

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

Sylvester Briggs,

*Appellant.*

v.

Case No. 10-MIS-11-0307

Department of Rehabilitation and Correction,  
Chillicothe Correctional Institution,

*Appellee.*

**ORDER**

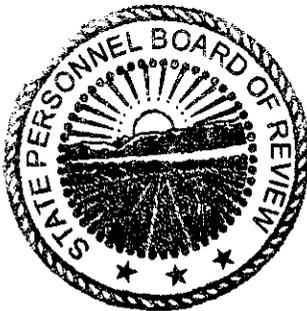
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

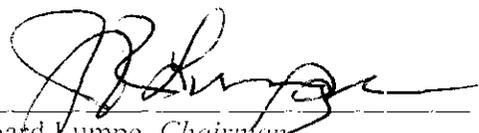
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction, pursuant to O.R.C. §§ 124.341 and 4167.13.

Lumpe - Aye

Tillery - Aye

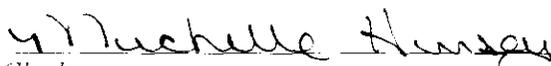


  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

**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 7, 2011.

  
\_\_\_\_\_  
*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**

Sylvester Briggs,

Case No. 10-MIS-11-0307

*Appellant*

v.

December 2, 2010

Department of Rehabilitation & Correction,  
Chillicothe Correctional Institution,

*Appellee*

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to Appellant's response to this Board's November 15, 2010, Procedural Order. Based upon the information submitted by Appellant, I find that no disciplinary action had been taken against Appellant at the time he filed his appeal alleging retaliatory discipline. Accordingly, there is no employment issue that this Board may review.

The two statutes which provide this Board with jurisdiction to consider appeals of retaliatory discipline are R.C. 124.341 and R.C. 4167.13.(A). R.C. 124.341 provides that if an employee becomes aware in the course of his 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 the authority to correct the violation or misuse, that employee may file a written report with his supervisor or appointing authority identifying the violation or misuse. Thereafter, no disciplinary action may be taken against the employee for making that report. The documentary materials provided by Appellant fail to identify any specific violation of state or federal statutes, rules, or regulations, or a misuse of public forms. Accordingly, I find that Appellant failed to comply with the reporting requirement of R.C. 124.341.

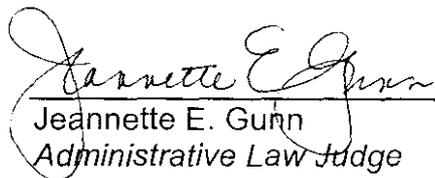
R.C. 4167.13(A) provides that a public employer may not discharge or discriminate against a public employee for filing a complaint pursuant to that chapter, testifying in any proceeding or exercising a right afforded under the chapter. R.C. Chapter 4167. provides that public employers must furnish a workplace free from recognized hazards that are causing or are likely to cause

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death or serious physical harm. The statute makes no provision for an appeal of work conditions leading to mental stress. Information provided by Appellant failed to demonstrate that he had filed a complaint regarding workplace hazards causing or likely to cause death or serious physical harm to any employee, testified in any proceeding or exercised a right afforded under Chapter 4167. I find that Appellant failed to comply with the reporting requirement of R.C. 4167.13.

Appellant indicated that he has filed an EEO claim with the Ohio Civil Rights Commission which is presently under review; I note that this Board has no statutory authority to review a claim of discrimination based upon age, race or gender.

Therefore, because no disciplinary action had been taken by Appellee at the time Appellant filed his appeal of retaliatory discipline, and because Appellant failed to comply with the reporting requirements of R.C. 124.341 and R.C. 4167.13, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of jurisdiction.

  
Jeannette E. Gunn  
Administrative Law Judge