

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

Michelle L. Silvus,

Appellant,

v.

Case No. 10-FIN-06-0162

Department of Rehabilitation and Correction,
Franklin Pre-Release Center,

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 the Board lacks jurisdiction over a 40 hour fine of an overtime exempt employee, pursuant to O.R.C. § 124.34(B).



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

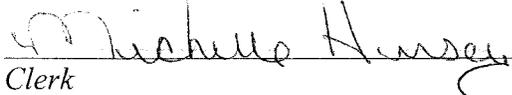


J. Richard Lumpe, *Chairman*

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, September 3, 2010.



Michelle Hussey
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**

Michelle L. Silvus

Case No. 10-FIN-06-0162

Appellant

v.

August 12, 2010

Department of Rehabilitation & Correction,
Franklin Pre-Release Center

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's June 15, 2010 appeal of a 40 hour fine which was imposed on her effective July 3, 2010. On July 7, 2010, this Board issued a Procedural Order and Questionnaire to the Appellee. Appellee filed its response to the Questionnaire on July 19, 2010 and also stated the response to the Questionnaire was being submitted in lieu of a Motion to Dismiss. Appellant Silvus did not file an optional reply.

Attached to the Appellee's Response to the Questionnaire were several documents establishing that Appellant Silvus is an overtime exempt employee in her position of Corrections Warden Assistant 1. Attached as Exhibit A was a memorandum entitled "Designation of Overtime Exempt Status". The memo states Appellant Silvus is designated an overtime exempt employee and the memo is acknowledged by Appellant Silvus on February 23, 2009.

Section 124.34(B) of the Ohio Revised Code states as follows, in pertinent part:

(B) In case of a reduction, a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, **a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation**, a fine of more than twenty-four hours' pay in the case

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of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action. (Emphasis added).

As can be seen from the above statute, there is no requirement to serve an order to an overtime exempt employee for a fine of forty (40) hours or less. Since there is no order required to be filed, then there is no right of appeal to this Board. Appellant Silvus' fine was for forty (40) hours, therefore this Board is without jurisdiction to hear her appeal.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as the Board lacks jurisdiction over a 40 hour fine of an overtime exempt employee.



Marcie M. Scholl
Administrative Law Judge

:mms