

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

ANGIE J. ARMSTRONG,

Appellant,

v.

Case No. 11-REM-04-0101

OHIO STATE HIGHWAY PATROL,

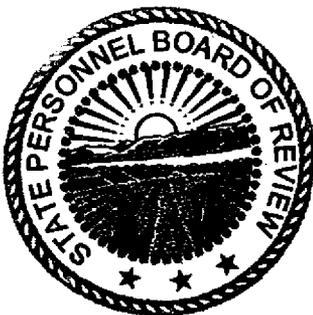
Appellee

ORDER

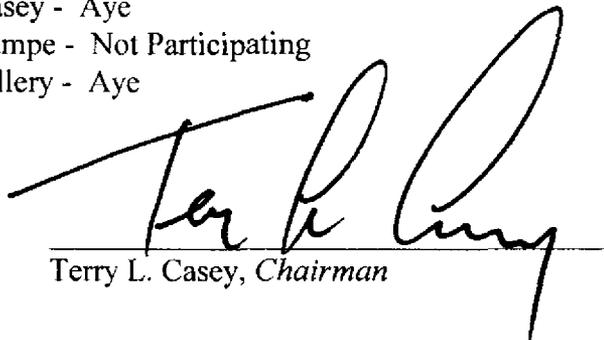
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is granted and this appeal is **DISMISSED** based on the lack of jurisdiction over a voluntary resignation pursuant to section 124.03 of the Ohio Revised Code.



Casey - Aye
Lumpe - Not Participating
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, November 30, 2011.


Erin E. Conn
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**

Angie J. Armstrong

Case No. 11-REM-04-0101

Appellant

v.

October 7, 2011

Ohio State Highway Patrol

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 Armstrong's filing of an appeal on April 4, 2011; Appellee's Motion to Dismiss, filed on September 12, 2011; and Appellant's Memorandum in Opposition, filed on September 14, 2011.

Appellee alleges this Board has no jurisdiction over this appeal as Appellant Armstrong resigned her position effective April 4, 2011. Attached to the Motion to Dismiss is an affidavit of Julianne Lee, Assistant Human Resources Administrator with Appellee. In her affidavit, Ms. Lee states Appellant Armstrong was employed as a Highway Patrol Radio Dispatcher Supervisor and made an inappropriate racial comment to her subordinate on March 4, 2011. A pre-disciplinary conference was held on April 1, 2011 and Appellant Armstrong attended. Prior to the Appellee taking any disciplinary action after the pre-disciplinary conference, Appellant Armstrong turned in her resignation. A Personnel Action effectuating Appellant Armstrong's resignation was executed on April 4, 2011 with an effective date of April 5, 2011, a copy of which was attached to Appellee's Motion to Dismiss.

Appellant Armstrong did not dispute any of the above facts in her Memorandum Contra. She added that she apologized as soon as she made the comment and that she had no previous disciplinary actions. Appellant Armstrong states in her affidavit attached to her Memorandum Contra that on Monday, March 28, 2011, Major Kevin Teaford, one of her supervisors, told her the decision had already been made to terminate her employment regardless of what happens at the upcoming pre-disciplinary hearing. Appellant Armstrong states in her affidavit that at that point, she tendered her resignation on Sunday, April 3, 2011 as she felt her discharge was imminent, she felt coerced and she felt she had no other choice as to

be terminated under the circumstances would have severely hindered her future job prospects.

CONCLUSIONS OF LAW

This Board has only the authority granted to it by statute. Section 124.03 of the Ohio Revised Code sets out this Board's jurisdiction. That statute states as follows, in pertinent part:

(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

As can be seen from reading the above statute, this Board only has jurisdiction to review a final decision of an appointing authority relative to reductions, job abolishments, layoffs, suspension, discharges, or reclassifications. The statute does not include resignations.

Appellant Armstrong argues that she was forced and coerced to resign and that the courts have held that this Board does have jurisdiction over forced resignations. The case that Appellant Armstrong cited, *Kinney v. Ohio State Dept. of Admin. Services*, 14 Ohio App.3d 33, 469 N.E.2d 1007 (1984), had a set of facts distinguishable from Appellant Armstrong's. In that case, Mr. Kinney was told of the reasons for his pending removal and then kept in a room, not being able to call anyone and told he had to sign a letter of resignation that day. In the instant case, Appellant Armstrong did not present any facts in her affidavit to suggest that she did not resign of her own free will nor does she allege any coercion on the part of the

Appellee. She was not put into a room and told to make a quick decision; in fact, at the point in time she resigned, she had not received any decision from the appointing authority as to what, if any, discipline she was going to receive. Appellant Armstrong states she was told by her Major that the decision had been made prior to her pre-disciplinary hearing to terminate her. That may or may not have been the case. The Major is not the appointing authority for Appellee, and as such, he did not have the authority to decide the punishment. While Appellant Armstrong stated in her affidavit that at that point, she felt she had no choice but to resign, that is the choice she made and it was not a choice that she was overtly pressured into by Appellee.

In the case of *Streitenberger v. Ohio Dept. of Ed.*, 2004-Ohio-5549; No. AP-342 (Oct. 2004), Ms. Streitenberger was confronted with wrongdoing and given the choice of immediately resigning or being terminated. She resigned and then appealed to this Board alleging a forced resignation. This Board denied jurisdiction on the basis that her resignation was voluntary and Ms. Streitenberger appealed the decision to the Court of Common Pleas and to the Court of Appeals. Both courts upheld the decision of this Board. The Court of Appeals stated:

A resignation is involuntary and therefore ineffective when it is the product of the appointing authority's wrongful coercion. Thus, where an employer induces the resignation as the only alternative to a removal based upon unfounded charges of misconduct, the resignation should be regarded as ineffective to deny the employee his appeal. Under those circumstances, there has not been a resignation but, rather a removal, the merits of which the employee should be permitted to contest. This differs from a situation where an employee is permitted to resign as an alternative to being removed on charges which are meritorious; in such an event, as there is no coercion, the resignation is voluntary. *Id.* at pg 6.

In the instant case, Appellant Armstrong never got to the point of being confronted with a removal or a resignation. As stated above, a Major told her the decision had been made, but that statement was not made to Appellant Armstrong after the pre-disciplinary hearing nor was it made to her at the time she was being served with any disciplinary paperwork. While the Major should not have made such a statement, the fact is that he did not have the authority to make the decision on Appellant Armstrong's discipline, as that responsibility is given only to the appointing authority.

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Appellant Armstrong admitted she engaged in wrongdoing and she acknowledged that she violated the rules and apologized for doing so. Therefore, as in the case of *Streitenberger*, supra, there were meritorious charges pending against Appellant Armstrong. When she resigned, she did so voluntarily; in fact there was no allegation that the Major asked for her resignation, only asked if she wanted to waive her hearing. There has not been anything presented in Appellant Armstrong's affidavit to suggest that she was coerced into resigning. She could have waited to see if the Major's statement that she was going to be removed proved true, but she did not wait for the outcome of her pre-disciplinary hearing before resigning. There has been no evidence presented that her resignation was anything but voluntary.

Therefore, it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be **GRANTED** and this appeal be **DISMISSED** based on a lack of jurisdiction over a voluntary resignation pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms