

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DIANE ROLLER,

Appellant,

v.

Case No. 11-MIS-05-0187

DEPARTMENT OF HEALTH,

Appellee

ORDER

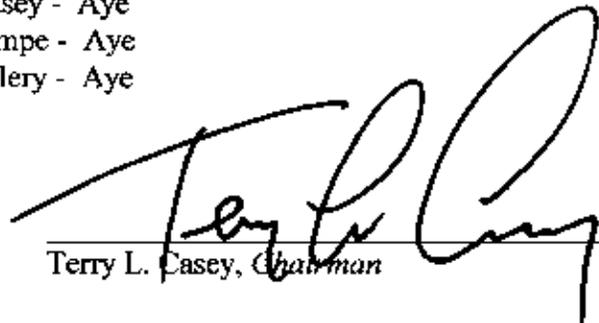
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal be **DISMISSED** for lack of jurisdiction, pursuant to R.C. 124.341 and R.C. 4167.13.

Casey - Aye
Lumpe - Aye
Tillery - Aye

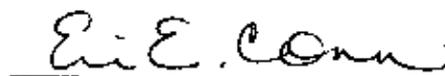



Terry L. Casey, *Chairman*

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, September 28, 2011.



Clerk

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

Diane Roller,

Case No. 11-MIS-05-0187

Appellant

v.

September 2, 2011

Department of Health,

Jeannette E. Gunn

Appellee

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 Procedural Order and Questionnaire, filed with the Board on June 23, 2011. Appellant indicated in her response to this Board's June 13, 2011, Procedural Order and Questionnaire, that she had filed a written report pursuant to R.C. 124.341(A) with her supervisor, specifically an email attachment addressed to her supervisor dated December 27, 2010. She provided a copy of that email attachment and indicated that she believed that Ohio Revised Code Section 4733.22 had been violated.

Appellant's Response provided no information indicating that she had filed a complaint or instituted any proceeding under or related to R.C. Chapter 4167.

CONCLUSIONS OF LAW

This Board has jurisdiction to consider retaliatory discipline arising pursuant to the report of violations of state or federal statutes, rules, or regulations; the misuse of public resources, or OSHA violations. See, R.C. 124.341, 4167.13. In the case at hand, Appellant makes no claim of protection pursuant to R.C. 4167.13, therefore, the evidence presented will be evaluated solely as it applies to the provisions of R.C. 124.341.

In a "whistleblower" appeal, the employee bears the burden to prove, by a preponderance of the evidence, that the disciplinary or retaliatory action taken by the employee's appointing authority was the result of the employee making a report

under the pertinent statute. Case law has established that the framework for the order and presentation of evidence first articulated by the United States Supreme Court in *McDonnell Douglas v. Green* (1973), 411 U.S. 792, is appropriate in a whistleblower appeal brought under O.R.C. 124.341. See, *Mark Leslie v. Ohio Department of Development* (2006), Franklin County No. 05CVF-05-4401, unreported.

An employee must first establish a *prima facie* case to support his or her retaliatory reason for its employment decision. If the appointing authority satisfies that burden of production, the burden of persuasion shifts to the employee to prove that the appointing authority's stated reason is a pretext for retaliation.

R.C. 124.341 states, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of 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 authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the supervisor or appointing authority, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.