.A.C. 124-11-07 governs the motions practice before this Board. O.A.C. 124-11-07 (A)(2) requires the party served with a properly supported motion to dismiss, as here, to set forth specific facts showing there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a 10-day time frame for the opposing party to file a memorandum *contra* to a properly supported motion to dismiss.

In the instant appeal, Appellant has failed to comply with the requirements set forth in O.A.C. 124-11-07. Further, Appellee has provided sufficient documentation to support its assertion that Appellant failed to timely file (or postmark) her appeal within 10 days following her notice of layoff, as required by R.C. 124.328. Additionally, Appellee has provided sufficient documentation to support its assertion

RHONDA RISMILLER
Case No. 09-REM-08-0368
Page 2

that Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A)(8) as a personal exemption of the Darke County Auditor.

Accordingly, Appellant's appeal is untimely filed and this Board thus lacks jurisdiction over the subject matter of the instant appeal, Moreover, this Board lacks jurisdiction over Appellant's appeal pursuant to R.C. 124.03; since Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A)(8) as a personal exemption of the Darke County Auditor.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal both for untimely filing pursuant to R.C. 124.328 and for lack of jurisdiction over the subject matter of this appeal pursuant to R.C. 124.03 and R.C. 124.11 (A)(8).



JAMES R. SPRAGUE
Administrative Law Judge

JRS: