STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Aaron Simmons,

Appellant,

v. Case No. 2011-INV-07-0221

Troy Civil Service Commission

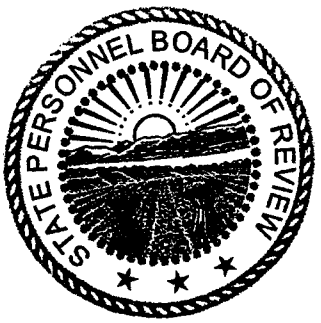
Appellee.

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 entirety of the record, including 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 investigation is **TERMINATED** for Appellant's failure to prosecute this matter.



Casey - Aye
Lumpe - Aye
Tillery - Aye

Terry L. Casey, *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 constitutes (~~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, July 31, 2013.

Clerk

NOTE: *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

ENTERED 7/31/13

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Aaron Simmons,	Case No. 11-INV-07-0221
Appellant	
v.	June 11, 2013
Troy Civil Service Commission,	Christopher R. Young
Appellee	*Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on review of the information contained in the record. On June 13, 2011, the Appellant, Aaron Simmons, filed an appeal with this Board requesting an investigation into a promotional exam which he took that allegedly had not been handled properly by the Commission. However, the Appellee, the Troy Civil Service Commission, stated that the investigation was inappropriate given the circumstances of the case, as Mr. Simmons had filed a complaint as a breach of the collective bargaining agreement, and was pursuing a grievance, along with the union had demanded arbitration. In summary, the Troy Civil Service Commission, on August 12, 2011, asserted that they correctly applied seniority points in the promotional examination that the Appellant took, and that if Mr. Simmons was dissatisfied with the scoring of that exam, the matter was pending before a neutral arbitrator.

Afterwards on August 19, 2011, the Appellant, was asked to respond to the Appellee's August 12, 2011 response, and to file his response on or before September 2, 2011, which was filed. From both the Troy Civil Service Commission and Mr. Simmons' responses it appeared as though the issue of concern was the awarding of seniority credits and when they should be added to a promotional exam grade, along with the certifying of a promotional list while under official protest/appeal. While noting that Mr. Simmons had filed a grievance under the collective bargaining agreement, the undersigned requested an update on the status of the current grievance. On October 12, 2011, the undersigned was notified that the union does wish to proceed to arbitration on the issue, but nothing had been rendered at that point. On January 10, 2012 the undersigned sent a letter to the Troy Civil Service Commission requesting an update as to the status of the

current grievance filed by Mr. Simmons and/or the union. On January 24, 2012, the Troy Civil Service Commission notified this Board that nothing had changed with regards to the status of the grievance that had been filed, nor to advance the same beyond the initial filing by Mr. Simmons.

As result, on May 22, 2013, the undersigned sent the following letter to the Appellant, after having a previous conversation with him on the telephone.

> Dear Mr. Aaron Simmons:
>
> Thank you for returning my phone call to discuss the investigation request which you filed against the Troy Civil Service Commission.
>
> On January 30, 2012, the undersigned sent a letter to you requesting you state the timeframe in which you believe it would take to have grievance considered by the Troy Civil Service Commission, to which you were to respond no later than February 17, 2012. The records in the file indicated that you have not responded to the above noted letter.
>
> As a result the undersigned contacted you on May 6, 2013, to inquire if you had filed the above noted or were going to file the same. Pursuant to our conversation, among other things, it was my understanding you were going to file a withdrawal or dismissal of the instant investigation request, as I gave you my work e-mail address (chris.young@spbr.state.oh.us) at your request, as you stated you no longer wish to proceed with the investigation. To date, I have not received an e-mail from you.
>
> Therefore, since you have indicated that you no longer wish to proceed with the investigation, the undersigned Administrative Law Judge will terminate the investigation request within two weeks of the date of this letter if no correspondence is filed. On the other hand, if you wish to still proceed with the investigation request, please file the above noted response which he should've file by February 17, 2012, within two weeks of date of this letter on or before June 5, 2013.

To date, the Appellant, has not responded to the undersigned request either by telephone, e-mail, letter or fax indicating that he no longer wishes to proceed or that he wished proceed. Thus, as in contemplation of the letter above, I respectfully **RECOMMEND** that the instant investigation be **TERMINATED**, for the Appellant's failure to prosecute this matter.

Christopher R. Young
Administrative Law Judge

CRY: