

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

Camille Campbell,

*Appellant,*

v.

Case No. 09-WHB-06-0316

Department of Mental Retardation  
and Developmental Disabilities Central Office,

*Appellee.*

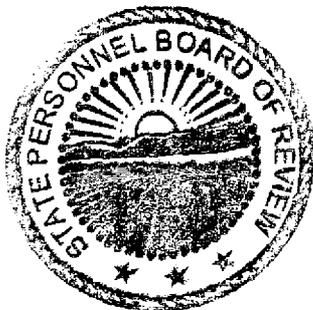
**ORDER**

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 lack of subject matter jurisdiction, pursuant to O.R.C. § 124.341.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye



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

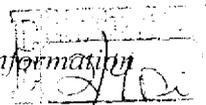
**CERTIFICATION**

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, February 4, 2010.

  
\_\_\_\_\_  
Michelle Hensley  
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**

Camille Campbell

Case No. 09-WHB-06-0316

*Appellant*

v.

December 28, 2009

Department of Mental Retardation and  
Developmental Disabilities, Central Office

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on December 28, 2009. A Procedural Order was issued by this Board on November 24, 2009 to Appellant Campbell. She filed her response on December 8, 2009 and Appellee filed a Reply to Appellant's Response to Procedural Order on December 21, 2009.

In looking at the statute governing "whistleblower" appeals, section 124.341 of the Ohio Revised Code, the pertinent part of the statute states as follows:

**(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority.** In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal auditing created under section 126.45 of the Revised Code.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the supervisor , appointing

authority, or the office of internal auditing, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission. (Emphasis added).

As can be seen from reading the provisions of R.C. 124.341(A), this statute protects an employee only if the following requirements have first been satisfied: (1) the employee filed a written report with either the **employee's supervisor or appointing authority identifying a violation of state or federal statutes, rules, regulations or the misuse of public resources**, or, in cases where the violation is believed to be a criminal offense, in addition to or instead of filing a written report with the employee's supervisor or appointing authority, the employee made a report with another official or entity named in the statute, and (2) **after filing a report under division (A), the appointing authority took disciplinary or retaliatory action against the employee as a result of the employee's filings.**

In *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, the Franklin County Court of Common Pleas restated these conditions as prerequisites to whistleblower jurisdiction under R.C. 124.341. The court in *Haddox* noted that "[j]urisdiction to invoke whistleblower protection requires that the whistleblower show that she 1) made a written report, 2) transmitted the written report to her supervisor, appointing authority, the state inspector general, or other appropriate legal official; and 3) identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report." See *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker's Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *State ex rel Cuyahoga Cty. SPBR*, 82 Ohio St. 3d 496, 696 N.E.2d 1054 (1998) and to *Chubb v. Ohio Bur. Of Worker's Comp*, 81 Ohio St. 3d 275, 690 N.E.2d 1267 (1998)).

The *Haddox* court went on further to explain that “the requirement of a written communication, specifically addressed to an appropriate individual, is an essential element of whistleblower protection and will be strictly applied.” *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker’s Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *Kuch v. Structural Fibers, Inc.*, 78 Ohio St. 3d. 134, 141, 677 N.E.2d 308 (1997)). Therefore, in order to invoke this Board’s jurisdiction, an employee must first establish that he or she complied with the reporting requirements of R.C. 124.341.

This Board’s Procedural Order directed Appellant Campbell to attach copies of the reports she filed which she believes qualify as “whistleblower” documents. Of the documents submitted by Appellant Campbell in response to the Procedural Order, none of them satisfy the requirements of section 124.341 of the Ohio Revised Code.

The requirement that the written communication identify a violation of state or federal statute, rule, or regulation, or misuse of public resources is not met by the documents submitted by Appellant Campbell. None of the documents submitted identify any violation of state or federal statute, rule, or regulation, or misuse of public resources by Appellee. Most of what Appellant Campbell submitted are emails back and forth to her supervisors regarding the omission of signatures on a letter, mistakes on tracking reviews and miscellaneous documents pertaining to her placement on administrative leave with pay and a letter to a psychologist. None of the documents cite to a violation of any statute or rule. While she attached the administrative rules governing Provider Compliance Reviews, none of her documents cite to any alleged violation of those rules or to any other violations of statutes or rules. As was argued in Appellee’s Reply, most of the documents submitted by Appellant Campbell appear to be documents that she would submit in the normal course of her job duties, thereby not qualifying as “whistleblower” documents. Since none of the documents contain a reference to any violation of any state or federal statute or regulation as called for under R.C. 124.341, they fail to satisfy the reporting requirements under R.C. 124.341 and *Haddox*.

In accordance with R.C. 124.341 and consistent with case law and similar state and federal procedures, an employee filing a whistleblower appeal is assigned

both the burden of proof and the initial burden of production. The employee's initial burden of production includes demonstrating that the employee filed a report with the appropriate entity specifically fulfilling the requisite reporting requirements of the pertinent whistleblower statute and that thereafter disciplinary retaliatory action was taken against the employee as a result of the employee having filed a report pursuant to that statute.

Accordingly, Appellant Campbell has failed to demonstrate that she met the requisite reporting requirements set forth in R.C 124.341, by failing to allege any specific violations of statute, rule or regulation. Thus, she has failed to meet her *prima facie* burden.

Appellee also argued that Appellant Campbell has not been disciplined and therefore cannot invoke the "whistleblower" statute. Paragraph (B) of section 124.341 of the Ohio Revised Code states the following:

(B) Except as otherwise provided in division (C) of this section, no officer or employee in the classified or unclassified civil service shall take any disciplinary action against an employee in the classified or unclassified civil service for making any report authorized by division (A) of this section, including, without limitation, doing any of the following:

- (1) Removing or suspending the employee from employment;
- (2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
- (3) Transferring or reassigning the employee;
- (4) Denying the employee promotion that otherwise would have been received;
- (5) Reducing the employee in pay or position.

(C) An employee in the classified or unclassified civil service shall make a reasonable effort to determine the accuracy of any information reported under division (A) of this section. The employee is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority, for purposely, knowingly, or recklessly reporting false information under division (A) of this section.

As can be seen from reading the above, the placement of an employee on administrative leave with pay is not regarded as a disciplinary action. Since Appellant Campbell received her pay while on administrative leave, she was not suspended or removed from service. Appellee states in its Response that she was placed on administrative leave with pay in order to be scheduled for and to attend a psychological evaluation pursuant to administrative rule 123:1-30-03(A) of the Ohio Administrative Code. If Appellant Campbell is ultimately placed on an involuntary disability separation, that action is not a disciplinary action and also does not fall under the purview of the above statute. (See *Cordial v. Ohio Dep't of Rehab. & Corr.*, 10<sup>th</sup> Dist. No. 05AP-473, 2006-Ohio-2533, paragraph 13).

Therefore, since Appellant Campbell has failed to meet her *prima facie* burden of showing that she met the reporting requirements of section 124.341 of the Ohio Revised Code and by failing to show that she has been disciplined, it is my **RECOMMENDATION** that this appeal be **DISMISSED** for a lack of subject matter jurisdiction.

  
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Marcie M. Scholl  
Administrative Law Judge

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