

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Terry L. Janke,

Appellant,

v.

Case No. 10-REM-04-0083

Department of Job and Family Services,

Appellee.

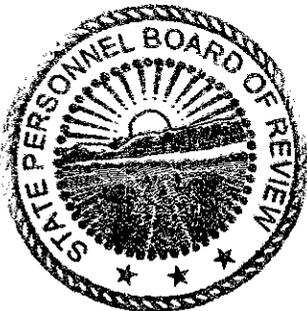
ORDER

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.

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, June 25, 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**

Terry L. Janke,

Case No. 10-REM-04-0083

Appellant

v.

May 20, 2010

Department of Job & Family Services,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a review of the information contained in the record. Appellant filed an appeal with this Board on April 1, 2010, indicating that he was removed from employment with Appellee effective March 26, 2010. In its response to this Board's Procedural Order and Questionnaire, filed on April 30, 2010, Appellee asserted that Appellant was not removed, but that his unclassified position was revoked and Appellant exercised fall-back rights to return to a classified position.

I note that Appellant also filed an appeal with this Board alleging that Appellee's revocation of his unclassified position constituted retaliatory discipline, as prohibited by R.C. 124.341. That case has been designated 10-WHB-04-0084 and is presently pending before this Board.

CONCLUSIONS OF LAW

This Board held in *Asti v. Ohio Department of Youth Services*, SPBR Case No. 03-MIS-01-0001, and the Supreme Court affirmed in *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, that it lacks jurisdiction to review the exercise of fall-back rights. Accordingly, this Board may not review whether or not Appellee acted properly in processing Appellant's fall-back rights or whether the classified position to which Appellant was returned was appropriate.

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Therefore, because this Board lacks jurisdiction to consider the instant appeal, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: