

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

Brian A. McCarthy,

Appellant,

v.

Case No. 09-WHB-10-0464

Ohio State University,

Appellee.

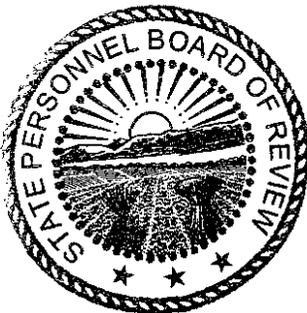
ORDER

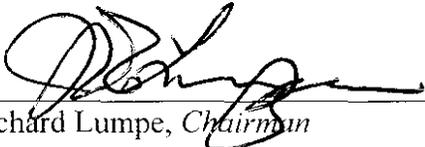
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** as untimely, pursuant to O.A.C. § 124-1-03(I) and O.R.C. § 124.341.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



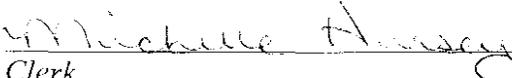


J. Richard Lumpe, *Chairman*

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, December 22, 2009.



Michelle Hunsley
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**

Brian A. McCarthy,

Case No. 09-WHB-10-0464

Appellant

v.

November 16, 2009

Ohio State University,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration November 16, 2009, upon a review of the information contained in the record. I find that the State Personnel Board of Review is without jurisdiction to hear this appeal because the appeal was not filed in a timely manner.

Appellant could have filed a removal appeal on the merits of the rationale provided by Appellee for his termination. As it appears that no Ohio Revised Code Section 124.34 order was provided to Appellant, such an appeal would have had to have been filed within thirty (30) calendar days after Appellant received actual notice of his termination, as required by Ohio Administrative Code Section 124-1-03(I), in order to be considered timely. Information provided by Appellant as part of his appeal established that he received notification of his termination, effective July 31, 2009, on June 4, 2009. Similarly, Appellant could have filed an appeal pursuant to R.C. 124.341 if he believed his removal was a retaliatory action taken as a result of whistleblowing activities. O.A.C. Section 124-1-03 provides that such an appeal must be filed with this Board within thirty (30) days after receiving notice of the action. I note that the timeline for filing an appeal under either rationale expired approximately one month prior to Appellant's recent elective hospital admission.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED**.



Jeannette E. Gunn
Administrative Law Judge